

ORDINANCE NO. 2021-11

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, ADOPTING ZONING CODE AMENDMENT NO. CA2020-009 AMENDING TABLE 2-8 (ALLOWED USES AND PERMIT REQUIREMENTS) OF SECTION 20.22.020 (MIXED-USE ZONING DISTRICTS LAND USES AND PERMIT REQUIREMENTS) OF TITLE 20 (PLANNING AND ZONING) OF THE NEWPORT BEACH MUNICIPAL CODE TO ALLOW EATING AND DRINKING ESTABLISHMENTS AND LARGE HEALTH/FITNESS FACILITIES IN THE MU-DW (MIXED-USE DOVER/WESTCLIFF) ZONING DISTRICT (PA2020-316)

WHEREAS, Section 200 of the City of Newport Beach ("City") Charter vests the City Council with the authority to make and enforce all laws, rules and regulations with respect to municipal affairs subject only to the restrictions and limitations contained in the Charter and the State Constitution, and the power to exercise, or act pursuant to any and all rights, powers, and privileges, or procedures granted or prescribed by any law of the State of California;

WHEREAS, the MU-DW (Mixed-Use Dover/Westcliff) Zoning District ("MU-WD Zoning District") of the Newport Beach Municipal Code ("NBMC") is comprised of six parcels located along the westerly side of Dover Drive between 16th and 17th Streets that are predominantly developed with multi-tenant office buildings, with the exception of 801 Dover Drive;

WHEREAS, the MU-DW Zoning District does not currently permit eating and drinking establishments or larger health/fitness facilities despite being located immediately adjacent to general commercial uses along Westcliff Drive that permit these uses;

WHEREAS, the MU-DW Zoning District is the only mixed-use zoning district in Title 20 (Planning and Zoning) of the NBMC that does not permit eating and drinking establishments or larger health/fitness facilities;

WHEREAS, multiple property owners in the MU-DW Zoning District have had difficulty leasing their property and requested a code amendment to permit eating and drinking establishments or fitness type uses to help fill vacancies;

WHEREAS, on November 24, 2020, the City Council adopted Resolution No. 2020-98, by a unanimous vote, initiating an amendment to Title 20 (Planning and Zoning) of the NBMC to allow eating and drinking establishments and larger health/fitness facilities within the MU-DW Zoning District;

WHEREAS, a telephonic public hearing was held by the Planning Commission on April 8, 2021, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California, due to the Declaration of a State Emergency and Proclamation of Local Emergency related to COVID-19. A notice of time, place, and purpose of the public hearing was given in accordance with Government Code Section 54950 *et seq.* ("Ralph M. Brown Act") and Chapter 20.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing;

WHEREAS, at the conclusion of the hearing, the Planning Commission adopted Resolution No. PC2021-009 by a majority vote (5 ayes, 1 nay, 1 recusal), recommending the City Council approve the Zoning Code Amendment No. CA2020-009;

WHEREAS, Zoning Code Amendment No. CA2020-009 is consistent with the City's General Plan ("General Plan") land use designation of MU-H1 (Mixed-Use Horizontal 1) for the six parcels;

WHEREAS, with respect to the MU-H1 (Mixed-Use Horizontal 1) land use designation, Table LU1 (Land Use Plan Categories) of the General Plan states, "[t]he MU-H designation is intended to provide for the development of areas for a horizontally distributed mix of uses, which may include general or neighborhood commercial, commercial offices, multi-family residential, visitor-serving and marine-related uses, and/or buildings that vertically integrate residential with commercial uses";

WHEREAS, with respect to properties located in the Dover Drive/Westcliff Drive area, Table LU1 (Land Use Plan Categories) of the general plan provides that these properties, "may also be developed for professional offices or mixed-use buildings that integrate residential with retail or office uses on the ground floor in accordance with the CO and MU-V designations respectively";

WHEREAS, both the CO (Commercial Office) and MU-V (Mixed Use Vertical) categories provide areas for service uses, including restaurants and larger health and fitness facilities;

WHEREAS, restaurants provide a social gathering place and a convenient dining option for residents, while health and fitness facilities provide another amenity for those who live and work in the Dover Drive/Westcliff Drive neighborhood;

WHEREAS, together, these uses support the needs of those working, visiting or living in Newport Beach and promote a living, active, and diverse environment that complements all lifestyles and enhances neighborhoods, without compromising the valued resources that make Newport Beach unique;

WHEREAS, allowing new uses within the MU-DW Zoning District should ultimately help property owners fill existing vacancies and facilitate the establishment of local businesses within already developed properties, which is consistent with various goals, policies, and land use designations contained within the General Plan; and

WHEREAS, an application for an eating and drinking establishment or larger health/fitness facility is subject to compliance with Title 20 (Planning and Zoning) parking requirements and approval of a use permit to ensure compatibility with the surrounding neighborhood.

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

Section 1: Table 2-8 (Allowed Uses and Permit Requirements) of Section 20.22.020(C) (Applicable Regulations) of the NBMC is amended as follows with all other provisions in Table 2-8 remaining unchanged:

TABLE 2-8 ALLOWED USES AND PERMIT REQUIREMENTS	Mixed-Use Zoning Districts Permit Requirements				
	P	CUP	MUP	LTP	—
	Permitted by Right	Conditional Use Permit (Section 20.52.020)	Minor Use Permit (Section 20.52.020)	Limited Term Permit (Section 20.52.040)	Not Allowed *
Land Use See Part 7 of this title for land use definitions. See Chapter 20.12 for unlisted uses.	MU-V	MU-MM (6)	MU-DW	MU-CV/15th St. (7)	Specific Use Regulations
Service Uses—General					
Eating and Drinking Establishments					
Accessory food service (open to public)	P	P	P	P	Section 20.48.090

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Land Use See Part 7 of this title for land use definitions. See Chapter 20.12 for unlisted uses.	MU-V	MU-MM (6)	MU-DW	MU-CV/15th St. (7)	Specific Use Regulations
Fast Food (no late hours) (4)(5)	P/MUP	P/MUP	P/MUP	P/MUP	Section 20.48.090
Fast Food (with late hours) (4)	MUP	MUP	P/MUP	MUP	Section 20.48.090
Food Service (no late hours) (4)(5)	P/MUP	P/MUP	P/MUP	P/MUP	Section 20.48.090
Food Service (with late hours) (4)	CUP	CUP	CUP	CUP	Section 20.48.090
Take-Out Service, Limited (5)	P/MUP	P/MUP	P/MUP	P/MUP	Section 20.48.090
Health/Fitness Facilities					
Small—2,000 sq. ft. or less	P	P	MUP	P	
Large—Over 2,000 sq. ft	CUP	CUP	CUP	CUP	

Section 2: The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

Section 3: 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 4: The City Council finds the introduction and adoption of this ordinance 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. While Zoning Code Amendment No. CA2020-009 would allow two new categories of use in an existing zoning district, it does not authorize new development that would directly result in physical change to the environment.

Section 5: Except as expressly modified in this ordinance, all other sections, subsections, terms, clauses and phrases set forth in the Newport Beach Municipal Code shall remain unchanged and shall be in full force and effect.

Section 6: The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the ordinance, or a summary thereof, to be published pursuant to City Charter Section 414.

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This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 11th day of May, 2021, and adopted on the 25th day of May, 2021, by the following vote, to-wit:

AYES, COUNCILMEMBERS _____

NOES, COUNCILMEMBERS _____

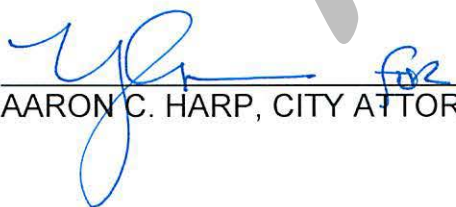
ABSENT COUNCILMEMBERS _____

BRAD AVERY, MAYOR

ATTEST:

LEILANI I. BROWN, CITY CLERK

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



AARON C. HARP, CITY ATTORNEY