



**CITY OF**

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# **NEWPORT BEACH**

## **City Council Staff Report**

September 14, 2021  
Agenda Item No. 26

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** David A. Webb, Public Works Director - 949-644-3311,  
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**TITLE:** Resolution No. 2021-85: Lido Isle Community Association Request for  
Waiver of City Council Policy L-6 and Associated Encroachment  
Permit Fees (Encroachment Permit No. N2021-0425)

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### **ABSTRACT:**

The Lido Isle Community Association (HOA) has requested a waiver of City Council Policy L-6 to annually install lighted garland and wreaths on each side of the Lido Isle bridge during the December holiday season. The HOA has also requested that the City Council waive a portion of the encroachment permit related fees for Encroachment Permit No. N2021-0425. Lastly, the HOA has requested that the City Council review and approve all components of the requested waivers at its September 14, 2021 meeting to help the HOA plan for the 2021 December holiday season.

### **RECOMMENDATION:**

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly;
- b) Waive City Council Policy L-6, *Encroachments in the Public Rights-of-Way*, to authorize that the City Council rather than the Planning Commission be designated to grant or deny the requested waiver of City Council Policy L-6;
- c) Waive City Council Policy L-6, *Encroachments in Public Rights-of-Way*, to allow installation of lighted garland and wreaths on each side of the Lido Isle bridge (with power provided from a City outlet), contingent upon all conditions of the Encroachment Permit process being met;
- d) Adopt 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*; and

- e) Accept Council Member Diane Dixon's payment of \$1,000 for this permit fee from her City Council discretionary funds, and consider the request by the HOA to waive the remaining portion of the applicable encroachment permit related fees (\$3,175.00) for Encroachment Permit No. N2021-0425:
  - i. If it is desired to waive the remaining portion of the applicable encroachment permit fees, direct staff to waive the remaining portion of the applicable encroachment permit related fees (\$3,175.00) for Encroachment Permit No. N2021-0425, **OR**
  - ii. If it is desired to deny the applicant's request to waive the remaining portion of the applicable encroachment permit fees, direct the applicant to pay the remaining portion of the applicable encroachment permit related fees (\$3,175.00) for Encroachment Permit No. N2021-0425.

### **DISCUSSION:**

The Lido Isle Community Association is requesting to annually install lighted garland and wreaths on each side of the Lido Isle bridge during the December holiday season. City Council Policy L-6 (Policy) prohibits the proposed encroachments within the public right-of-way and the HOA is requesting a waiver of the Policy to install the decorative lighting. The HOA is also requesting that the City Council waive the fees associated with the encroachment permit process. Please see the attached location map, applicant's letters (dated August 25, 2021 and August 27, 2021) and plans (Attachments C through E) for specific details regarding holiday decorations/lighting request. The HOA's encroachment agreement submittal includes a request to allow the HOA to power its holiday decorations from a City of Newport Beach (City) power source on the bridge. The HOA is also requesting that the City Council review and approve all components of the HOA's requested waivers to streamline the proposed project so that it is ready for the 2021 December holiday season.

City Council Policy L-6, Encroachments in Public Rights-of-Way, is included as Attachment A. It 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 rights-of-way. The policy specifies allowable and prohibited encroachments and describes the required permits and/or encroachment agreements.

A section of the Policy titled Private encroachments that are prohibited without a waiver and approval outlines private encroachment prohibitions including private lighting within the public right-of-way. The HOA is requesting a waiver of this policy to annually install lighted garland and wreaths on each side of the Lido Isle bridge within the Via Lido right-of-way.

The annual decorations would be complementary to and enhance the area during the December holiday season and annual Christmas Boat Parade. The existing public sidewalk along both sides of the bridge would remain unobstructed.

Staff supports the policy waiver for the proposed private encroachments. In staff's review of the site conditions, the proposed improvements:

- Do not hinder the use of the public right-of-way
- Will not be detrimental to the health, safety, and welfare of the public
- Do not diminish the rights of the public, present and future at this location, provided an encroachment agreement between the City and HOA will be executed.

The HOA also requests a waiver of the remaining portion of the encroachment permit fees associated with encroachment permit No. N2021-0425. The proposed permit fee is \$4,175 and includes permit processing, public meeting preparation for the L-6 waiver, required public noticing, and encroachment agreement and inspection fees. Councilmember Diane Dixon has committed to paying \$1,000 of this permit fee from her City Council discretionary funds. The fee waiver amount requested by the HOA is thus \$3,175.

Should the City Council approve the waiver of the existing private improvements and appurtenances, one of the conditions of approval is for the HOA to enter into an encroachment agreement with the City, consistent with Policy L-6. The encroachment agreement specifies the rights of the City and any liability associated with the private improvements would be transferred to the HOA. Additionally, if the need for public improvements should arise in the future, the HOA shall agree to remove all improvements at no cost to the City. The agreement also includes a provision, in accordance with Council Policy L-6, delegating further annual review and continued approval of this permit to the City Manager. The agreement will be recorded and provides important notice to the HOA and protects the City.

#### **FISCAL IMPACT:**

If the City Council waives the \$3,175 encroachment permit fees, the General Fund would subsidize that one-time cost. In addition, the ongoing annual cost of electricity for the holiday decorations would be also subsidized by the General Fund, estimated to be up to \$100 per holiday season.

#### **ENVIRONMENTAL REVIEW:**

Staff recommends the City Council find this action 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, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

**NOTICING:**

Notice of this hearing was mailed to all owners of property within 300 feet of the boundaries of the site (excluding intervening rights-of-way and waterways) including the HOA and posted on the subject property at least 10 days before the scheduled meeting, consistent with the provision of the Municipal Code. Additionally, the items appeared on the agenda for this meeting, which was posted at City Hall and on the City website. 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).

**ATTACHMENTS:**

Attachment A – City Council Policy L-6  
Attachment B – Resolution No. 2021-85  
Attachment C – Location Map  
Attachment D – Applicant's Letters  
Attachment E – Plans and Renderings