

**NEWPORT BEACH PLANNING COMMISSION MINUTES
CITY COUNCIL CHAMBERS – 100 CIVIC CENTER DRIVE
THURSDAY, JULY 23, 2020
REGULAR MEETING – 6:30 P.M.**

I. CALL TO ORDER – The meeting was called to order at 6:36 p.m.

II. PLEDGE OF ALLEGIANCE – Vice Chair Lowrey

III. ROLL CALL

PRESENT: Chair Erik Weigand, Vice Chair Lee Lowrey, Secretary Lauren Kleiman, Commissioner Curtis Ellmore, Commissioner Sarah Klaustermeier, Commissioner Mark Rosene

ABSENT: Commissioner Peter Koetting

Staff Present: Community Development Director Seimone Jurjis, Assistant City Attorney Yolanda Summerhill, Principal Planner Jaime Murillo, Associate Planner David Lee, Planning Consultant David Blumenthal, Administrative Support Specialist Clarivel Rodriguez

IV. PUBLIC COMMENTS

None

V. REQUEST FOR CONTINUANCES

None

VI. CONSENT ITEMS

ITEM NO. 1 MINUTES OF JULY 9, 2020

Recommended Action: Approve and file

Chair Weigand noted Mr. Mosher has submitted proposed revisions.

Motion made by Commissioner Kleiman and seconded by Commissioner Rosene to approve the minutes of the July 9, 2020 meeting with the revisions suggested by Mr. Mosher.

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

NOES:

ABSTAIN:

ABSENT: Koetting

Chair Weigand announced Item No. 3, the Shvetz Residential Subdivision, will be heard next.

VII. PUBLIC HEARING ITEMS

ITEM NO. 2 SHORT-TERM LODGING LCP AMENDMENT (PA2020-048)

Site Location: Citywide

Summary:

Amendment to Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code (NBMC) related to regulations and operational standards for short-term lodging permits. This includes amending Sections 21.18.020 (Residential Coastal Zoning Districts Land Uses) and 21.48.115 (Short-Term Lodging) of the NBMC.

Recommended Action:

1. Conduct a public hearing;

2. Find this project 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; and
3. Adopt Resolution No. PC2020-027 recommending the City Council authorize submittal of Local Coastal Program Amendment No. LC2020-007 to the California Coastal Commission to amend Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code amending coastal zoning regulations for the operation of short-term lodging (PA2020-048) (Attachment No. PC 1)

Community Development Director Seimone Jurjis reported 50-100 different platforms facilitate the rental of short-term lodging (STL). The City has no intention of eliminating STL. Residents adjacent to STL units have complained to the Council and staff about the units. Prior to July 14, 2020, the City had few regulations for STL. STL of 30 days or less is not a property right. The City grants the privilege through a permit program. The City can dictate requirements for STL. The Council began considering STL requirements in early 2019. STL is allowed in residential zones except for R-1 and mixed-use zones. Some single-family homes offer STL through a grandfather provision of a 2004 ordinance. Currently, the City will not issue a STL permit for a single-family home. Because there are few regulations, complaints about STL are limited to noise and trash issues. He shared the number of complaints, notices of violation issued, and citations issued for 2017-2020; number of complaints and citations issued for violation of the City's ban on STL during the pandemic; and public meetings held since January 19, 2019. Currently, 1,524 permits are active, but more than 10,000 STL units could be located within the City. STL impacts Balboa Peninsula, Balboa Island, West Newport/Newport Shores, and Corona del Mar Village more than other areas of the City. Newport Beach has issued more than twice the number of STL permits as the coastal city with the next highest number of permits. From 2011 to 2019, the number of properties registered for STL has increased by 60 percent. From 2016 to 2020, the number of active STL units has increased by 43 percent. On July 14, 2020, the Council adopted Phase I changes to Title 5 for STL. A Council ad hoc committee has recommended Phase II changes to Title 21, the Local Coastal Program Implementation Plan. Proposed Phase II changes include no issuance of new permits after the effective date of an ordinance; existing permits may be renewed if they have not lapsed or been revoked; an existing permit can be assigned to a new owner of the real property; a three-night minimum stay for owner-occupied units and a six-night minimum stay for non-owner-occupied units; posting of the permit and any conditions of approval within the unit; and owners have to address noise and disturbance complaints.

In response to Commissioner Kleiman's questions, Community Development Director Jurjis advised that the permitting program was implemented in 1996. Prior to 1996, STL was not regulated. With the propagation of rental platforms, rentals are easier to manage and do not require property owners to utilize a management company. License Supervisor, Monique Navarrete explained that units rather than parcels are permitted. Since implementation of the permitting process, rental of both units in a duplex requires two STL permits. The decrease in complaints since 2017 is likely the result of staff identifying non-permitted STLs prior to complaints being made and increased enforcement of trash and parking regulations. Community Development Director Jurjis added that enforcement will always be an issue, whether or not the Council institutes a cap on the number of permits. Assistant City Attorney Yolanda Summerhill indicated the City has the right to adopt laws that protect the health, safety, and welfare of the community. The City may regulate STL under the zoning laws in order to protect the community. If a property owner does not have an STL permit and would not have one prior to the effective date of an ordinance, then he would not have a right to use his property as STL. Community Development Director Jurjis felt the California Coastal Commission would be wary of eliminating STL in a jurisdiction that has always had it. The best argument in support of banning new permits is the City has more STL permits than any other city.

In answer to Commissioner Klaustermeier's inquiries, Community Development Director Jurjis related that existing STL permits have to be renewed annually. If a property owner does not renew an existing permit prior to the effective date of the ordinance, the property owner cannot apply for a new permit for the same property. If a ban is implemented, attrition will reduce the number of STL permits.

In reply to Vice Chair Lowrey's queries, Community Development Director Jurjis reported the Council ad hoc committee has proposed Phase II as a next step. The ad hoc committee bundled its recommendations, but staff separated the recommendations into Phase I, which did not require Planning Commission and Coastal

Commission review, and Phase II. Council Member Duffield was absent when the Council voted on Phase I. The language granting the City Manager authority to impose additional standard conditions for STL has been utilized in other provisions of the Municipal Code. License Supervisor, Monique Navarrete added that Transient Occupancy Tax (TOT) revenue from STL in fiscal year 2018-2019 totaled \$4.48 million. In comparison, TOT revenue from hotels is about \$25 million annually.

In answer to Commissioner Ellmore's inquiries, Community Development Director Jurjis advised that staff investigates each complaint. Under the ordinance adopted in July 2020, two violations can result in an STL permit being suspended for six months. Previously, the City could impose a fine of up to \$500 or revoke a permit with the third violation. The suspension provisions have not been implemented. Assistant City Attorney Summerhill explained that Phase I pertained to the STL permit while Phase II pertained to land use features of the permit.

Commissioner Kleiman and Chair Weigand disclosed communications with members of the public. Commissioner Klaustermeier disclosed no ex parte communications. Commissioner Ellmore and Vice Chair Lowrey disclosed reading emails on the topic.

In reply to Commissioner Kleiman's question, Community Development Director Jurjis indicated approximately 17 active permits have been issued for properties on Newport Island. Staff is not aware of any unpermitted STL units on Newport Island.

In response to Chair Weigand's query, Community Development Director Jurjis advised that once the COVID emergency is lifted, any changes have to be approved by the Coastal Commission.

Chair Weigand opened the public hearing.

Debbie Stevens, Corona del Mar Residents Association President, shared the results of a survey sent to 650 households located primarily in Corona del Mar. A large majority of survey respondents supported additional regulation of STL units.

Jeff Boston, Share Newport Beach and Seabreeze Vacation Rentals, read a statement from the Coastal Commission regarding property rights. The Coastal Commission approved an ordinance banning STL in Huntington Beach because it never had a STL program and allowed huge hotels. The 1,500 STL permits equaled about 60,000 bookings per year. STL is not the issue neighbors believe it is. If the latest ordinance provisions are enforced, perceived problems should go away. He supported a three-night minimum stay.

Charles Caten noted the number of complaints has decreased while the number of STL units increased. Parking and noise issues are not exclusive to one area of the City. Using the pandemic to enact laws without Coastal Commission review is not kosher.

Chris Neilson indicated Newport Beach has historically been oriented toward vacationers. Residents have invaded Newport Beach rather than vacationers. COVID has been weaponized against STL owners. The Planning Commission should investigate the data.

Carmen Rawson related the requirements imposed on STL in 1992. STL owners are not seeking an increase in the number of permits issued. Enforcement is needed.

Gary Cruz stated unpermitted STLs are located on Newport Island. The person renting a property may not occupy the property or prohibit guests.

Deborah Hoffmeyer asked if the cities shown in Table 1 count STL permits by parcel or unit. The area of each city should be listed in Table 1. She inquired about the goal of limiting the number of STL permits and the number of hotel rooms permitted in Newport Beach.

PJ Paterno questioned whether he had an active permit. STL income allows property owners to survive until they can build a home in Newport Beach. STL is proliferating because property owners are having success with professional property managers.

An unidentified speaker indicated that the issue is providing quality STL and ensuring regulations are proper.

Jim Mosher commented that the permitting program began in 1992. The Coastal Land Use Plan describes Newport Beach as having a significant number of single-family homes that serve as overnight visitor accommodations and STL as a rental for 30 days or less. Staff wants to change STL to less than 30 days. The proposed changes indicate a STL unit must be located on an R-1 parcel and located on a nonresidential parcel.

Craig Batley indicated the statement that a six-night minimum stay will not prevent public access to coastal resources is not based on fact. A six-night minimum will reduce overall bookings by 42 percent. Stays of three, four and five nights are very popular. Not allowing the issuance of new STL permits reduces affordable access to the coast. The success of Phase I should be determined before Phase II is implemented.

Curtis Wesseln suggested staff is focusing too much on those who break the rules. Limiting the number of permits to the existing permits has not been proposed prior to this meeting.

Max Johnson remarked that Commissioners who have not lived in Newport Beach for 15 or 20 years should review the history of Newport Beach. Residents' quality of life has decreased over the years. More regulations will benefit the community.

Brian Boltinghouse commented that he cannot operate his STL units with a six-night minimum stay. These regulations go too far.

Charles Darquea felt most families could not afford a seven-night minimum stay. The City could increase the fines if permit holders do not comply or there are complaints or require a property manager to oversee a permit holder's property. Existing STL permits could be grandfathered and assigned to a new property owner at the time of his purchase of the property. Many businesses on the Peninsula depend on STL. The City should not hold public meetings during the pandemic because the public cannot participate in person.

Joe Bowerbank reported the noise level and parking have changed on Newport Island over the past ten years. Newport Island is quiet compared to the rest of the City. A higher concentration of STL makes an impact. Permit holders rely on income from rentals. The City should not issue STL permits.

Newby Sears advised that all STL tenants he has met have been delightful. STL adds life to the neighborhood because the homes would be vacant 70 percent of the time. People have been renting summer cottages on Balboa Island for the past 100 years. This is an opportunity to increase the number of STL on Balboa Island to increase the vibrancy of the Island. The Council's recent actions regarding STL are counterproductive because renters are more likely to spread COVID if they rent hotel rooms.

Mark Marcos believed implementing Phase I and Phase II is imperative to check an industry that has run rampant for decades. There has been no enforcement. The Police Department will not issue fines. The island is overrun with STL, and STL cannot be controlled because of the size and shape of the island. Residents are suffering the impacts of STL.

Kirk related that STL is a year-round industry that generates more than \$4.5 million in taxes, not including sales tax. Businesses that benefit from STL will suffer if Phase II is implemented. The six-night minimum stay is a game changer for STL. The proposal feels like an overreach.

Gila Willner stated STL alone has not caused changes in the community. The proposed changes will lead to more long-term leases to college students, which will increase the number of Code violations. The number of complaints should be categorized as occurring at permitted and non-permitted STL. The three-night minimum stay during COVID has significantly impact STL, and a seven-night minimum will be worse. Many families visit Newport Beach for a weekend.

Don Abrams believed vacationers cause zero problems and add to the economy of restaurants, shops, and the service industry. A total of 136 complaints for tens of thousands of visits is miniscule. In law school, he learned that vacation rentals were a property right. Council Members are trying to guide legislation in such a

way as to eliminate STL. A cap on STL is unreasonable. The number of STL units has increased because staff changed the way they count units. The Council knows that 95 percent of STL units are not owner-occupied.

Brad Bowman felt a six-night minimum stay requirement would be too invasive. STL permit holders do not need to be told what is the right thing to do. There should not be a cap on the number of STL permits because people want to invest in Newport Beach.

Kelly Waterman suggested the City utilize a third party to enforce trash requirements such as it did with non-permitted STL. A six-night minimum will eliminate weekend stays. Many of the platforms shown in the staff presentation are not local, reputable, onsite realtors.

An unidentified speaker remarked that long-term renters cause more problems than short-term renters. A six-night minimum stay will eliminate STL during the winter and result in more cars per unit and more weekend parties. Local permitholders should be differentiated from out-of-state permitholders.

Scott Carpenter indicated a six-night minimum stay will severely harm STL owners and businesses and put some good people out of business. An online service suggests 86 percent of rentals in Newport Beach are six nights or less. The City will lose \$2 million in tax revenue, and owners will lose \$20 million in income. The Planning Commission should not take action without fully understanding the economic impacts.

Jennings Reveley related that Newport Island is being negatively impacted by STL. The City needs to moderate STL so that the City is livable.

Nancy Gardner urged the Planning Commission to limit the number of STL permits because STL greatly impacts neighborhoods.

Jacqueline Wittmeyer shared her experience with STL adjacent to her home. Many residents of her neighborhood have signed a petition in opposition to STL.

Scott McFetters advised that the number of STL units in his neighborhood has increased greatly in the past two years. STL is creating a big nuisance. Residents have a right to the quiet enjoyment of their property. Filing a complaint with a property management company is extremely difficult.

Charles Challah reported he cannot afford to stay in Newport Beach for six nights and cannot be away from his business for more than two or three days.

Nancy Alston, Still Protecting Our Newport (SPON), shared highlights from her research regarding the impacts of STL.

Gina Ainsworth commented regarding the impacts of noise created by outdoor residential spaces and the location of residences near the water and in alleyways. Neighborhoods should remain residential.

Lori Hamel noted Phase II has been a shock to the community, and notice has not been provided to residents. Prohibiting all new STL units is not fair. There is no justification for limiting stays to a three-night minimum. The length of the stay does not equate to the quality of the renter.

Charles Klobe advised that \$4 million in TOT revenues is a small percentage of the City's revenue. Many permitholders do not live or vote in the City. He recommended the Planning Commission approve the proposed changes and offered to develop a coalition to support the Council's actions before the Coastal Commission.

Mike Adnoff, Beach View Realty, stated the issue is enforcement. A six-night minimum stay requirement will substantially affect permitholders' off-season income. Students cause more problems than STL renters. A three-night minimum stay would be reasonable.

Alan Morcos shared details of his contract with a property management company for rental of his STL units.

Community Development Director Jurjis reported the comparison of Newport Beach to other cities is based on a unit count but does not include cities' area. There are about 3,200 hotel rooms in Newport Beach. Assignment of STL permits is allowed if the permit is active at the time the ordinance is adopted.

Chair Weigand closed the public hearing.

In response to Vice Chair Lowrey's inquiries, Community Development Director Jurjis advised that a STL permit runs with the property and can be assigned. The Police Department issues citations for loud parties (DAC) and loud and unruly gatherings (LUGO). DAC and LUGO citations can result in a suspension of the STL permit.

Commissioner Rosene noted the item before the Commission is discussion of the Local Coastal Program amendment. The document will have to be amended to align with the Council's policy decision. In response to his question, Chair Weigand indicated the proposed changes are a cap on new STL permits, a limit on renewals, and minimum stay requirements for owner-occupied properties and non-owner-occupied properties. Commissioner Rosene indicated a three-night minimum sounds reasonable from an enforcement perspective. His recommendation would be dedication of a single staff person to enforce STL regulations and a three-night minimum stay requirement.

Commissioner Ellmore commented that the intent is to limit STL business rather than eliminate it. A six-night minimum would eliminate a large amount of business for STL permitholders. As written, a six-night minimum would likely lead to permitholders dropping their permits. The enforcement statistics are underwhelming and seem to indicate problems are minimal. Phase I has not been in place long enough to have an effect. He wanted to see new enforcement statistics after Phase I has been in place so that the Planning Commission can understand if proposals for Phase II are warranted. The new regulation for suspension of a permit after two violations may remove some bad operators. This is a City Council item, and the Council should draft regulations. He viewed STL as a property right.

Commissioner Kleiman remarked that a homeowners association (HOA) is the most effective way to deal with these problems. If the problems on Newport Island are severe, residents should be able to band together and report violations to the City so that the City can deal with permitholders or non-permitted units. She was reluctant to make recommendations relating to the Local Coastal Plan when she felt there is little likelihood the Coastal Commission will support all the recommendations. Based on the Coastal Commission's actions for San Diego's recommendations, she was reluctant to waste staff time and resources. The Coastal Commission will definitely reject a six-night minimum and anything that is too restrictive. Something as simple as signage listing the permit number and a contact phone number for permitted units could be effective in reducing issues. Some of these recommendations seem drastic. Some of the \$4 million in revenue could be used to address issues.

In answer to Chair Weigand's question, Community Development Director Jurjis advised that the Coastal Commission recognizes the need for cities to regulate activities in order to protect neighborhoods and improve quality of life and that STL provides low-cost visitor accommodations. The Coastal Commission has approved STL programs and will discuss the City's proposed amendment with City staff in order to find a solution.

Chair Weigand recalled Mr. Klobe's comment regarding three Council Members have prepared the recommendations, and only a fourth Council Member is needed to approve them. If the Planning Commission can craft some compromises, they might work for the Council and the business community.

Assistant City Attorney Summerhill suggested the Planning Commission consider recommendations individually and propose modifications as needed.

In reply to Commissioner Kleiman's query, Community Development Director Jurjis reported permitholders pay TOT on the honor system. Staff conducts spot checks with an audit program. The City has no knowledge of amounts reported or not reported to the Internal Revenue Service (IRS).

Commissioner Klaustermeier believed the Coastal Commission would view the recommendations as the City limiting access to the beach. Commissioners should consider modifications that could be acceptable to the

Council, the Coastal Commission, and residents. The Planning Commission should look at a cap on permits. Property owners should be allowed to apply for STL permits. A cap greater than the current number of active permits would be good. She did not support a six-night minimum stay requirement or differentiation between owner-occupied units and non-owner-occupied units. A one-night minimum may not improve the situation more than a three-night minimum. She was not inclined to support a minimum of more than three nights.

Chair Weigand proposed setting a cap on permits at perhaps 1,500 and, as permits lapse, using a lottery system to issue permits, much as the Harbor Department does for moorings. Commissioners may wish to discuss a cap of 1,600 or no cap. In response to his inquiry, Community Development Director Jurjis indicated Council Members have discussed a cap greater than the number of active permits. The Council ad hoc committee was looking to decrease the number of permits. The cap can be set lower than the number of active permits such that attrition will lower the number of active permits to and below the cap.

Chair Weigand remarked that the Planning Commission is struggling with recommendations because it has not been a part of the conversation and public outreach.

Commissioner Kleiman noted the Commission's consideration is limited in scope. This is an issue of balancing the property rights of residents who want to rent their property on a short-term basis and residents living adjacent to STL units. Balancing the two is tricky. The Coastal Commission is more likely to consider a three-night minimum than a six-night minimum. She did not know how a cap on the number of permits could be handled fairly or enforced.

Vice Chair Lowrey did not understand the rush to implement Phase II, especially based on the enforcement statistics. He hesitated to support recommendations for which he has little knowledge and that could limit people's ability to earn income. He could not support any of the three recommendations. If the Commission agrees, it could include a statement suggesting study of the effects of Phase I. If complaints increase, then caps and minimum stays could be studied in-depth. A six-night minimum does not seem viable.

In answer to Chair Weigand's question, Community Development Director Jurjis advised that staff does not have hard numbers for the percentage of one and two-night stays or for owner-occupied units.

Chair Weigand related that most STL owners appear to agree with a three-night minimum. There is some merit to imposing a three-night minimum. The City Council can always change a minimum stay requirement.

Motion made by Chair Weigand to recommend to the City Council the status quo of 1,524 permits, a cap at 1,500 permits, the creation of a lottery system for STL permits similar to the lottery for moorings, and a three-night minimum stay.

The motion failed for lack of a second.

Commissioner Ellmore noted the Council has studied the issues, but the Planning Commission has not. The Planning Commission cannot create a structure without in-depth study.

Motion made by Commissioner Ellmore and seconded by Vice Chair Lowrey not to recommend any of the proposed changes to the Council.

Commissioner Klaustermeier questioned whether the Commission wishes to recommend topics for further study. In reply to her queries, Chair Weigand indicated the Council may interpret the Commission's action as it does not like any of the proposed changes and it urges the Council not to support them. The Council may revise or approve the proposed changes, but the Planning Commission's action will indicate it does not approve the way the changes are drafted.

Commissioner Kleiman interpreted Commissioner Klaustermeier's comments as support for some kind of changes, but not those provided.

Vice Chair Lowrey stated the Planning Commission is not aware of potential unintended consequences of these proposed changes. Perhaps community leaders and activists and residents have discussed these changes, but their discussions were not shared with the Planning Commission.

Commissioner Kleiman suggested changes to enforcement could alleviate some of the problems. The motion does not indicate the Planning Commission supports STL operators and not residents. The motion indicates the Planning Commission cannot make a recommendation without additional information.

AYES: Lowrey, Kleiman, Ellmore, Klaustermeier
NOES: Weigand, Rosene
RECUSED:
ABSENT: Koetting

Chair Weigand recessed the meeting for a short break.

ITEM NO. 3 SHVETZ RESIDENTIAL SUBDIVISION (PA2020-041)
Site Location: 2400 Santiago Drive

Summary:

An amendment to the General Plan and a tentative parcel map to subdivide an existing single-unit residential lot into two separate single-unit residential lots. An amendment to the City's General Plan is necessary to allow for the increase of one additional dwelling unit in accordance with Land Use Policy LU 4.2 (Prohibition of New Residential Subdivisions).

Recommended Action:

1. Conduct a public hearing;
2. Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303 under Class 3 (New Construction) of the CEQA Guidelines, because it has no potential to have a significant effect on the environment; and
3. Adopt Resolution No. PC2020-028 approving General Plan Amendment No. GP2020-003 and Tentative Parcel Map No. NP2020-007.

Associate Planner David Lee reported the applicant requests a Tentative Parcel Map to divide an existing single-unit residential lot into two single-unit residential lots and a General Plan Amendment to increase the density by one unit and pursuant to General Plan Policy LU 4.2. The applicant has not proposed a development. The subject property is located between Irvine and Tustin Avenues. Surrounding uses are all single residential. The lot measures 300 feet deep by 120 feet wide. The applicant does not propose any changes to the existing home. The new parcel will contain 15,000 square feet, leaving 21,060 square feet for the second parcel where the existing home and driveway are located. The existing driveway satisfies the Fire Department's requirements for emergency access. Facts in support of a General Plan Amendment are the addition of one dwelling unit to Statistical Area J5, no change in the land use, the created lots' compliance with Zoning Code requirements for minimum lot width and area, and the configuration's consistency with the neighborhood. Staff is conducting the Native American Tribal consultation. Per Charter Section 423, the General Plan amendment does not require a vote of the people because the proposal will not exceed thresholds for density, intensity, and peak hour trips. Facts in support of a Tentative Parcel Map are the lot's suitability for an additional dwelling unit, the location in an urbanized area with no sensitive vegetation or habitat, future development's compliance with Codes, and the requirement for the new parcel to have its own utilities. If the Planning Commission approves the application, staff will complete the Native American Tribal consultation and schedule a hearing before the City Council, which will likely occur at the Council's second meeting in October.

In response to Commissioner Rosene's question, Associate Planner Lee advised that the drive aisle for the subject site is 20 feet wide, and the drive aisle serving the two properties to the north is 25 feet wide. The Fire Department requires a width of 20 feet for apparatus access.

Commissioner Rosene disclosed a drive by the property. Commissioners Kleiman, Klaustermeier, Ellmore, and Vice Chair Lowrey disclosed no ex parte communications. Chair Weigand disclosed communications with a neighbor.

Chair Weigand opened the public hearing.

Shawna Schaffner, applicant representative, indicated three parcels on the street have previously been divided into two parcels with configurations similar to that proposed for the subject parcel. She reiterated the proposed lot sizes, access from Santiago Drive, and a net increase of one residential lot.

Jim Mosher remarked regarding the application's consistency with the General Plan. The staff report and proposed resolution do not indicate the General Plan provision that will be amended. Staff indicated the application is consistent with the General Plan policy that prohibits new residential subdivisions, which appears to be a contradiction. He inquired whether a condition of approval prohibiting a gate across the driveway is necessary so that emergency access is available at all times.

In reply to Chair Weigand's inquiry, Community Development Director Seimone Jurjis related that a condition of approval requiring an application for development of the property be presented to the Zoning Administrator as a receive and file item can be added. Chair Weigand explained that he wants to provide neighbors with an opportunity for input, to increase vetting of any project, and to provide the Planning Commission with an opportunity to call the project for review.

Chair Weigand closed the public hearing.

Motion made by Commissioner Kleiman and seconded by Commissioner Ellmore to find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303 under Class 3 (New Construction) of the CEQA Guidelines, because it has no potential to have a significant effect on the environment; and adopt Resolution No. PC2020-028 approving General Plan Amendment No. GP2020-003 and Tentative Parcel Map No. NP2020-007.

Chair Weigand reopened the public hearing.

In answer to Chair Weigand's query, Ms. Schaffner commented that staff's review of projects is thorough. If staff determines a future application for a residence meets the City's stringent guidelines, the application should not be presented to the Zoning Administrator as the Zoning Code grants the Zoning Administrator little authority to change the project. She requested a condition of approval not be added.

Commissioner Kleiman concurred with Ms. Schaffner's analysis.

Chair Weigand closed the public hearing.

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

NOES:

ABSTAIN:

ABSENT: Koetting

[The Planning Commission proceeded to Item 2.]

ITEM NO. 4. INDUSTRIAL ZONING (IG) ZONING DISTRICT CODE AMENDMENTS (PA2020-042)
Site Location: Northwest corner of the City near Costa Mesa along Production Place, 16th Street, and portions of Monrovia Avenue

Summary:

Amendments to Sections 20.70.020 (Definitions of Specialized Terms and Phrases), 20.24.020 (Industrial Zoning District Land Uses and Permit Requirements), 20.40.040 (Off-Street Parking Spaces Required), and 20.48.090 (Eating and Drinking Establishments) of Title 20 (Planning and Zoning) of the Newport Beach Municipal Code. The changes would allow wine tasting rooms subject to obtaining a conditional use permit in the IG Zoning District.

Recommended Action:

1. Conduct a public hearing;
2. Find this 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; and
3. Adopt Resolution No. PC2020-029 recommending the City Council approve Zoning Code Amendment No. CA2020-005 to amend Sections 20.24.020 (Industrial Zoning District Land Uses and Permit Requirements), 20.40.040 (Off-Street Parking Spaces Required), 20.48.090 (Eating and Drinking Establishments), and 20.70.020 (Definitions of Specialized Terms and Phrases), of Title 20 (Planning and Zoning) of the Newport Beach Municipal Code.

Planning Consultant David Blumenthal explained the licensing process and requirements for a wine tasting room. The proposal is to allow wine tasting rooms in the Industrial Zoning District (IG) and to require a conditional use permit prior to operations commencing. The amendment would prohibit the sale of beer or distilled spirits, allow onsite and offsite consumption of wine, prohibit live entertainment and operations as a restaurant, limit hours of operation to 4 p.m. to 11 p.m. Monday through Friday and noon to 11 p.m. on Saturday and Sunday, and require separation of wine tasting rooms from other wine tasting rooms and schools. Orange Coast Winery, a wine tasting room, has been operating as a nonconforming use since 2010. If the amendment is approved, Orange Coast Winery will need to apply for a conditional use permit.

In response to Chair Weigand's inquiries, Planning Consultant Blumenthal advised that one or two properties in the IG Zone could accommodate a wine tasting room with Orange Coast Winery operating at its site. Wine tasting rooms would have to be located 500 feet from Pacifica Christian school. The separation requirement is limited to primary and secondary education sites.

Vice Chair Lowrey and Chair Weigand disclosed ex parte communications with the consultant. All other Commissioners disclosed no ex parte communications.

Chair Weigand opened the public hearing.

Philip Greer, consultant for Orange Coast Winery, advised that the staff report is comprehensive.

Jim Mosher remarked that the amendment appears to benefit only one property owner. The separation requirement is measured to the building because part of the parcel would be eliminated if the measurement is to the property. In 2010, food processing uses were approved in the IG Zone. A wine tasting room is not consistent with the General Plan.

Chair Weigand closed the public hearing.

Commissioner Kleiman recalled a similar application which the Planning Commission approved and the City Council denied. Community Development Director Jurjis clarified that the prior application was for a brewery, a distillery, and a winery. The Council initiated the current application and directed staff to develop a restricted standard to allow a winery. Commissioner Kleiman indicated she considered the application as spot zoning and would not support approval. This is an opportunity for one business to be located in an area where it does not belong.

In answer to Chair Weigand's questions, Community Development Director Jurjis explained that the Commission is making a recommendation to the City Council. If the Council denies the amendment, the existing use will have to cease operations or convert its business model to the original model. The business is producing offsite.

Commissioner Rosene agreed that the amendment seems to benefit a single entity and to be spot zoning. The IG Zone could benefit from a new and interesting use. There is not much opportunity for other businesses to utilize the amendment.

Assistant City Attorney Summerhill clarified spot zoning as a parcel being given less rights than surrounding parcels. While only one or two properties could be a winery, this is not necessarily quintessential spot zoning. The Planning Commission could recommend a smaller separation to allow additional wineries in the area.

In response to Chair Weigand's queries, Community Development Director Jurjis indicated staff set the 500-foot distance. The Council directed staff to include a separation requirement but did not specify a distance. Planning Consultant Blumenthal did not know the number of parcels that could accommodate a winery if the separation requirement from the existing business is eliminated. The number could be greater than ten.

Chair Weigand could support removing the separation requirement from the existing winery.

Commissioner Kleiman shared her understanding of spot zoning. The Council denied the earlier application because it was piecemeal and the proposed use needed a more comprehensive review. Schools and churches are located in the area.

In reply to Commissioner Ellmore's inquiry, Planning Consultant Blumenthal explained that the proposed amendment pertains to the IG Zone only, and a wine tasting room is not allowed elsewhere in the City.

Motion made by Commissioner Kleiman and seconded by Commissioner Rosene to recommend the Council deny the application.

Substitute Motion made by Chair Weigand and seconded by Vice Chair Lowrey to recommend the Council approve the application and remove the 500-foot separation distance from the existing winery.

Vote on the Substitute Motion:

AYES: Weigand, Lowrey, Ellmore, Klaustermeier

NOES: Kleiman, Rosene

ABSTAIN:

ABSENT: Koetting

VIII. STAFF AND COMMISSIONER ITEMS

ITEM NO. 5 MOTION FOR RECONSIDERATION

None

ITEM NO. 6 REPORT BY THE COMMUNITY DEVELOPMENT DIRECTOR OR REQUEST FOR MATTERS WHICH A PLANNING COMMISSION MEMBER WOULD LIKE PLACED ON A FUTURE AGENDA.

Community Development Director Jurjis reported the Council on July 29, 2020 will review and consider Local Coastal Program cleanup amendments, an extension of the Development Agreement with Hoag Hospital, and the Newport Airport Village project. The Airport Land Use Commission found the project inconsistent with the Airport Land Use Plan. The Planning Commission's next meeting will be August 20, 2020.

ITEM NO. 7 REQUESTS FOR EXCUSED ABSENCES

None

X. ADJOURNMENT – 10:32 p.m.

The agenda for the July 23, 2020, Planning Commission meeting was posted on Friday, July 17, 2020, at 4:20 p.m. in the Chambers binder, on the digital display board located inside the vestibule of the Council Chambers at 100 Civic Center Drive, and on the City's website on Friday, July 17, 2020, at 4:16 p.m.

Erik Weigand, Chairman

Lauren Kleiman, Secretary

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