

ORDINANCE NO. 2021-16

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AMENDING TITLE 21 (LOCAL COASTAL PROGRAM IMPLEMENTATION PLAN) OF THE NEWPORT BEACH MUNICIPAL CODE AND ADOPTING LOCAL COASTAL PROGRAM AMENDMENT NO. LC2019-006 RELATED TO RESIDENTIAL DESIGN STANDARDS (PA2019-070)

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, Section 30500 of the California Public Resources Code requires each county and city to prepare a local coastal program for the portion of the coastal zone within its jurisdiction;

WHEREAS, in 2005, the City adopted the City of Newport Beach Local Coastal Program Coastal Land Use Plan (“LCP”) as amended from time to time including most recently on February 12, 2019, via Resolution No. 2019-16;

WHEREAS, the California Coastal Commission effectively certified the City’s Local Coastal Program Implementation Plan on January 13, 2017, and the City Council adopted Ordinance No. 2016-19 adding Title 21 (Local Coastal Program Implementation Plan) (“Title 21”) to the Newport Beach Municipal Code (“NBMC”) whereby the City assumed coastal development permit-issuing authority as of January 30, 2017;

WHEREAS, in 2010, the Title 20 (Planning and Zoning) development standards were revised, in part, to streamline the review process and simplify the development standards applicable to residential development, while maintaining allowable building envelopes and preserving the character of existing communities, however, some of revisions resulted in unintended consequences;

WHEREAS, therefore, staff initiated amendments to Titles 20 and 21 in order to correct the issues;

WHEREAS, on May 14, 2019 and May 28, 2019, the City Council adopted Resolution Nos. 2019-43 and 2019-45, respectively, authorizing staff to initiate code revisions to reduce third floor mass and overall building bulk associated with single- and two-unit developments and to restrict single- and two-unit dwellings developed on lots zoned for Multiple Residential (RM) to the development standards applicable to the standards of the Two-Unit Residential (R-2) Zoning District (“Code Amendment”);

WHEREAS, on August 19, 2019 and March 9, 2020, the Community Development Department hosted community meetings attended by members of the public, including design professionals, to share the proposed Code Amendment and receive community feedback;

WHEREAS, on September 10, 2019, the City Council held a study session to receive a staff update regarding the status of the proposed Code Amendment, summary of the comments received at the August 19, 2019, community meeting, and to provide staff further direction;

WHEREAS, a telephonic public hearing was held by the Planning Commission on May 7, 2020, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California, observing restrictions 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 the California Government Code Section 54950 *et seq.* (“Ralph M. Brown Act”) and Chapters 20.62 and 21.62 (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 voted to remove the Code Amendment from calendar to allow staff time to seek guidance from the California Department of Housing and Community Development (“HCD”) as to whether it complied with the Housing Crisis Act of 2019 (Senate Bill 330);

WHEREAS, on July 31, 2020, HCD issued a letter to the City finding that upon review of the materials, the pending revisions do not trigger the Housing Crisis Act “less intensive use” provisions under Government Code section 66300, subdivision (b)(1)(A);

WHEREAS, a telephonic public hearing was held by the Planning Commission on September 17, 2020, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California, observing restrictions 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 the Ralph M. Brown Act and Chapters 20.62 and 21.62 (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. PC2020-032 by a majority vote (5 ayes, 2 nays) recommending to the City Council approval of LCP Amendment No. LC2019-006 and Zoning Code Amendment No. 2019-004;

WHEREAS, a telephonic public hearing was held by the City Council on November 24, 2020, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California, observing restrictions 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 the Ralph M. Brown Act and Chapters 20.62 and 21.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the City Council at this public hearing;

WHEREAS, at the conclusion of the hearing, the City Council introduced Ordinance No. 2020-28 adopting Zoning Code Amendment No. 2019-004 and Resolution No. 2020-102 authorizing submittal of LCP Amendment No. LC2019-006 to the California Coastal Commission by a unanimous vote (5 ayes, 0 nays); and

WHEREAS, on July 7, 2021, the California Coastal Commission approved LCP Amendment No. LC2019-006 (LCP-5-NPB-21-0036-1 Part A) with no modifications, as a result, LCP Amendment No. LC2019-006 is now deemed approved and became a certified part the City's Local Coastal Program on July 21, 2021.

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

Section 1: The Open Space row of Table 21.18-4 of Section 21.18.030 (Development Standards for Multi-Unit Residential Coastal Zoning Districts) of Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code shall be amended to read as follows:

Open Space	<i>Minimum required open space (applicable to 3 or more unit development).</i>	
	Common: 75 square feet/unit Minimum dimension shall be 15 feet. Private: 5% of the gross floor area for each unit. Minimum dimension shall be 6 feet.	The minimum dimension is for length and width.

Section 2: The definition of “Floor Area, Gross” of Section 21.70.20 (Definitions of Specialized Terms and Phrases) of Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code, shall be amended to read as follows:

Floor Area, Gross.

1. Single-Unit and Two-Unit Dwellings.
 - a. For single-unit and two-unit dwellings, the following areas shall be included in calculations of gross floor area:
 - i. The area within and including the surrounding exterior walls;
 - ii. Covered decks, balconies or patios above the first floor;
 - iii. Any interior portion of a structure that is accessible and that measures more than six feet from floor to ceiling; and
 - iv. Covered parking spaces which are open only on one side.
 - b. The following areas shall be excluded:
 - i. Stairwells and elevator shafts above the first level; and
 - ii. Covered decks, balconies or patios open on at least two sides, with the exception of required safety railings and minimal structural supports. Railings shall be constructed of either transparent material (except for supports) or opaque material (e.g., decorative grillwork, wrought iron, latticework, or similar open materials) so that at least forty (40) percent of the railing is open.

2. Multi-Unit Residential (3+ dwellings), Mixed-Use, and Nonresidential Structures.

a. For multi-unit residential, mixed-use, and nonresidential structures, the following areas shall be included in calculations of gross floor area:

- i. The surrounding exterior walls; and
- ii. Any interior portion of a structure that is accessible and that measures more than four feet from floor to ceiling.

b. The following areas shall be excluded:

- i. Stairwells and elevator shafts above the first level;
- ii. Outdoor dining areas associated with an eating and drinking establishment; and
- iii. Parking structures associated with an allowed use within the same development.

Section 3: The LCP and Title 21, including LCP Amendment No. LC2019-006, shall be carried out in full conformance with the California Coastal Act.

Section 4: The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

Section 5: 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 6: The City Council finds the adoption of LCP Amendment No. LC2019-006 is not subject to the California Environmental Quality Act (“CEQA”) in accordance with Section 21065 of the California Public Resources Code and Sections 15060 (c)(2), 15060 (c)(3), and 15378 of the California Code of Regulations Title 14, Division 6, Chapter 3 (“CEQA Guidelines”). LCP Amendment No. LC2019-006 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. Lastly, pursuant to CEQA Guidelines Section 15265(a)(1), local governments are statutorily exempt from the requirements of CEQA in connection with the adoption of a local coastal program. LCP Amendment No. LC2019-006 itself does not authorize development that would directly result in physical change to the environment.

Section 7: Except as expressly modified in this ordinance, all other sections, subsections, terms, clauses and phrases set forth in the NBMC shall remain unchanged and shall be in full force and effect.

Section 8: 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.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 14th day of September, 2021, and adopted on the 28th day of September, 2021, by the following vote, to-wit:

AYES: _____

NAYS: _____

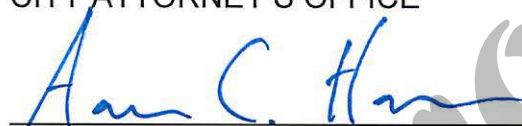
ABSENT: _____

BRAD AVERY, MAYOR

ATTEST:

LEILANI I. BROWN, CITY CLERK

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



AARON C. HARP, CITY ATTORNEY

Proposed