

## ATTACHMENT B

### RESOLUTION NO. 2021- 85

#### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, WAIVING CITY COUNCIL POLICY L-6 (ENCROACHMENTS IN PUBLIC RIGHTS-OF-WAY) AND APPROVING ENCROACHMENT PERMIT NO. N2021-0425 TO INSTALL SEASONAL LIGHTED GARLAND AND WREATHS ON THE LIDO ISLE BRIDGE**

**WHEREAS**, an application was filed by the Lido Isle Community Association ("Applicant") requesting approval of an encroachment permit with respect to the Lido Isle Bridge ("Property");

**WHEREAS**, the Applicant requests annual installation of lighted garland and wreaths on each side of the Property during the December holiday season ("Decorations");

**WHEREAS**, City Council Policy L-6 (Encroachments in Public Rights-of-Way) ("Council Policy L-6") prohibits lighting in the public right-of-way without a waiver of the policy and approval of the encroachment permit;

**WHEREAS**, Council Policy L-6 explains and describes how the public rights-of-way are to be reserved for public use or open space and that the rights of the public, present and future, are not to be diminished by the installation of private improvements within the public right-of-way;

**WHEREAS**, the Decorations do not diminish the public's right to use the Property as the existing public sidewalk along both sides of the Lido Isle Bridge would remain unobstructed and walkable by the public;

**WHEREAS**, the Decorations are not be a detriment to the health, safety, and welfare of the public as they would be complementary to and enhance the area during the December holiday season and annual boat parade; and

**WHEREAS**, the City Council held a public meeting on September 14, 2021, in the Council Chambers located at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with California Government Code Section 54950 *et seq.* ("Ralph M. Brown Act") and City Council Policy L-6. Evidence, both written and oral, was presented to, and considered by, the City Council at this hearing.

**NOW, THEREFORE,** the City Council of the City of Newport Beach resolves as follows:

**Section 1:** The City Council of Newport Beach hereby waives City Council Policy L-6 (Encroachments in Public Rights-of-Way) and approves Encroachment Permit No. N2021-0425, subject to the conditions of approval set forth in Exhibit "A," which is attached hereto and incorporated herein by reference.

**Section 2:** The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

**Section 3:** If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

**Section 4:** The City Council finds the adoption of this resolution is not subject to the California Environmental 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.

**Section 5:** This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting the resolution.

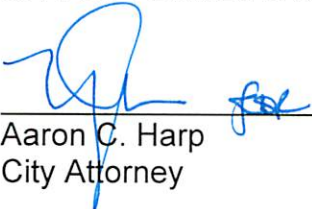
**ADOPTED** this 14th day of September 2021.

\_\_\_\_\_  
Brad Avery  
Mayor

**ATTEST:**

\_\_\_\_\_  
Leilani I. Brown  
City Clerk

**APPROVED AS TO FORM:**  
CITY ATTORNEY'S OFFICE

  
\_\_\_\_\_  
Aaron C. Harp  
City Attorney

Attachment(s):      Exhibit A – Conditions of Approval

## EXHIBIT "A"

### CONDITIONS OF APPROVAL

#### **PUBLIC WORKS DEPARTMENT**

1. The Project shall be in substantial conformance with the approved plans and renderings and dated with the date of this approval.
2. The Project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. The Owner shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Encroachment Permit and any associated Encroachment Agreements.
4. The Owner shall enter into an Encroachment Agreement within one (1) calendar year upon receipt of approval, otherwise this approval shall automatically expire.
5. The Owner shall remove all encroachments at no cost to the City if the need for public improvements should arise in the future.
6. The Owner shall install decorations on an annual basis during the December holiday season.
7. To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of Lido Isle Community Association Encroachment including, but not limited to, Encroachment Permit No. N2021-0425. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Owner, City, and/or the parties initiating or bringing such proceeding. The Owner shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The Owner shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.