

**NEWPORT BEACH PLANNING COMMISSION MINUTES  
CITY COUNCIL CHAMBERS – 100 CIVIC CENTER DRIVE  
THURSDAY, JULY 8, 2021  
REGULAR MEETING – 6:30 P.M.**

I. **CALL TO ORDER** – The meeting was called to order at 6:30 p.m.

II. **PLEDGE OF ALLEGIANCE** – Commissioner Ellmore

III. **ROLL CALL**

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

ABSENT: Commissioner Sarah Klaustermeier

Staff Present: Community Development Director Seimone Jurjis, Deputy Community Development Director Jim Campbell, Assistant City Attorney Yolanda Summerhill, City Traffic Engineer Tony Brine, Principal Planner Jaime Murillo, Administrative Assistant Clarivel Rodriguez, Department Assistant Amanda Lee

IV. **ELECTION OF OFFICERS**

**ITEM NO. 1 ELECTION OF OFFICERS**

**Summary:**

The Planning Commission's adopted rules require the election of officers at its annual meeting, which occurs at the first meeting of July each year. Officers include the Chair, Vice Chair, and Secretary, and they would serve for a one-year term.

**Recommended Action:**

1. Find this action not subject to the California Environmental Quality Act ("CEQA") pursuant to 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3;
2. Nominate Planning Commission officers consisting of Chair, Vice Chair, and Secretary; and
3. Appoint the officers by majority approval of a motion either individually or as one motion for all positions.

**Motion** made by Chair Weigand and seconded by Secretary Kleiman to approve the nomination of Vice Chair Lowrey for Chair of the Planning Commission.

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

NOES:

ABSTAIN:

ABSENT: Klaustermeier

Chair Lowrey thanked Commissioner Weigand for his time and efforts in leading the Planning Commission over the past year.

**Motion** made by Chair Lowrey and seconded by Commissioner Rosene to approve the nomination of Secretary Kleiman for Vice Chair of the Planning Commission.

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

NOES:

ABSTAIN:

ABSENT: Klaustermeier

**Motion** made by Commissioner Koetting and seconded by Commissioner Weigand to approve the nomination of Commissioner Ellmore for Secretary of the Planning Commission.

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

**V. PUBLIC COMMENTS**

None

**VI. REQUEST FOR CONTINUANCES**

None

**VII. CONSENT ITEMS**

**ITEM NO. 2 MINUTES OF JUNE 3, 2021**  
**Recommended Action:** Approve and file

**Motion** made by Commissioner Koetting and seconded by Commissioner Rosene to approve the minutes of the June 3, 2021 meeting as recommended.

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

**VIII. PUBLIC HEARING ITEMS**

**ITEM NO. 3 APPEAL OF INTERPRETATION ALLOWING ACCESSORY RESIDENTIAL WITHIN RESORT HOTELS (PA2021-096)**  
**Site Location:** Various Resort Hotel Properties

**Summary:**

An appeal of the Community Development Director's determination, issued on April 30, 2021, interpreting accessory residential as an allowed use within resort hotels. This determination is consistent with City Council Policy K-4 (Reducing the Barriers to the Creation of Housing).

**Recommended Action:**

1. Conduct a de novo public hearing;
2. Find the Director's Determination is exempt from the California Environmentally Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. This Director's Determination is also exempt that CEQA Guidelines Section 15061(b)(3), the general rule common sense exemption that CEQA applies only when there is the potential for causing a significant effect on the environment; and
3. Adopt Resolution No. PC2021-016 denying an appeal and upholding the Community Development Director's Determination No. DD2021-001, and associated findings.

Community Development Director Jurjis reported on March 9, 2021, the Council adopted Council Policy K-4 to reduce barriers to the creation of housing in response to the City's extraordinary Regional Housing Needs Assessment (RHNA) allocation and to assist the hotel industry with recovery from the pandemic. Council Policy K-4 directs staff to draft new or modify existing regulations to encourage development of accessory dwelling units (ADUs) and housing in mixed-use zones and resort hotels. COVID-19 impacted the hotel industry through shelter-in-place orders and virtual meetings, and hotels' financial recovery may take a long time. The Newport Beach Municipal Code authorizes the Community Development Director to interpret the Code and determine if

unlisted land uses are allowed. Consistent with Council Policy K-4, the Director's Determination interprets that a residential use may be viewed as an accessory use of a resort hotel subject to the resort hotel being located outside the Coastal Commission's appeal area, conversion of rooms to residences on a 1:1 basis, a 30 percent cap on the number of rooms converted to residences, approval of a conditional use permit (CUP) and coastal development permit (CDP), adequate onsite parking, and a Development Agreement addressing public access, affordable housing, and loss of transient occupancy tax (TOT) revenue.

Community Development Director Jurjis stated that Stop Polluting Our Newport (SPON) appealed the Director's Determination alleging that it improperly converts General Plan-approved hotel allocations into General Plan-approved dwelling units without Greenlight (Charter Section 423) tracking. Charter Section 423 states voter approval is required for any major amendment of the Newport Beach General Plan. A major amendment significantly increases the maximum amount of traffic that allowed uses could generate or significantly increases allowed density or intensity. A Director's Determination is not a General Plan amendment and is not subject to Charter Section 423. Converting a hotel unit to a residential unit does not increase traffic assumed in the General Plan. Past examples of conversions approved by the City include the Newport Beach Country Club, which converted 17 tennis courts into 27 hotel rooms with Planning Commission and City Council approval. Also, Villas Fashion Island transferred and converted 79 hotel rooms to residential units with Planning Commission and City Council approval. An example of a Director's Determination authorizing an unclassified use was when the Director made an interpretation for the new Fire Station No. 2 site in the Commercial-Serving Visitors (CV) zone.

In response to Commissioner Koetting's questions, Community Development Director Jurjis advised that the owner of a hotel pursuing development under the Director's Determination would apply for a CUP. The Determination does not define the residential units as for sale or for rent. One hotel room would be allowed to be converted to one residence, regardless of bedroom count. A residential unit is defined as having cooking appliances and sleeping accommodations. A subdivision map will be needed for units that are intended to be individually sold.

In reply to Commissioner Weigand's inquiry, Community Development Director Jurjis indicated that a hotel wishing to convert rooms to residences will have to submit an application that is subject to the usual review process and Planning Commission approval. A Development Agreement must be approved by the City Council.

In answer to Commissioner Rosene's query, Community Development Director Jurjis clarified that units will be converted, not transferred. Staff tracks units in tables that are available to the public, and the units will be recognized in the tracking tables. The units will not be officially converted until an application is approved.

Commissioner Rosene and Vice Chair Kleiman disclosed no ex-parte communications. Commissioner Koetting, Secretary Ellmore and Chair Lowrey disclosed email communications with staff. Commissioner Weigand disclosed communications with staff and members of the public.

Chair Lowrey opened the public hearing.

Michelle Black, representing the appellant SPON's, explained that the Director's Determination is a change in definition, not an interpretation of an ambiguity, and exceeds the Director's authority. The Determination requires a General Plan amendment, avoids the Greenlight initiative by authorizing previously unplanned and unapproved residential units without a vote, and conflicts with the Local Coastal Program (LCP) Implementation Plan (IP). State law and the City's Charter and Code provide that the General Plan is the constitution for future development. The primacy of the General Plan and its planning assumptions and mitigations are meaningless if the words of the General Plan, Zoning Code, and Local Coastal Program may be interpreted in ways that conflict with their intended meanings, as the Director's Determination does. Interpretation of the Municipal Code is permitted but is only necessary when there is ambiguity. Titles 20 and 21 provide that hotels are for transient guests, which is not ambiguous. Interpreting transient to mean permanent is not reasonable. The City may redefine hotels to permit residential uses through established planning processes. Following planning processes would ensure that the City's actions to increase housing supply actually supply affordable housing. It appears unlikely that allowing residential uses in resort hotels would provide affordable housing. The staff report alleges that the Greenlight initiative applies to General Plan amendments only, and the allowance of more than 100 new residential units does not trigger Greenlight. However, as recently as February 2021, staff has stated publicly that adding residential uses to hotels would require a General Plan amendment and an LCP amendment. Staff

is proposing Code amendments for ADUs and should do the same to address the conversion of hotel units to residential units. The Director's Determination would permit approximately 250 units in the Airport Area and Newport Center, but 250 units do not remain in Newport Center. Without a vote of the people to authorize more units, the action violates the City's Charter. The City has previously converted units, and SPON has objected. SPON's decision not to litigate those projects does not mean the prior conversion was legal. The LCP IP prohibits the conversion of hotel rooms. The Director's Determination cannot be implemented without approval of the Coastal Commission. The City cannot make the findings to support the Determination.

Gary Sherwin, Newport Beach & Company and Visit Newport Beach President and CEO, supported the Director's Determination. Mixed-use hotels are an established trend within the hospitality industry. Without residential units, most hotel projects would have difficulty obtaining financing. The Director's Determination recognizes this trend.

Jim Mosher remarked that density refers to the number of residences, and the Director's Determination changes density. The General Plan does not prohibit conversions, and it does not allow conversions. The Deputy Community Development Director wrote a memorandum indicating that tennis courts could not be converted to hotel rooms. Staff previously presented to the Council a resolution initiating amendments to the General Plan, LCP, Zoning Code, and the IP to allow many kinds of creative land uses including conversions. After finding ambiguities, staff now finds they did not need the amendments. Designating a cap of 30 percent is legislation requiring an amendment.

David Tanner commented that the conversion of hotel units should be a part of the General Plan Update. Environmental concerns in addition to traffic have not been presented to the Planning Commission or the public. Converting hotel rooms and allowing new hotel rooms to be built elsewhere have not been evaluated. The applicability of the Director's Determination to the non-appealable areas of the LCP is a clear attempt to circumvent the LCP, Coastal Commission, and his decision-making authority. He recommended the Planning Commission direct staff to request a Coastal Commission Executive Director interpretation.

Seeing no one else wishing to provide comments, Chair Lowrey closed the public hearing.

In reply to Vice Chair Kleiman's queries, Community Development Director Jurjis indicated properties affected by the Director's Determination are not located in areas where short-term lodging permits are allowed. A number of residences across the City do not house permanent residents. Nothing in the General Plan or Municipal Code requires residences to house residents on a permanent basis. The Director's Determination is not an entitlement. It adds residential to the list of potential accessory uses to hotels. Conversion of hotel units will be subject to the planning and entitlement process. Review of a conversion project will include a review of all environmental impacts. Deputy Community Development Director Jim Campbell added that the Regional Housing Needs Assessment (RHNA) allocation for the City results in a housing need of 1,456 units for very low income, 930 units for low income, 1,050 units for moderate income, and 1,409 units for above moderate income. The four properties eligible for conversion of units could provide 492 residential units.

In answer to Commissioner Rosene's questions, Deputy Community Development Director Campbell advised that Council Policy K-4 has not yet been incorporated into the Housing Element Update. Community Development Director Jurjis explained that the General Plan Update is a three-year process, while the Director's Determination takes effect immediately and applies to only four resort hotels. Three of the hotels have some interest in converting units.

Secretary Ellmore indicated his belief that Council Policy K-4 limits the Planning Commission's authority to determining whether the Director's Determination complies with Policy K-4.

**Motion** made by Commissioner Rosene and seconded by Secretary Ellmore to approve the staff recommendation.

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

**ITEM NO. 4     BSP BRISTOL, LLC MEDICAL OFFICES (PA2020-052)**  
**Site Location: 1400 and 1420 North Bristol Street**

**Summary:**

A condominium conversion in conjunction with a tentative parcel map to convert two existing two-story office buildings to medical office condominiums, creating between 22 to 30 ownership units. The applicant is also requesting a conditional use permit for the reduction of 38 onsite parking spaces to accommodate the conversion to medical office.

**Recommended Action:**

No action as this item was removed from calendar prior to the meeting. Future consideration of this application will require new notice.

**IX.     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.**

Deputy Community Development Director Campbell reported the Council will hold a study session regarding the draft Housing Element on July 13, 2021. The draft Housing Element is available on the City website. The Planning Commission's agenda for July 22, 2021, includes an encroachment agreement and ordinance amendments.

**ITEM NO. 7     REQUESTS FOR EXCUSED ABSENCES**

None

**X.     ADJOURNMENT – 7:28 p.m.**

The agenda for the July 8, 2021, Planning Commission meeting was posted on Friday, July 02, 2021, at 10:12 a.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 02, 2021, at 10:19 a.m.

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Lee Lowrey, Chairman

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Curtis Ellmore, Secretary