

CALIFORNIA COASTAL COMMISSION

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W13b

LCP-5-NPB-22-0056-1 (Part C)

(City of Newport Beach)

May, 8, 2024

EXHIBITS

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Exhibit No. 1 – City Council Resolution No. 2022-82

RESOLUTION NO. 2022-82

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AUTHORIZING THE SUBMITTAL OF LOCAL COASTAL PROGRAM AMENDMENT NO. LC2022-002 TO AMEND SECTIONS 21.18.030 (RESIDENTIAL COASTAL ZONING DISTRICTS GENERAL DEVELOPMENT STANDARDS), 21.38.040 (NONCONFORMING STRUCTURES), AND 21.38.050 (NONCONFORMING USES) OF THE NEWPORT BEACH MUNICIPAL CODE TO CONFORM WITH STATE LAW AND CORRECT ERRORS RELATED TO SETBACKS (PA2022-076)

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, in 2005, the City of Newport Beach (“City”) adopted the Local Coastal Program Coastal Land Use Plan which has been amended from time to time;

WHEREAS, the California Coastal Commission effectively certified the City’s LCP on January 13, 2017, and the City added Title 21 (Local Coastal Program Implementation Plan) (“Title 21”) to the Newport Beach Municipal Code (“NBMC”) on January 30, 2017;

WHEREAS, Chapter 21.38 (Nonconforming Uses and Structures) of the NBMC distinguishes between a nonconforming lot (e.g., a parcel that was legally subdivided, but does not meet current standards for the zone in which it is located), a nonconforming structure (e.g., a structure that was lawfully erected, but does not meet current development standards), and a nonconforming use (e.g., the use of a structure or land, which complied with the zoning code at the time of its establishment, but is no longer a permitted use);

WHEREAS, Section 21.38.050 (Nonconforming Uses) of the NBMC authorizes the alteration of nonconforming residential uses with more units than permitted to reduce the number of dwelling units, but does not clearly state the development rights associated with repair and maintenance, alterations, or expansions;

WHEREAS, redevelopment opportunities of nonconforming residential uses are now restricted under Senate Bill 330 and Senate Bill 8 which place limitations on the City’s ability to disapprove a housing development that would result in a net loss of residential density through January 1, 2030;

WHEREAS, due to the ambiguity in Section 21.38.050 (Nonconforming Uses) of the NBMC, Local Coastal Program Amendment No. LC2022-002 is necessary to clarify that residential properties that are nonconforming due to density may be maintained, altered, or expanded subject to the limitations set forth in Section 21.38.040 (Nonconforming Structures);

WHEREAS, prior to the 2010 comprehensive update to Title 20 (Planning and Zoning) of the NBMC ("2010 Zoning Code Update"), the NBMC contained an overlay district known as the B Overlay, which was redesignated as the R-1-6,000, R-1-7,200, R-1-10,000, R-2-6,000, and RM-6,000 zoning districts in the 2010 Zoning Code Update;

WHEREAS, previous versions of the NBMC authorized an addition to the principal structure located within the former B Overlay to the side yard setback in effect at the time the principal structure was constructed;

WHEREAS, the 2010 Zoning Code Update inadvertently omitted this provision, therefore, the provision was also omitted from Title 21 when the City assumed coastal development permit-issuing authority under the LCP;

WHEREAS, Local Coastal Program Amendment No. LC2022-002 is necessary to incorporate the omitted provision and unencumber these properties from the restrictions of Section 21.38.040 (Nonconforming Structures) of the NBMC and maintain consistency with Zoning Code Amendment No. CA2022-004;

WHEREAS, on May 10, 2022, the City Council adopted Resolution No. 2022-29 by a majority vote (6 ayes, 1 absent) initiating Local Coastal Program Amendment No. LC2022-002 related to nonconforming uses and structures;

WHEREAS, the Planning Commission held a public hearing on October 20, 2022 in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the hearing was given in accordance with the California Government Code Section 54950 *et seq.* ("Ralph M. Brown Act") and Chapter 21.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this hearing;

WHEREAS, at the hearing, the Planning Commission adopted Resolution No. PC2022-027 by a majority vote (4 ayes, 3 abstentions) recommending to the City Council the submission of Local Coastal Program Amendment No. LC2022-002 to the Coastal Commission;

WHEREAS, pursuant to Section 13515 (Public Participation and Agency Coordination Procedures) of the California Code of Regulations, Title 14, Division 5.5, Chapter 8, ("Section 13515") review drafts of Local Coastal Program Amendment No. LC2022-002 were made available and a Notice of the Availability was distributed a minimum of six weeks prior to the City Council public hearing; and

WHEREAS, the City Council held a public hearing on November 15, 2022 in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the hearing was given in accordance with the Ralph M. Brown Act, Section 13515, and Chapter 21.62 (Public Hearings) of the NBMC. 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 does hereby authorize City staff to submit Local Coastal Program Amendment No. LC2022-002 to the California Coastal Commission, which is attached hereto as Exhibit "A," and incorporated herein by reference.

Section 2: The City Council finds amendments to Title 21 (Local Coastal Program Implementation Plain) of the NBMC are legislative acts. Neither Title 21 nor State Planning Law set forth any required findings for either approval or denial of such amendments. Notwithstanding the foregoing, Local Coastal Program Amendment No. LC2022-002 is consistent with the Housing Crisis Act of 2019 and the Newport Beach Coastal Land Use Plan.

- a. Local Coastal Program Amendment No. LC2022-002 is consistent with the Housing Crisis Act of 2019 as it will help extend the useable life of the City's existing housing stock, while avoiding the need to demolish dwelling units to redevelop certain properties.

- b. Local Coastal Program Amendment No. LC2022-002 is consistent with Coastal Land Use Plan Policy 2.2.5-4 which states, "The enlargement or intensification of legally established nonconforming uses shall be limited to only those uses normally permitted by right or by the approval of a use permit, but which were made nonconforming by additional regulations of the district in which they are located. Such enlargement or intensification shall be subject to discretionary review and approval by the City and shall not increase the degree of the use's nonconformity." Local Coastal Program Amendment No. LC2022-002 is consistent with the policy in that it allows limited improvements to nonconforming residential uses. Local Coastal Program Amendment No. LC2022-002 will not allow increases to the number of dwelling units on the property or any other development which is not otherwise authorized by the development standards of the coastal zoning district.
- c. Local Coastal Program Amendment No. LC2022-002 is consistent with Coastal Land Use Policy 2.7-1 which requires development to "maintain appropriate setbacks and density, floor area, and height limits for residential development to protect the character of established neighborhoods and to protect coastal access and coastal resources". Local Coastal Program Amendment No. LC2022-002 does not authorize any new development which will block coastal access. Local Coastal Program Amendment No. LC2022-002 provides increased opportunities to alter and maintain existing properties.
- d. Adoption of Local Coastal Program Amendment No. LC2022-002 will not supersede Coastal Land Use Plan Policy 2.7-2 which requires the continued administration of provisions of State law relative to the demolition, conversion, and construction of low and moderate-income dwelling units within the coastal zone. The demolition or conversion of a low- or moderate-income unit within the coastal zone will remain subject to 21.34 (Conversion of Demolition of Affordable Housing) of the NBMC and state law.

Section 3: Local Coastal Program Amendment No. LC2022-002 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 certified 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: The City Council finds the introduction and 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. Local Coastal Program Amendment No. LC2022-002 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. Local Coastal Program Amendment No. LC2022-002 does not authorize specific new development and only affects existing structures. Local Coastal Program Amendment No. LC2022-002 will not increase the number of dwelling units and will not have a direct effect on the environment.

Section 8: 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 15th day of November, 2022.


Kevin Muldoon
Mayor

ATTEST:


Leilani I. Brown
City Clerk



APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE


Aaron C. Harp
City Attorney

Attachment(s): Exhibit A - Local Coastal Program Amendment No. LC2022-002

EXHIBIT "A"

City of Newport Beach Local Coastal Program Amendment No. LC2022-002 Related to Nonconforming Uses and Side Setbacks

Section 1: The rows entitled "Side [Setbacks]" in Table 21.18-2 (Development Standards for Single-Unit Residential Coastal Zoning Districts) of Section 21.18.030 (Residential Coastal Zoning Districts General Development Standards) of the NBMC shall be amended to read as follows:

Development Feature	R-A	R-1	R-1-6,000	Additional Requirements
Side (interior, each):				
Lots 40 ft. wide or less	5 ft.	3 ft. (4)	6 ft. (7)	21.30.110 21.38.040 (I)
Lots wider than 40 ft.	5 ft.	4 ft.	6 ft. (7)	
Side (street side):				
Lots 40 ft. wide or less	5 ft.	3 ft.	6 ft. (7)	21.30.110 21.38.040 (I)
Lots wider than 40 ft.	5 ft.	4 ft.	6 ft. (7)	

Section 2: Footnote 7 of Table 21.18-2 (Development Standards for Single-Unit Residential Coastal Zoning Districts) of Section 21.18.030 (Residential Coastal Zoning Districts General Development Standards) of the NBMC shall be added to read as follows:

(7) An addition to the principal structure shall be allowed to be constructed to the side yard setback in effect at the time the principal structure was constructed provided the addition meets applicable building and fire code standards.

Section 3: The rows entitled "Side [Setbacks]" in Table 21.18-3 (Development Standards for Two-Unit Residential Coastal Zoning Districts) of Section 21.18.030 (Residential Coastal Zoning Districts General Development Standards) of the NBMC shall be amended to read as follows:

Development Feature	R-BI	R-2	R-2-6,000	Additional Requirements
Side (interior, each):				
Lots 40 ft. wide or less	3 ft.	3 ft.	6 ft. (7)	21.38.040 (I)
Lots 40'1" wide to 49'11" wide	4 ft.	4 ft.	6 ft. (7)	
Lots 50 ft. wide and greater	N/A	4 ft.	6 ft. (7)	
Side (street side):				
Lots 40 ft. wide or less	3 ft.	3 ft.	N/A	21.38.040 (I)
Lots 40'1" wide to 49'11" wide	4 ft.	4 ft.	N/A	

Development Feature	R-BI	R-2	R-2-6,000	Additional Requirements
Lots 50 ft. wide and greater	N/A	N/A	6 ft. (7)	

Section 4: Footnote 7 of Table 21.18-3 (Development Standards for Two-Unit Residential Coastal Zoning Districts) of Section 21.18.030 (Residential Coastal Zoning Districts General Development Standards) of the NBMC shall be added to read as follows:

(7) An addition to the principal structure shall be allowed to be constructed to the side yard setback in effect at the time the principal structure was constructed provided the addition meets applicable building and fire code standards.

Section 5: The rows entitled "Side [Setbacks]" in Table 21.18-4 (Development Standards for Multi-Unit Residential Coastal Zoning Districts) of Section 21.18.030 (Residential Coastal Zoning Districts General Development Standards) of the NBMC shall be amended to read as follows:

Development Feature	RM	RM-6,000	Additional Requirements
Side (interior, each):			
Lots 40 ft. wide or less	3 ft.	6 ft. (9)	21.38.040 (I)
Lots 40'1" wide to 49'11" wide	4 ft.	6 ft. (9)	
Lots 50 ft. wide and greater	8% of the average lot width (4)	6 ft. (9)	
Side (street side):			
Lots 40 ft. wide or less	3 ft.	N/A	21.38.040 (I)
Lots 40'1" wide to 49'11" wide	4 ft.	N/A	
Lots 50 ft. wide and greater	8% of the average lot width (4)	6 ft. (9)	

Section 6: Footnote 9 of Table 21.18-4 (Development Standards for Multi-Unit Residential Coastal Zoning Districts) of Section 21.18.030 (Residential Coastal Zoning Districts General Development Standards) of the NBMC shall be added to read as follows:

(9) An addition to the principal structure shall be allowed to be constructed to the side yard setback in effect at the time the principal structure was constructed provided the addition meets applicable building and fire code standards.

Section 7: Section 21.38.040(I) (Exceptions) is amended to read as follows:

21.38.040 Nonconforming Structures.

I. Exceptions.

1. Corona del Mar and Balboa Village. Existing nonresidential structures within Corona del Mar and Balboa Village that are nonconforming because they exceed the allowed floor area shall be exempt from the limits of this section and may be demolished and reconstructed to their preexisting height and floor area; provided, that not less than the preexisting number of parking spaces is provided along with provisions for alternative modes of transportation.

2. Landmark Structures. Landmark structures shall be exempt from the requirements of this chapter in compliance with Section 21.38.070 (Landmark Structures).

3. R-1-6,000, R-2-6,000, and RM-6,000 Coastal Zoning Districts. Existing principal structures within the R-1-6,000, R-2-6,000, and RM-6,000 Coastal Zoning Districts that are nonconforming only because side yard setbacks were amended subsequent to the original construction are exempt from the limits of this section.

Section 8: Section 21.38.050 (Nonconforming Uses) of the NBMC is amended to read as follows:

Nonconforming uses may be changed, expanded, increased, or intensified only as provided in this section.

A. Expansion and Intensification of Existing Nonconforming Uses.

1. Nonresidential Coastal Zoning Districts. In nonresidential coastal zoning districts, and in areas where residential uses are not allowed in Planned Community Districts or specific plan districts, a use that was previously allowed by right, but which becomes nonconforming because of new permit regulations, may be expanded or intensified (e.g., increase in floor area, lot area, or occupancy load) if such new development does not increase the degree of nonconformity, complies with the coastal protection policies of the Local Coastal Program, and is subject to the approval of a coastal development permit.

2. Residential Coastal Zoning Districts. In residential coastal zoning districts, and in areas where residential uses are allowed in Planned Community Districts or Specific Plans, a residential use that is nonconforming because it exceeds the allowed number of units for the coastal zoning district may be altered subject to compliance with the provisions of Section 21.38.040 (Nonconforming Structures).

B. Change of Use. A nonconforming nonresidential use may be changed to a conforming use, provided the change does not create or increase a deficiency in required off-street parking except as provided in Section 21.38.060 (Nonconforming Parking).

C. Exception for Landmark Structures. The use of a landmark structure may be changed, expanded, increased, or intensified subject to compliance with the provisions of Section 21.38.070 (Landmark Structures).

D. Exception for Short-Term Lodging. A short-term lodging unit legally established on or before June 1, 2004, on a parcel in the R-1 (Single-Unit Residential) Coastal Zoning District, or a parcel designated for single-unit dwelling land use as part of a planned community development plan, may continue.

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; the foregoing resolution, being Resolution No. 2022-82 was duly introduced before and adopted by the City Council of said City at a regular meeting of said Council held on the 15th day of November, 2022; and the same was so passed and adopted by the following vote, to wit:

AYES: Mayor Kevin Muldoon, Mayor Pro Tem Noah Blom, Council Member Brad Avery,
Council Member Joy Brenner, Council Member Duffy Duffield, Council Member
Will O'Neill
NAYS: None
ABSENT: Council Member Diane Dixon

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 16th day of November, 2022.



Leilani I. Brown
City Clerk
Newport Beach, California

