

RESOLUTION NO. 2017-45

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWPORT BEACH, CALIFORNIA, AUTHORIZING THE
SUBMITTAL OF LOCAL COASTAL PROGRAM AMENDMENT
NO. LC2017-002 TO THE CALIFORNIA COASTAL
COMMISSION (PA2017-047)**

WHEREAS, Section 30500 of the Public Resources Code requires each county and city to prepare a local coastal Program ("LCP") for that portion of the coastal zone within its jurisdiction;

WHEREAS, the California Coastal Commission effectively certified the City of Newport Beach ("City") LCP on January 13, 2017, and the City assumed coastal development permit-issuing authority on January 30, 2017;

WHEREAS, LCP Amendment No. LC2017-002 is necessary to address issues that have arisen since the LCP was certified, incorporate land use and property regulations adopted by the City after submission of the LCP to the California Coastal Commission and to clarify LCP administrative procedures;

WHEREAS, a public hearing was held by the Planning Commission of the City of Newport Beach on May 4, 2017, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the public hearing was given in accordance with the NBMC and Section 13515 of the California Code of Regulations. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing. At the conclusion of the public hearing, the Planning Commission voted (5 ayes, 0 noes, 2 absent) to adopt Planning Commission Resolution No. 2055, recommending City Council approval of LCP Amendment No. LC2017-002;

WHEREAS, a public hearing was held by the City Council on July 11, 2017, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the public hearing was given in accordance with the NBMC and Section 13515 of the California Code of Regulations. Evidence, both written and oral, was presented to, and considered by, the City Council at this public hearing; and

WHEREAS, pursuant to Section 13515 of the California Code of Regulations, review drafts of LCP Amendment No. LC2017-002 were made available and a notice of the availability was distributed a minimum of six weeks prior the City Council public hearing.

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

Section 1: The City Council does hereby authorize City staff to submit LCP Amendment No. LC2017-002 to the California Coastal Commission for review and approval, as attached in Exhibit A, and incorporated herein by reference.

Section 2: The City Council does hereby further authorize City staff to submit the component amendments of LCP Amendment No. LC2017-002 to the California Coastal Commission grouped as either "de minimis," "minor" and/or "major," as necessary, based on direction received from California Coastal Commission staff.

Section 3: LCP Amendment No. LC2017-002 shall not become effective until approval by the California Coastal Commission and adoption, including any modifications suggested by the California Coastal Commission, by resolution(s) and/or ordinance(s) of the City Council of the City of Newport Beach.

Section 4: The LCP including the proposed amendment will be carried out fully in conformity with the California Coastal Act.

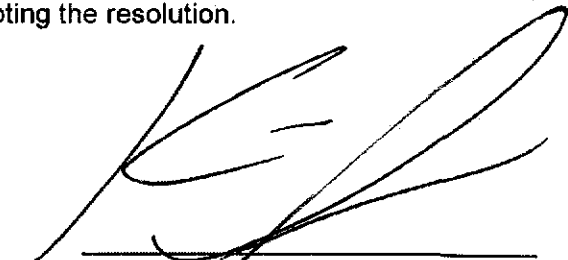
Section 5: The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

Section 6: 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.

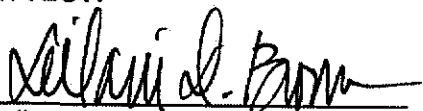
Section 7: Pursuant to the authority and criteria contained in the California Environmental Quality Act ("CEQA"), LCP Amendment No. LC2017-002 is statutorily exempt from CEQA pursuant to Section 15265(a)(1) of the California Code of Regulations, Title 14, and Chapter 3 of the Coastal Act. Section 15265(a)(1), which exempts local governments from the requirements of preparing an environmental impact report or otherwise complying with CEQA in connection with the adoption of a Local Coastal Program.

Section 7: 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 11th day of July, 2017.


Kevin Muldoon
Mayor

ATTEST:


Leilani I. Brown
City Clerk



APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

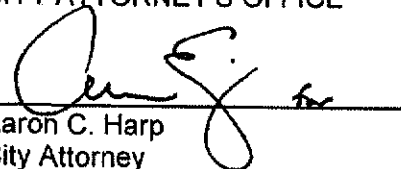

Aaron C. Harp
City Attorney

EXHIBIT A

LC2017-002

1. Amend Policy 4.4.2-1 of the City of Newport Beach Coastal Land Use Plan to read as follows:

4.4.2-1. Maintain the 35-foot height limitation in the Shoreline Height Limitation Zone, as graphically depicted on Map 4-3 with exceptions for assembly and meeting facilities, government facilities, architectural features, boat cranes, chimneys and vents, dormers, elevator shafts, flagpoles, landmark buildings, light standards, mechanical equipment, solar equipment, peaks of sloping roofs and other similar fixtures and exterior structures specified in, and regulated by, the certified Local Coastal Program Implementation Plan.

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2. Amend Section 21.26.055 of the Newport Beach Municipal Code to add Section 21.26.055(V) to read as follows, with all other provisions of Section 21.26.055 remaining unchanged:

V. Lido Villas (PC-59).

1. Lot Size: 52,099 square feet (1.2 acres)
2. Density/intensity Limit: twenty-three (23) dwelling units.
3. Setbacks.
 - a. Via Lido: 9 feet (first floor); 4 feet, 5 inches (second floor)
 - b. Via Malaga: 7 feet, 3 inches (first floor); 6 feet, 6 inches (second floor)
 - c. Via Oporto: 6 feet (first floor); 3 feet (second floor)
 - d. North Interior Property Line: 5 feet
4. Height: Thirty-five (35) feet.

3. Amend Section 21.30.010.015(E)(5) and Section 21.30.015(E)(5)(a) of the Newport Beach Municipal Code to read as follows, with all other provisions of Section 21.30.015 remaining unchanged:

5. Waiver of Future Protection. As a condition of approval of new development, the review authority shall require an agreement between an applicant, including its successors and assigns, and the City in favor of the City, in a form approved by the City Attorney, and recorded by the applicant, waiving any potential right to future protection that results in any encroachment seaward of the authorized footprint of the protective device to address situations in the future in which development is threatened with damage or destruction from waves, erosion, storm conditions, landslides, seismic activity, bluff retreat, sea level rise, or other natural hazards. The applicant shall agree to:

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- a. Never construct structures or features over the economic life of the development to protect the development that results in any encroachment seaward of the authorized footprint of the protective device; and

4. Amend Section 21.30.060(C) and Section 21.30.060(D) of the Newport Beach Municipal Code to read as follows, with all other provisions of Section 21.30.060(C) and Section 21.30.060(D) remaining unchanged:

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Increase in Height Limit.

1. Procedure. The height limits established in Part 2 of this Implementation Plan (Coastal Zoning Districts, Allowable Land Uses, and Coastal Zoning District Standards) may be increased within specified areas with approval of a coastal development permit when all applicable findings are met in compliance with subsection (C)(3) of this section (Required Findings).

2. Height Limit Areas. The height limit areas shall be as follows:

a. R-A, R-1, R-B1, and R-2 Coastal Zoning Districts Height Limit Area. In this height limit area the base height limit for structures with flat roofs is twenty-four (24) feet (including guardrails and parapet walls) and the base height limit for structures with sloped roofs is twenty-nine (29) feet. The height of a structure may be increased up to a maximum of twenty-eight (28) feet with a flat roof or thirty-three (33) feet with a sloped roof through the approval of a coastal development permit as provided above. This height limit applies in all R-A, R-1, R-B1, and R-2 Coastal Zoning Districts as shown on the Coastal Zoning Map.

b. RM Coastal Zoning District Height Limit Area. In this height limit area the base height limit for structures with flat roofs is twenty-eight (28) feet (including guardrails and parapet walls) and the base height limit for structures with sloped roofs is thirty-three (33) feet. The height of a structure may be increased up to a maximum of thirty-two (32) feet with a flat roof or thirty-seven (37) feet with a sloped roof through the approval of a coastal development permit as provided above. This height limit applies in the RM Coastal Zoning District as shown on the Coastal Zoning Map.

c. Nonresidential, Shoreline Height Limit Area. In this height limit area the base height limit for nonresidential and mixed-use structures with flat roofs is twenty-six (26) feet and the base height limit for structures with sloped roofs is thirty-one (31) feet. The height of a structure may be increased up to a maximum of thirty-five (35) feet with a flat roof or forty (40) feet with a sloped roof through the approval of a coastal development permit application as provided above. The shoreline height limit shall apply to all nonresidential coastal zoning districts and mixed-use coastal zoning districts within the boundaries of the Shoreline Height Limit Area shown on the High Rise and Shoreline Height Limit Areas Map (See Map H-1 in Part 8 (Maps) of this Implementation Plan).

d. Nonresidential, Nonshoreline Height Limit Area. In this height limit area the base height limit for nonresidential and mixed-use structures with flat roofs is thirty-two (32) feet and the base height limit for structures with sloped roofs is thirty-seven (37) feet. The height of a structure may be increased up to a maximum of fifty (50) feet with a flat roof or fifty-five (55) feet with a sloped roof through the approval of a coastal development permit as provided above. This height limit shall apply to all nonresidential, nonshoreline coastal zoning districts and mixed-use coastal zoning districts within its boundaries. The nonresidential, nonshoreline height limit area is identified as all of the area outside the Shoreline Height Limit Area shown on the High Rise and Shoreline Height Limit Areas Map (See Map H-1 in Part 8 (Maps) of this Implementation Plan).

e. High Rise Height Area. In this height limit area, the maximum height limit shall be three hundred (300) feet and no further increase to the maximum allowed height is available. This height limit is applicable to all nonresidential coastal zoning districts within its boundaries as indicated on the High Rise and Shoreline Height Limit Areas Map (See Map H-1 in Part 8 (Maps) of this Implementation Plan).

f. Planned Communities Coastal Zoning District. Height limits established as part of an adopted planned community shall be as specified in Section 21.26.055 (Planned Community Coastal Zoning District Development Standards). If a PC District is located within the Shoreline Height Limit Area, per Map H-1, the thirty-five (35) foot height limit shall prevail over any other higher height limit identified in a PC District.

3. Required Findings. The review authority may approve a coastal development permit to allow an increase in the height of a structure above the base height limit only after first making all of the following findings in addition to the findings required in Section 21.52.015(F):

- a. The project is sited and designed to protect public views to and along the ocean and scenic coastal areas; and
- b. The project is sited and designed to minimize visual impacts and be visually compatible with the character of surrounding areas; and
- c. Where feasible, the project will restore and enhance visual quality in visually degraded areas.

D. Exceptions to Height Limits.

1. Assembly and Meeting Facilities. Structures used as places of worship may be allowed to exceed the height limit subject to the approval of a coastal development permit in compliance with Chapter 21.52 (Coastal Development Review Procedures). Where more than one structure exists or is proposed for the site, only the principal structure shall be eligible for approval to exceed the maximum height limit.

2. Architectural Features. Architectural features (e.g., cupolas, weathervanes, and other decorative rooftop features) of an open nature, but excluding guardrails, parapet walls, and similar features, may be allowed up to the height limit for a sloped roof. Architectural features with a height greater than that allowed for a sloped roof shall be subject to the approval of a coastal development permit.

3. Boat Cranes. Boat cranes used in conjunction with an approved marine-oriented nonresidential use may be allowed to exceed the maximum height limit up to a maximum operating height of seventy (70) feet, subject to the approval of a coastal development permit.

4. Chimneys and Vents. Chimneys and spark arrestors for fireplaces and roof-mounted vents shall be allowed to exceed the allowed height limits as follows:

- a. Chimneys may extend above the allowed height limit a maximum of two feet or a greater height if required by the City's Building Code;
- b. Spark arrestors may extend above the top of a chimney a maximum of two feet, provided they do not exceed a width of two feet and a length of four feet; and
- c. Roof-mounted vents may extend above the allowed height limit a maximum of twelve (12) inches or a greater height if required by the City's Building Code.

5. Dormers. Dormers may be allowed to exceed the maximum height; provided, that:

- a. The total width of the dormer that exceeds the height limit shall not be greater than thirty-five (35) percent of the length of the side of the structure where the dormer is located;
- b. The roof pitch of the dormer shall not be less than 2:12; and
- c. The peak of the dormer shall not be higher than the peak of the roof on which it is located.

6. Elevator Shafts, Enclosed Stairwells. Elevator shafts and enclosed stairwell housings may exceed the allowed height limit by the minimum height required by the California Building Code, provided they do not exceed thirty (30) square feet in area, unless a larger elevator is required by the California Building Code and/or the Fire Department. In these instances, the area of the elevator or stair housing shall not exceed the minimum size required by the California Building Code and/or the Fire Department. Elevator shafts and enclosed stairwell housings that exceed thirty (30) square feet in area shall have sloped roofs with a minimum 3/12 pitch.
7. Fences, Hedges, and Walls. Section 21.30.040 (Fences, Hedges, Walls, and Retaining Walls) sets forth exceptions to height limits for these structures.
8. Flagpoles.
 - a. Ground-mounted flagpoles shall be allowed in residential coastal zoning districts to a maximum height of twenty-eight (28) feet and in nonresidential coastal zoning districts to a maximum height of thirty-five (35) feet.
 - b. Flagpoles mounted on tops of buildings located in nonresidential coastal zoning districts shall be allowed to exceed the maximum height limit by up to twenty (20) feet.
9. Landmark Buildings. An alteration or addition to a landmark building shall be exempt from height limits; provided, that structural alterations or additions that exceed the height of the existing structure shall require approval of a coastal development permit in compliance with Chapter 21.52 (Coastal Development Review Procedures) and shall not exceed a maximum of fifty-five (55) feet in height. The coastal development permit may be approved only if all of the following findings are first made in addition to those findings identified in Section 21.52.015(F):
 - a. The portion of the structural alteration or addition that exceeds the height of the existing structure does not significantly impact public views from public rights-of-way.
 - b. The portion of the structural alteration or addition that exceeds the height of the existing structure will not be used in a manner that increases the intensity of the use of the landmark building.
 - c. The allowed height of the landmark building will not be detrimental to the health, safety, peace, comfort, or general welfare of persons residing or working in the neighborhood of the landmark building.
10. Light Standards. Light standards may be allowed to exceed maximum height limits, subject to the approval of a coastal development permit in compliance with Chapter 21.52 (Coastal Development Review Procedures). All light fixtures and standards shall comply with the requirements of Section 21.30.070 (Outdoor Lighting).
11. Mechanical Equipment.
 - a. Nonresidential Coastal Zoning Districts. In nonresidential coastal zoning districts, roof-mounted mechanical equipment, totaling not more than thirty (30) percent of the total roof area, including required screening devices, shall be allowed to exceed the maximum height limit by up to five feet.
 - b. Residential Coastal Zoning Districts. In residential coastal zoning districts, roof-mounted equipment is not allowed to exceed the maximum height limit for the coastal zoning district.
12. Solar Equipment. The height limit regulations in this Implementation Plan do not apply to equipment and panels used for the production of solar energy.

- ~~13. Skylights and Roof Windows. Skylights or roof windows shall be allowed to exceed the maximum height limit by up to six inches on conforming roofs.~~
- ~~14. Marina Park Lighthouse Feature. A single, up to maximum seventy-three (73) foot tall, faux lighthouse architectural tower, that creates an iconic landmark for the public to identify the site (1600 West Balboa Boulevard) from land and water as a boating safety feature, may be allowed. No further exceptions to the height limit shall be allowed, including, but not limited to, exceptions for architectural features, solar equipment or flagpoles. Any architectural tower that exceeds the thirty-five (35) foot height limit shall not include floor area above the thirty-five (35) foot height limit, but shall house screened communications or emergency equipment, and shall be sited and designed to reduce adverse visual impacts and be compatible with the character of the area by, among other things, incorporating a tapered design with a maximum diameter of thirty-four (34) feet at the base of the tower. Public viewing opportunities shall be provided above the thirty-five (35) feet, as feasible.~~
- ~~15. Lido House Hotel. At the former City Hall, 3300 Newport Boulevard and 475 32nd Street:~~
- ~~a. At least seventy-five (75) percent of the total area of the site shall be thirty-five (35) feet in height or lower.~~
 - ~~b. Buildings and structures up to fifty-five (55) feet in height with the peaks of sloping roofs and elevator towers up to sixty (60) feet in height provided it is demonstrated that development does not adversely materially impact public views.~~
 - ~~c. Architectural features such as domes, towers, cupolas, spires, and similar structures may be up to sixty-five (65) feet in height.~~
 - ~~d. Buildings and structures over thirty-five (35) feet in height, including architectural features, shall not occupy more than twenty-five (25) percent of the total area of the site.~~
 - ~~e. Buildings and structures over forty-five (45) feet in height, including architectural features, shall not occupy more than fifteen (15) percent of the total area of the site.~~
 - ~~f. With the exception of a fire station, all buildings and structures over thirty-five (35) feet in height, including architectural features, shall be set back a minimum of sixty (60) feet from the Newport Boulevard right-of-way and seventy (70) feet from the 32nd Street right-of-way.~~
 - ~~g. A fire station may be located in its current location and may be up to forty (40) feet in height.~~
 - ~~h. A fire station may include architectural features up to forty-five (45) feet in height to house and screen essential equipment. (Ord. 2016-19 § 1 (Exh. A)(part), 2016)~~
- ~~16. Government Facilities. Structures owned, operated, or occupied by the City or other governmental agency to provide a governmental service to the public may be allowed to exceed the height limit subject to the approval of a coastal development permit in compliance with Chapter 21.52 (Coastal Development Review Procedures) where the increase in height is necessary for the facility to function (e.g., lifeguard towers, tsunami warning sirens, architectural design features that accommodate emergency vehicles or essential equipment, etc.).~~
5. Amend Section 21.30.075(B)(4)(b) of the Newport Beach Municipal Code to read as follows, with all other provisions of 21.30.075(B)(4)(b) remaining unchanged:
- b. Landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing and trimming. Lawn areas shall be exempt from the healthy and growing condition provision when the City Council has declared a Level Three water supply shortage and all

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lawn, landscape, and other vegetated areas shall be exempt from the healthy and growing condition requirement when the City Council has declared a Level Four water supply shortage.

6. ~~Amend Section 21.38.040(G)(1) of the Newport Beach Municipal Code to read as follows, with all other provisions of 21.38.040(G)(1) remaining unchanged:

 1. ~~Expansion shall be limited to a maximum of fifty (50) percent of the gross floor area of the existing structure; expansion of residential structures may be permitted up to a maximum of seventy-five (75) percent with the approval of a coastal development permit.~~~~
7. Amend Table 21.50-1 of Section 21.51.020 of the Newport Beach Municipal Code to read as follows, with all other provisions of Table 21.50-1 of Section 21.51.020 remaining unchanged:

TABLE 21.50-1 – REVIEW AUTHORITY

Type of Action	Applicable Code Chapter /Section	Role of Review Authority (1)					
		Director	Zoning Administrator	Harbor Resources Manager	Commission	Council (2)	Coastal Commission
Administrative and Legislative							
Interpretations	Section 21.12.020	Determination (3)			Appeal	Appeal	Appeal (8)
LCP Amendments					Recommend	Decision (4)	Decision (4)
Approvals in Concept	Section 21.52.015(B)(1)(a)		Determination (3)	Determination (5)	Appeal	Appeal	
Waiver for De Minimis Development	Section 21.52.055	Decision (9)				(9)	
Permits and Approvals							
Coastal Development Permits	Section 21.52.015		Decision (6)		Appeal	Appeal	Decision (7) Appeal (2)
Emergency Coastal Development Permits	Section 21.52.025	Decision (3)			Appeal	Appeal	

Notes:

(1) "Recommend" means that the Commission makes a recommendation to the Council; "Determination" and "Decision" mean that the review authority makes the final determination or decision on the matter; "Appeal" means that the review authority may consider and decide upon appeals to the decision of a previous decision making body, in compliance with Chapter 21.64 (Appeals and Calls for Review).

- (2) The Council is the final review authority for all applications in the City. A decision by the City on a coastal development permit application within the appeal areas depicted on the Post-LCP Certification Permit and Appeal Jurisdiction Map or a project that constitutes a major public works project or energy facility may be appealed to the Coastal Commission in compliance with Chapter 21.64 (Appeals and Calls for Review).
- (3) The Director or Zoning Administrator may defer action and refer the request to the Commission for consideration and final action.
- (4) The California Coastal Commission is the final decision making authority on amendments to the Local Coastal Program.
- (5) For development located on tidelands or submerged lands that did not involve a discretionary action authorized by this Implementation Plan where the authority is specifically assigned to the Council, Commission, Director, or Zoning Administrator.
- (6) If the project also requires another discretionary approval (e.g., conditional use permit, variance, etc.), then the applicable review authority shall be the authority for the other discretionary approval.
- (7) All development on tidelands, submerged lands, and public trust lands as described in California Public Resources Code Section 30519(b) and in deferred certification areas designated by the Local Coastal Program shall require a permit issued by the Coastal Commission in accordance with procedures specified by the Coastal Commission, in addition to other permits or approvals required by the City. This provision does not include those tidelands, submerged lands, and public trust lands where permit authority may be delegated to the City at a future date if determined by the Coastal Commission to be filled and developed and located within an area committed to urban uses pursuant to Coastal Act Section 30613.
- (8) Appeal procedure for interpretations shall only apply to interpretations made by the Director on the determination of whether a development is categorically excluded, exempt, nonappealable or appealable to the Coastal Commission according to the dispute resolution process in compliance with Section 21.50.050(B).
- (9) A waiver shall not take effect until after the Director makes his/her report to the City Council. If one-third of the City Council (two members) so request, such issuance shall not be effective and, instead, the application for a coastal development permit shall be processed in accordance with the coastal development permit provisions of Chapter 21.52 (Coastal Development Permit Review Procedures).
8. Amend Section 21.52.035(C)(4) of the Newport Beach Municipal Code to renumber Section 21.52.035(C)(4)(c)(iii) to Section 21.52.035(C)(4)(d) with all other provisions of 21.52.035(C)(4) remaining unchanged:
- d. Unless destroyed by disaster, the replacement of fifty (50) percent or more of a single-unit residence, seawall, revetment, bluff retaining wall, breakwater, groin or any other structure is not repair and maintenance under California Public Resources Code Section 30610(d) but instead constitutes a replacement structure requiring a coastal development permit.
9. Amend Section 21.52.052(H) of the Newport Beach Municipal Code to read as follows, with all other provisions of 21.52.052(H) remaining unchanged:
- H. Notice of Final Action. Within seven days of the date of the City's final local action on an exemption or coastal development permit application and meeting the requirements of Title 14 California Code of Regulations Section 13570, a notice of its final action shall be sent by first class mail, to the applicant, the Coastal Commission, and any persons who specifically request such notice by submitting a self-addressed, stamped envelope. Such notice shall be accompanied by a copy of the exemption, denial or conditions of approval and written findings and the procedures for appeal of the action to the Coastal Commission.

10. Amend Section 21.52.055 of the Newport Beach Municipal Code to read as follows, with all other provisions of Section 21.52.055 remaining unchanged:

F. Report to the City Council. The Director shall report to the City Council at its next available public meeting those projects for which waivers are proposed, with sufficient description to give notice of the proposed development to the City Council. A list of waivers issued by the Director shall be available for public inspection at the public counter of the Department and at the City Council meeting during which any waivers are reported. A waiver shall not take effect until after the Director makes his/her report to the City Council. If two members of the City Council so request, such issuance shall not be effective and, instead, the application for a coastal development permit shall be processed in accordance with the coastal development permit provisions of this chapter.

11. Amend Chapter 21.52 of the Newport Beach Municipal Code add Section 21.52.090 to read as follows, with all other provisions of Chapter 21.52 remaining unchanged:

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2.090 Relief from Implementation Plan Development Standards.

Purpose. The purpose of this section is to provide relief from the development standards of this Implementation Plan when so doing is consistent with the purposes of the certified Local Coastal Program and will not have an adverse effect, either individually or cumulatively, on coastal resources.

B. Applicability. Any development standard of this Implementation Plan may be modified or waived through the approval of a coastal development permit, except: allowed and prohibited uses; residential density; nonresidential floor area ratios; specific prohibitions (for example, prohibitions intended to protect coastal resources, prohibited barriers to public access, limits on the use of protective structures, prohibited materials, prohibited plant species, prohibited signs, etc.); or procedural requirements.

1. Modifications. Minor deviations for the following development standards may be permitted when practical difficulties associated with the property and that the strict application of the Implementation Plan results in physical hardships:

a. Height modifications from exceptions identified in Part 3 of this Title (Site Planning and Development Standards). The following modifications are limited to not more than a ten (10) percent deviation from the standard being modified.

i. Chimneys, rooftop architectural features, and vents in excess of the exception to the allowed height limits identified in Part 3 of this Title (Site Planning and Development Standards);

ii. Flag poles in excess of the exception to the allowed height limits; and

iii. Heights of fences, hedges, or walls (except retaining walls).

b. Setback Modifications. The following modifications are limited to not more than a ten (10) percent deviation from the standard being modified.

i. Encroachments in front, side, or rear setback areas while still maintaining the minimum clearances required by Section 21.30.110 (Setback Regulations and Exceptions). Exceptions include the following:

(A) Modifications shall not be allowed for encroachments into alley setbacks; and

- (B) Modifications shall not be allowed for encroachments into bluff setback areas.
 - ii. Structural appurtenances or projections that encroach into front, side, or rear setback areas.
 - c. Other Modifications. Except as otherwise provided, the following modifications are not limited in the amount of deviation from the standard being modified:
 - i. Distances between structures located on the same lot;
 - ii. Landscaping standards in compliance with Chapter 21.30.075 (Landscaping), except for subsection (B)(3);
 - iii. Size or location of parking spaces, access to parking spaces, and landscaping within parking areas;
 - v. Increase in allowed floor area of additions for uses that have nonconforming parking;
 - vi. Increase in allowed height, number, and area of signs;
 - vii. Increase in the allowed height of retaining walls; and
 - viii. Increase in allowed floor area of additions for nonconforming residential structures as identified in Section 21.38.040 (Nonconforming Structures).
- Variances. Waiver or modification of certain standards of this Implementation Plan may be permitted when, because of special circumstances applicable to the property, including location, shape, size, surroundings, topography, or other physical features, the strict application of the development standards otherwise applicable to the property denies the property owner privileges enjoyed by other property owners in the vicinity and in the same coastal zoning district.
- 2. Modifications and Waivers Authorized Elsewhere. This section is not applicable when a modification or waiver to a development standard is specifically authorized elsewhere in this Implementation Plan.
- C. Findings and Decision. The review authority may approve or conditionally approve a modification or waiver to a development standard of this Implementation Plan only after first making all of the following findings as applicable:
- 1. The granting of the modification is necessary due practical difficulties associated with the property and that the strict application of the Implementation Plan results in physical hardships; or
 - 2. The granting of the variance is necessary due to special circumstances applicable to the property, including location, shape, size, surroundings, topography, and/or other physical features, the strict application of the development standards otherwise applicable to the property denies the property owner privileges enjoyed by other property owners in the vicinity and in the same coastal zoning district; and

3. The modification or variance complies with the findings required to approve a coastal development permit in Section 21.52.015(F);
4. The modification or variance will not have an adverse effect, either individually or cumulatively, on coastal resources; and
5. The granting of the modification or variance will not be contrary to, or in conflict with, the purpose of this Implementation Plan, nor to the applicable policies of the certified Local Coastal Program.

12. Amend Chapter 21.62 of the Newport Beach Municipal Code to add Section 21.62.050 to read as follows, with all other provisions of Chapter 21.62 remaining unchanged:

Section 21.62.050 Public Hearing Waiver for Minor Development.

A. Purpose. The purpose of this section is to provide a process, in accordance with Section 30624.9 of the Coastal Act, through which the public hearing requirement may be waived for certain minor developments that require coastal development permits.

B. Minor Development Defined. For purposes of this section, "minor development" means a development that the Director determines satisfies all of the following requirements:

1. Is consistent with the certified Local Coastal Program;
2. Requires no discretionary approvals other than a coastal development permit; and
3. Has no adverse effect either individually or cumulatively on coastal resources or public access to the shoreline or along the coast.

C. Procedure. The Director may waive the requirement for a public hearing on a Coastal Development Permit application for a minor development, if all of the following occur:

1. Notice is mailed or delivered to all persons and agencies required to be notified under Section 21.62.020(B)(2). The notice shall contain and shall contain all of the information required in Section 21.62.020(A). In addition, the notice of waiver of public hearing for the pending application shall contain the following:
 - a. A statement that a public hearing will be held upon the written request of any person provided that such written request is received by the Department within fifteen (15) working days from the date of sending the notice; and
 - b. For proposed development within the appealable area, a statement that failure by a person to submit a written request for a public hearing may result in the loss of that person's ability to appeal to the Coastal Commission any action taken by the City on a coastal development permit application in this matter.
2. No request for public hearing is received by the Department within fifteen (15) working days from the date of sending the notice pursuant to subsection (1) of this section.

3. Requests for hearing must be made in writing to the Department. Upon receipt of a request for a hearing, the Department shall schedule the matter for a public hearing and issue notice of such hearing consistent with the provisions of this Chapter.

13. Amend Section 21.64.050(A) of the Newport Beach Municipal Code to read as follows, with all other provisions of Section 21.64.050(A) remaining unchanged:

A. Director. Interpretations and decisions of the Director may be appealed or called for review to the Planning Commission, with the exception of waivers for de minimis development, which are reported to the City Council pursuant to Section 21.52.055(E).

14. Amend Section 21.64.035(C)(2) of the Newport Beach Municipal Code to read as follows, with all other provisions of Section 21.64.035(C)(2) remaining unchanged:

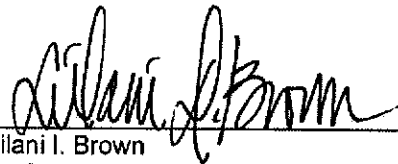
2. An appeal of a City decision was filed by two members of the Coastal Commission in compliance with Public Resources Code Section 30625. Notice of a Coastal Commissioner's appeal shall be transmitted to the City in compliance with Title 14 California Code of Regulations Section 13111(d). The Director may transmit the Coastal Commissioners' appeal to the local appellate body (which considers appeals from the review authority that rendered the final decisions subject to the Coastal Commissioners' appeal), and the Coastal Commissioners' appeal may be suspended pending a decision on the merits by that City appellate body. If the final action by an appellate body modifies or reverses the previous decision, the Coastal Commissioners appeal shall be required to file a new appeal from that decision.

STATE OF CALIFORNIA }
COUNTY OF ORANGE }
CITY OF NEWPORT BEACH } ss.

I, Leilani I. Brown, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; that the foregoing resolution, being Resolution No. 2017-45 was duly introduced before and adopted by the City Council of said City at a regular meeting of said Council held on the 11th day of July, 2017, and that the same was so passed and adopted by the following vote, to wit:

AYES: Council Member Jeff Herdman, Council Member Brad Avery, Council Member Diane Dixon, Council Member Scott Peotter, Council Member Will O'Neill, Mayor Kevin Muldoon
NAYS: None
ABSENT: Mayor Pro Tem Duffy Duffield

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 12th day of July, 2017.



Leilani I. Brown
City Clerk
Newport Beach, California

(Seal)

