

## ORDINANCE NO. 2016-22

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING A ZONING CODE AND LOCAL COASTAL PROGRAM AMENDMENT FOR PROPERTY LOCATED AT 191 RIVERSIDE AVENUE

**WHEREAS**, an application was filed by Pacific Coast Architects, with respect to property located at 191 Riverside Avenue, and legally described as Lot F of Tract 919, requesting approval of amendments to the General Plan and Coastal Land Use Plan to change the land use category from Public Facilities (PF) to Mixed-Use Horizontal (MU-H1) and an amendment to the Zoning Code and the Local Coastal Program to change the zoning from Public Facilities (PF) to Mixed-Use Mariners' Mile (MU-MM) (collectively, Project);

**WHEREAS**, the General Plan and Coastal Land Use Plan vision for the Mariners' Mile Commercial District calls for a pedestrian-oriented mixed-use "village" containing retail businesses, offices, services, and housing parcels on the inland side of Coast Highway;

**WHEREAS**, the proposed zoning change is consistent with the mixed-use village vision for this area of Mariners' Mile by providing the opportunity for commercial and residential development;

**WHEREAS**, the proposed change to mixed-use would be a continuation of the mixed land uses designated on the properties abutting and adjacent to the Project site;

**WHEREAS**, a public hearing was held on October 20, 2016, 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 Newport Beach Municipal Code (NBMC). 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, 1 noes, 1 abstain) to adopt Planning Commission Resolution No. 2032 recommending City Council adoption of Negative Declaration ND2016-004 (SCH NO. 2014011028) and approval of General Plan Amendment No. GP2016-002, Coastal Land Use Plan Amendment No. LC2016-002 and Code Amendment No. CA2016-005;

**WHEREAS**, a public hearing was held by the City Council on November 22, 2016, 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. Evidence, both written and oral, was presented to, and considered by, the City Council at this public hearing;

**WHEREAS**, pursuant to the California Environmental Quality Act, Public Resources Code Sections 21000, *et seq.* (CEQA), the CEQA Guidelines (14 Cal. Code of Regulations, Sections 15000 *et seq.*), and City Council Policy K-3, the Project is subject to environmental review;

**WHEREAS**, the City thereafter caused to be prepared an Initial Study/Negative Declaration (SCH No. 2014011028) (ND) in compliance with CEQA, the State CEQA Guidelines and City Council Policy K-3;

**WHEREAS**, notice of the availability of the draft ND was given in accordance with CEQA, the State CEQA Guidelines and City Council Policy K-3. The draft ND was made available for public review for a 30-day comment period beginning on September 20, 2016, and ending October 20, 2016. The City received four comments letters during the public review period and the comments were considered during consideration of the Project and the City Council of the City of Newport Beach, California, found that the comments did not include substantial evidence that a potential environmental effect may occur;

**WHEREAS**, on the basis of the entire environmental review record, the Project will have a less than significant impact upon the environment; and

**WHEREAS**, the City Council finds that judicial challenges to the City's CEQA determinations and approvals of land use projects are costly and time consuming. In addition, project opponents often seek an award of attorneys' fees in such challenges. As project applicants are the primary beneficiaries of such approvals, it is appropriate that such applicants should bear the expense of defending against any such judicial challenge, and bear the responsibility for any costs, attorneys' fees, and damages which may be awarded to a successful challenger;

Therefore, to the fullest extent permitted by law, applicant and property owner shall defend, indemnify, release and hold harmless the 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 the Project, the Project's approval based on the City's CEQA determination and/or the City's failure to comply with the requirements of any federal, state, or local laws, including, but not limited to, CEQA, General Plan and zoning requirements. 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, or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding.

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

**Section 1:** The City's Zoning Map shall be amended from PF for 191 Riverside Avenue, to Mixed-Use Mariners' Mile (MU-MM), as provided in the map attached as Exhibit "A," and incorporated herein by reference. All other provisions of the City's Zoning Map shall remain unchanged. This amendment to the City's Zoning Map shall not become effective until the effective date of approval of Local Coastal Program Amendment No. LC2016-002 by the California Coastal Commission.

**Section 2:** The City's Coastal Zoning Map shall be amended from PF for 191 Riverside Avenue, to Mixed-Use Mariners' Mile (MU-MM), as provided in the map attached as Exhibit "B," and incorporated herein by reference. All other provisions of the City's Coastal Zoning Map shall remain unchanged. This amendment to the City's Coastal Zoning Map shall not become effective until the effective date of approval of Local Coastal Program Amendment No. LC2016-002 by the California Coastal Commission.

**Section 3:** The City Council hereby authorizes staff to submit Local Coastal Program Amendment No. LC2016-002 to the California Coastal Commission for review and approval. The submittal to the California Coastal Commission shall not occur until the City's Local Coastal Program becomes effective.

**Section 4:** The City's Local Coastal Program, including this amendment, shall be implemented in a manner fully in conformity with the Coastal Act.

**Section 5:** The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

**Section 6:** If any section, subsection, sentence, clause or phrase of this ordinance 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 ordinance. The City Council hereby declares that it would have passed this ordinance 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 requirement for environmental review under CEQA is satisfied by Negative Declaration No. ND2016-004 (SCH NO. 2014011028).

**Section 8:** The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause this ordinance, or a summary thereof, to be published pursuant to City Charter Section 414.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 22<sup>nd</sup> day of November, 2016, and adopted on the 13<sup>th</sup> day of December, 2016, by the following vote, to-wit:

AYES, COUNCILMEMBERS \_\_\_\_\_  
\_\_\_\_\_

NOES, COUNCILMEMBERS \_\_\_\_\_  
\_\_\_\_\_

ABSENT COUNCILMEMBERS \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
DIANE B. DIXON, MAYOR

**ATTEST:**

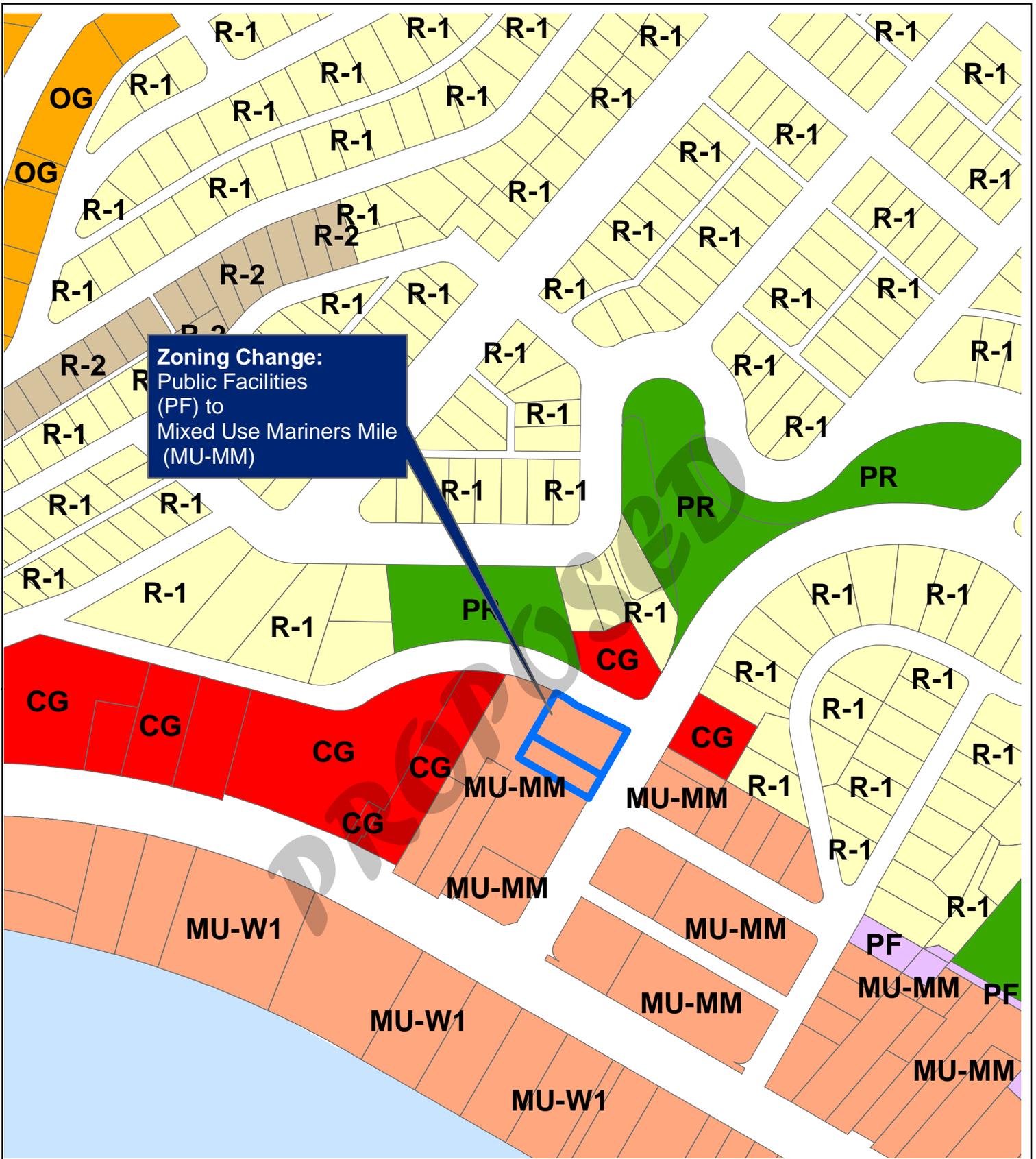
\_\_\_\_\_  
LEILANI I. BROWN, CITY CLERK

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

\_\_\_\_\_  
AARON C. HARP, CITY ATTORNEY

**Exhibit "A"**  
**Zoning Map Amendment**

**PROPOSED**



CA2016-005 (PA2016-127)  
Zoning Code Amendment  
191 Riverside Avenue

