

ORDINANCE NO. 2024- 8

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING A PLANNED COMMUNITY DEVELOPMENT PLAN AMENDMENT FOR THE RESIDENCES AT 1400 BRISTOL STREET PROJECT LOCATED AT 1400 BRISTOL STREET (PA2022-0296)

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, an application was filed by The Picerne Group ("Applicant"), with respect to the property located at 1400 Bristol Street and legally described in Exhibit "A," which is attached hereto and incorporated by reference ("Property");

WHEREAS, the Applicant is requesting approval to demolish two existing office buildings and develop 229 apartment units, including a 422-space parking structure ("Project"), which requires the following approvals:

- General Plan Amendment ("GPA") - A request to amend the General Plan land use designation from General Commercial Office (CO-G) to Mixed-Use Horizontal 2 (MU-H2) and add 64 dwelling units above the General Plan allowance to Anomaly 16 of the General Plan Table LU2 (Anomaly Locations);
- Planned Community Development Plan Amendment ("PCDP Amendment") - An amendment to the Newport Place Planned Community (PC-11) Development Plan to include the Property within the Residential Overlay;
- Major Site Development Review ("SDR") - A site development review in accordance with the Newport Place Planned Community (PC-11) and Section 20.52.080 (Site Development Reviews) of the Newport Beach Municipal Code ("NBMC") to construct the Project;
- Affordable Housing Implementation Plan ("AHIP") - A plan specifying how the Project would meet the City's affordable housing requirements, in exchange for a request of 50% increase in density including a request for six development standard waivers related to park land dedication, building setbacks, building

height, private open space for each residential unit, and common open space along with two development concessions related to the mix of affordable units and partial payment of park in-lieu fees pursuant to Chapter 20.32 (Density Bonus) of the NBMC and Government Code Section 65915 *et seq.* ("State Density Bonus Law");

- Development Agreement ("DA") – A development agreement between the Applicant and the City, pursuant to Section 15.45.020 (Development Agreement Required) of the NBMC, which would provide the Applicant with the vested right to develop the Project for a term of 10 years and provide negotiated public benefits to the City;
- Traffic Study - A traffic study pursuant to Chapter 15.40 (Traffic Phasing Ordinance) of the NBMC; and
- Addendum No. 7 to the 2006 General Plan Update Program Environmental Impact Report and the 2008–2014 City of Newport Beach Housing Element Update and Initial Study/Negative Declaration ("Addendum No. 7") – An addendum which addresses reasonably foreseeable environmental impacts resulting from the Project;

WHEREAS, the Property is designated General Commercial Office (CO-G) by the General Plan Land Use Element and located within the Newport Place Planned Community (PC-11) Zoning District in the Industrial Site 3A sub-area;

WHEREAS, the Property is not located within the coastal zone; therefore, amending the Local Coastal Program and obtaining a coastal development permit are not required;

WHEREAS, a public hearing was held by the Planning Commission on December 7, 2023 in the Council Chambers at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the hearing was given in accordance with Government Code Section 54950 *et seq.* ("Ralph M. Brown Act"), and Chapter 15.45 (Development Agreements), Chapter 19.20 (Vesting Tentative Map), Chapter 20.56 (Planned Community District Procedures), 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 hearing;

WHEREAS, at the hearing, the Planning Commission adopted Resolution No. PC2023-043 by a majority vote (6 ayes, 0 nays, 1 absent) recommending the City Council approve the Project;

WHEREAS, California Public Utilities Code ("CPUC") Section 21676(b) requires the City to refer the Project to the Orange County Airport Land Use Commission ("ALUC") to review for consistency with the 2008 John Wayne Airport Environs Land Use Plan ("AELUP");

WHEREAS, on January 18, 2024, the ALUC determined the Project is inconsistent with the AELUP;

WHEREAS, pursuant to Sections 21670 and 21676 of CPUC, the City Council may, after a public hearing, propose to overrule the ALUC with a two-thirds vote, if it makes specific findings that the Project is consistent with the purpose of Section 21670 of the CPUC to protect the public health, safety, and welfare by ensuring the orderly expansion of airports and the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses;

WHEREAS, a public hearing was held by the City Council on February 13, 2024, in the City 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 CPUC Section 21676(b) and the Ralph M. Brown Act. Evidence, both written and oral, was presented to, and considered by, the City Council at this hearing;

WHEREAS, at the conclusion of the hearing, the City Council adopted Resolution No. 2024-9 by unanimous vote (7 ayes, 0 nays) to notify the ALUC and State Department of Transportation Aeronautics Program ("Aeronautics Program") of the City's intent to override ALUC's inconsistency finding;

WHEREAS, notice of the City's intent to override the ALUC inconsistency determination, along with Resolution No. 2024-9 was sent via certified mail and emailed to the ALUC and the Aeronautics Program on February 14, 2024;

WHEREAS, the City received timely comments in response to the notice of the City's intent to override the ALUC inconsistency determination from the ALUC and the Aeronautics Program in accordance with CPUC Section 21676; and

WHEREAS, a public hearing was held by the City Council on April 9, 2024, in the City 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 Ralph M. Brown Act, Chapter 15.45 (Development Agreements), Chapter 19.20 (Vesting Tentative Map), Chapter 20.56 (Planned Community District Procedures), and Chapter 20.62 (Public Hearings) of the NBMC, and CPUC Section 21676(b). Evidence, both written and oral, was presented to, and considered by, the City Council at this meeting.

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

Section 1: The City Council has considered the recommendation of the Planning Commission and determined that modifications to the Project made by the City Council, if any, are not major changes that require referral back to the Planning Commission for consideration and recommendation.

Section 2: The PCDP Amendment to the Newport Place Planned Community (PC-11) is a legislative act. Neither the Newport Place Planned Community (PC-11), Chapters 20.56 (Planned Community District Procedures) and 20.66 (Amendments) of the NBMC, nor Section 65000 *et seq.* of the California Government Code set forth any required findings for approval of such amendments. Notwithstanding the foregoing, the PCDP Amendment complies with Part III (Residential Overlay) of the Newport Place Planned Community (PC-11) based on the following findings:

1. The Project allocates 15% of the base units (23 dwelling units) as affordable for very-low-income households.
2. Given the location of Property in the Airport Area which includes a mixture of service uses, hotels, John Wayne Airport and commercial support services, professional offices, and new residential developments that cumulatively contain the ingredients of a planned community, the PCDP Amendment would not disrupt the existing uses within the Newport Place Planned Community (PC-11) and would add to this diversity of uses, assisting the City in larger scale community planning and the provision of additional housing opportunities.
3. The Property is located within 85 feet of the Residential Overlay set forth in the Newport Place Planned Community (PC-11). The property nearest to the site within the Residential Overlay is 1300 Bristol Street, across Spruce Street. The

property at 1300 Bristol has been approved but not yet constructed as a residential apartment project. The Project at 1400 Bristol Street includes a pedestrian bridge that would extend from the subject site to the approved residential project at 1300 Bristol Street. The Project would be consistent with the anticipated future development of 1300 Bristol Street as well other adjacent properties within the Residential Overlay of Newport Place Planned Community (PC-11). The proposed pedestrian bridge would support pedestrian connectivity that integrates the Project into the existing community and larger residential development that may occur in the future pursuant to Section F (Amenities and Neighborhood Integration) of the PCDP Amendment.

4. The Project would be subject to the appropriate site and project specific setbacks, density, and height limits for this urban location. All required parking is provided on-site. The Project compiles with the development standards identified for the Residential Overlay, except as modified by the allowed development standard waivers identified in the Affordable Housing Implementation Plan. The Residential Overlay provides a density range for proposed projects and references the Section 20.32 (Density Bonus) of the NBMC that prescribes the maximum density bonus and incentives allowed. Although the PCDP Amendment references a maximum density bonus of 35%, the Project requests a 50% density bonus, which is consistent with Section 20.32 (Density Bonus) of the NBMC that allows up to 80% density bonus depending on the percentage of affordable units being provided. Therefore, the Project is consistent with the intent of the density bonus assumptions in the Residential Overlay and within the maximum allowed by the density bonus provisions.
5. The Newport Place Planned Community (PC-11) requires an SDR in accordance with Section 20.52.080 of the NBMC. The Project includes an SDR, and all required findings are addressed in a separate resolution.
6. The PCDP Amendment requires the density for a residential development to be between 30 and 50 dwelling units per acre. The Project includes 153 base units, not including density bonus units. Since the Property is 2.28 acres in size, there is a base density of 67 dwelling units per acre. With the density bonus, there is a total of 229 dwelling units, which results in 96 units per acre. Both the base density and density bonus units are not consistent with the PCDP Amendment density requirement; however, the Applicant is requesting a development standard waiver which is required under State Density Bonus Law and Section

20.32.080 of the NBMC where application of the development standard would physically preclude construction of a density bonus project.

7. The Property is located near existing office buildings within the Airport Area and is not negatively impacted by noise, dust, smoke, vibration, odor, toxic or noxious matter that may be generated by existing commercial or industrial uses nearby.
8. Residential dwellings are permitted as replacement of existing nonresidential uses, and the number of peak hour trips generated by the Project is not to exceed the number of trips of the underlying permitted nonresidential use. The Property is developed with existing two-story commercial office buildings totaling 38,764 square feet. A standardized conversion rate of 2.29 dwelling units per 1,000 square feet of commercial floor area, as provided by the City Traffic Engineer, is required. This results in a total of 89 dwelling units, which is the proposed base density of the Project less the GPA units requested. The Applicant is requesting a GPA to increase the base units for the Project by 64 dwelling units. With a 50% density bonus or 77 dwelling units requested, a total of 229 dwelling units are proposed for the Project.
9. The Property is fully developed and does not support any natural resources and all potential environmental impacts associated with the Project are appropriately addressed through standard building permit procedures, conditions of approval, and the General Plan Policies identified Addendum No. 7.

Section 3: The City Council hereby approves the PCDP Amendment, as set forth in Exhibit "B," which is attached hereto and incorporated herein by reference and finds that the PCDP Amendment to add the Property to the Residential Overlay complies with the purpose set forth in Section 20.56.010 (Purpose) of the NBMC, with all other provisions of the existing Planned Community District Regulations and exhibits remaining unchanged and in full force and effect.

Section 4: Environmental Impact Report Addendum No. 7 was prepared for the Project in compliance with CEQA set forth in California Public Resources Code Section 2100 *et seq.*; CEQA's implementing regulations set forth in the CEQA Guidelines and City Council Policy K-3 (Implementation Procedures for the California Environmental Quality Act) to ensure that the Project will not result in new or increased environmental impacts. On the basis of the entire environmental record, the Project will not result in any new significant impacts that were not previously analyzed in the PEIR for the General Plan 2006 Update (SCH No. 2006011119) and the City of Newport Beach Housing Element Initial Study/Negative Declaration. The potential impacts associated with this Project would either be the same or less than those described in the PEIR or the City of Newport Beach Housing Element Initial Study/Negative Declaration. In addition, there are no substantial changes to the circumstances under which the Project would be undertaken that would result in new or more severe environmental impacts than previously addressed in either the PEIR, nor has any new information regarding potential for new or more severe significant environmental impacts been identified.

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.

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 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 shall be effective thirty (30) calendar days after its adoption.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 9th day of April, 2024, and adopted on the 23rd day of April, 2024, by the following vote, to-wit:

AYES: _____

NAYS: _____

ABSENT: _____

WILL O'NEILL, MAYOR

ATTEST:

LEILANI I. BROWN, CITY CLERK

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



AARON C. HARP, CITY ATTORNEY

Attachments: Exhibit "A" – Legal Description
Exhibit "B" – Newport Place Planned Community (PC-11) Development
Plan Amendment

EXHIBIT "A"
Legal Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF NEWPORT BEACH, IN THE COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

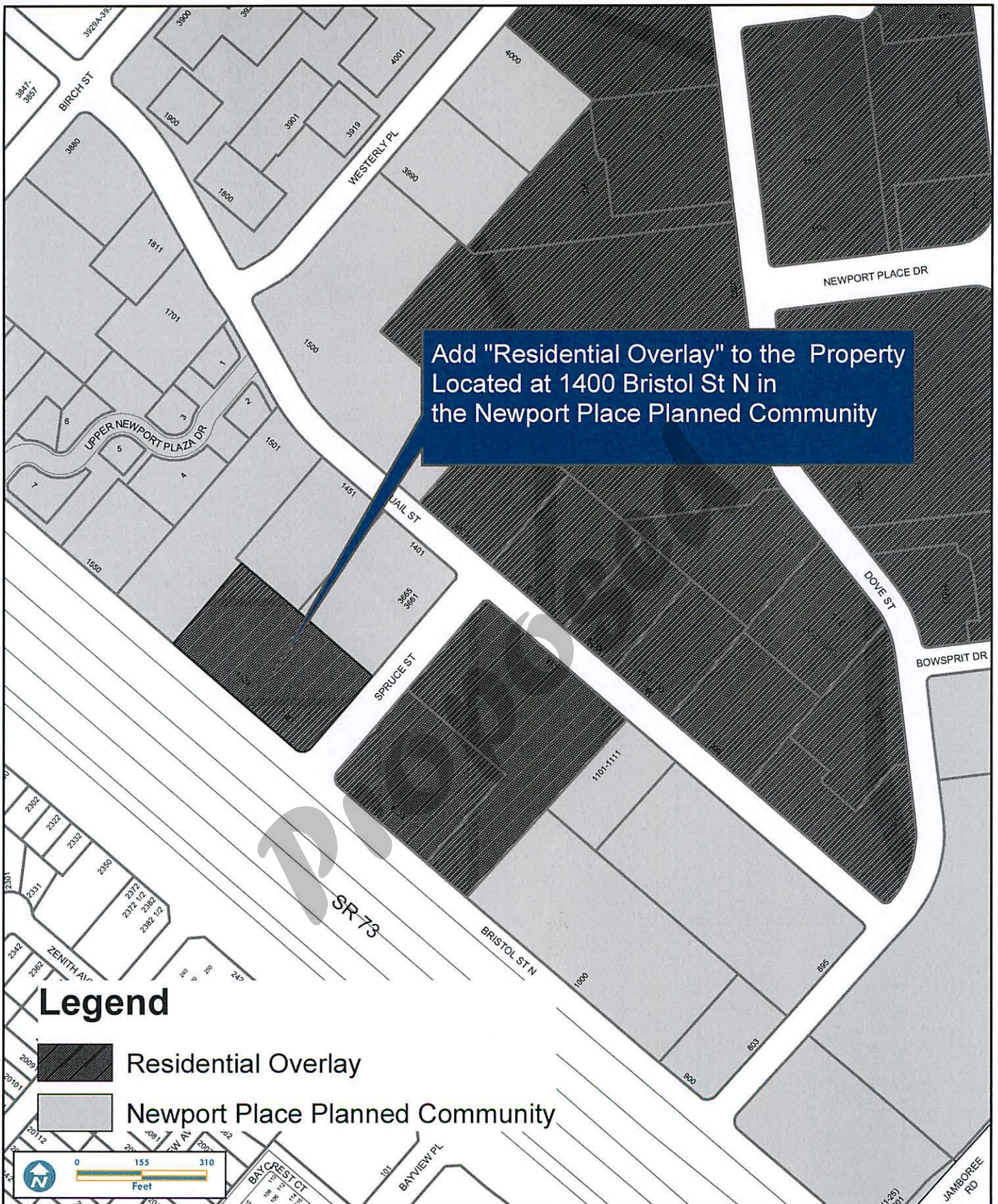
THAT PORTION OF BLOCK 50 OF IRVINE'S SUBDIVISION, AS SHOWN ON A MAP RECORDED IN BOOK 1, PAGE 88 OF MISCELLANEOUS RECORDS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, TOGETHER WITH THAT PORTION OF TRACT 706, AS SHOWN ON A MAP RECORDED IN BOOK 21, PAGE 25 OF MISCELLANEOUS MAPS, RECORDS OF SAID ORANGE COUNTY, DESCRIBED AS FOLLOWS:

PARCEL 2 IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP FILED IN BOOK 54, PAGE 11 OF PARCEL MAPS IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, CALIFORNIA.

EXCEPT THE FULL RIGHTS TO ALL MINERALS, PETROLEUM, GAS AND OTHER HYDROCARBON SUBSTANCES EXISTING BELOW FIVE HUNDRED (500) FEET FROM THE SURFACE OF SAID REAL PROPERTY DESCRIBED ABOVE, PROVIDED, HOWEVER, THAT GRANTOR HEREBY EXPRESSLY WAIVES THE RIGHT TO ENTER UPON THE SURFACE OF SAID REAL PROPERTY FOR THE PURPOSE OF EXPLORING FOR, OR PRODUCING THE MINERALS, PETROLEUM, GAS AND OTHER HYDROCARBON SUBSTANCES SO RESERVED IN DEED RECORDED JULY 1, 1977.

EXHIBIT "B"
Newport Place Planned Community (PC-11) Development Plan Amendment

Proposed



Add "Residential Overlay" to the Property Located at 1400 Bristol St N in the Newport Place Planned Community



PA2022-0296
PC-11 Newport Place Amendment
1400 Bristol St N



City of Newport Beach
 GIS Division
 November 22, 2023