

ORDINANCE NO. 2008-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA AMENDING VARIOUS PROVISIONS OF TITLE 20 OF THE NEWPORT BEACH MUNICIPAL CODE RELATING TO ALL CATEGORIES OF GROUP USES, REASONABLE ACCOMMODATION PROVISIONS FOR THE DISABLED AND NONCONFORMING STRUCTURES AND USES

WHEREAS, on February 13, 2007, the City Council adopted Resolution No. 2007-10 initiating an amendment to Title 20 of the Newport Beach Municipal Code to revise land use classifications and definitions related to group occupancies;

WHEREAS, on April 24, 2007, the City Council adopted Ordinance No. 2007-8, which, among other things, imposed a moratorium on the establishment of new group residential uses and directed the Planning Department, in cooperation with the City Attorney, to analyze the extent of regulatory controls affecting group residential uses and required in residential districts;

WHEREAS, on May 30, 2007, the City Council adopted Ordinance No. 2007-10, extending the moratorium for a period of five months through October 30, 2007;

WHEREAS, on October 17, 2007, the City Council adopted Ordinance No. 2007-16, extending the moratorium for an additional twelve months;

WHEREAS, the Planning Commission held a public hearing on June 21, 2007, August 23, 2007 and September 20, 2007, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California, on the proposed amendments. A notice of time, place, and purpose of the meeting was given in accordance with the Municipal Code;

WHEREAS, the Planning Commission Resolution No. 1731 recommended that the City Council adopt amendments to Title 20 of the Newport Beach Municipal Code as provided for in Exhibits A, B, C, D, and E to that Resolution;

WHEREAS, the City Council has considered Resolution No. 1731 and the amendments therein;

WHEREAS, this code amendment is not subject to the California Environmental Quality Act (CEQA) because the proposed code amendment will not result in a direct or reasonably foreseeable indirect physical change in the environment (Section 15060(c)(2) of the CEQA Guidelines) and this code amendment is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment (Section 15061(b)(3) of the CEQA Guidelines); moreover, this code amendment is also exempt from CEQA pursuant to Section 15305 of the CEQA Guidelines (minor alterations in land use).

WHEREAS, the City Council held a public hearing on January 8, 2008, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California, on this proposed ordinance.

Notice of the time, place and purpose of the meeting was given in accordance with the Municipal Code; and

WHEREAS, the City Council makes the following findings in conjunction with this Ordinance:

1. The recitals set forth above are true and correct and hereby incorporated by reference.
2. The City recognizes and agrees that the federal Fair Housing Act and the Fair Housing Act Amendments (42 U.S.C. § 3601), provides protections for persons with disabilities. The Fair Housing Act, however, does not preempt local zoning laws. The City may adopt, pursuant to its police power, zoning ordinances to protect the public health, welfare and safety that are consistent with state and federal law, including the Fair Housing Act and the Fair Housing Act Amendments. The adoption of zoning ordinances and land use planning is a fundamental function of local government.
3. The City recognizes and agrees that the Fair Housing Act and other state and federal laws (i.e. Americans with Disabilities Act), provide that individuals recovering from drug and alcohol addiction are deemed disabled;
4. The State of California via the California Department of Alcohol and Drug Programs (“ADP”) licenses residential facilities that provide nonmedical recovery, treatment and detoxification services for users of alcohol and other drugs. Such a treatment facility is defined as “any premises, place or building that provides 24-hour residential nonmedical services to adults who are recovering from problems related to alcohol, drug, or alcohol and drug misuse or abuse, and who need alcohol, drug, or alcohol and drug recover treatment or detoxification services.” (Health and Safety Code Section 11834.02). Residential treatment facilities serving six or fewer persons are considered a residential use of property and must be treated similarly as single-family residences in the zone they are located. These are defined in the ordinance as residential care facilities, small licensed. The City does currently treat, and proposes to continue to treat, residential care facilities, small licensed, in accordance with state law.
5. In addition to licensed residential care facilities, there are unlicensed care facilities in where persons in a residence agree to stay “clean and sober” during their residency. Such facilities are commonly known as “sober living” homes and are unlicensed, not regulated by the State of California and its residents are transitory in nature. The exact nature of these facilities, however, is not known. ADP has reported to the State Legislature that it receives on average 125 complaints a year regarding sober living homes, with many complaints indicating that unlicensed facilities are offering addiction treatment services without the required license. State law requires a license for any facility providing a service designed to promote treatment and maintain recovery from alcohol or drug problems and may include any one of the following: detoxification, group sessions, individual sessions, educational sessions, and/or alcoholism or drug abuse recovery or treatment planning (9 CCR Section 10501(5)). Many facilities appear to be advertising such services but do not have a license.
6. Evidence has been presented that there is a high degree of transiency among persons living in group home settings and that transiency (due to the failure of an occupant to comply

with rules or the successful completion of a program) is an important element of certain group living arrangement.

7. The City has a disproportionately high number of licensed and unlicensed residential group uses serving the disabled recovering from drug or alcohol use. Specifically: (i) the City has 2.63 licensed recovery beds per thousand residents, the highest ratio of any city in Orange County; (ii) the City's contains 2.7 – 2.8% of the total population of Orange County, but is host to approximately 14.6% of all licensed residential beds in the County; (iii) the City has at least 26 licensed residential alcohol and drug treatment and recovery facilities that provide a total of 213 licensed residential beds, and are licensed for a total occupancy of 238 individuals. Three of these facilities are treatment locations only; (iv) the City has at least 55 known unlicensed facilities, most with 6 or fewer residents; (v) combining the known number of licensed beds with an estimate of known unlicensed beds, the City has 614 total recovery beds within the city limits. The City is likely to have the highest amount of residential recover facilities in Orange County and possibly the State of California. Analysis by the City demonstrates that, based on the 2003-2004 National Survey on Drug Use and Health, the City has approximately twice the licensed bed days needed on an annual basis.

8. In conformance with privacy rights under the California Constitution, the City's Zoning Code does not limit the number of related or unrelated persons, whether or not disabled, who choose to live together as a single housekeeping unit. Single housekeeping unit is defined in the ordinance.

9. The fundamental precept of the City's Zoning Code provisions relative to residential zones is that individual dwelling units are intended for the occupancy and use of single housekeeping units. Accordingly, the City prohibits group residential uses (as defined in the proposed ordinance) such as boarding or rooming houses, dormitories, fraternities, sororities and single-room occupancy hotels in residential zoning districts in the City because such group residential uses are frequently transient and institutional in nature and differ in character and create impacts on residential neighborhoods from single house keeping units.

10. Convalescent homes, hospitals, and SRO residential hotels are also not compatible with residential areas, and no such facilities are located in residential districts in the City, and the City does not desire to permit such facilities in residential districts.

11. The California Department of Corrections has reported that approximately 70 percent of persons on parole will be returned to prison each year because they have either been convicted of new crimes or have violated the conditions of their parole. Residences housing two or more parolees may pose a danger to the safety of the community and adjacent residents, and the City does not intend to permit such uses.

12. The City has received evidence of increasing numbers of residential care facilities that do not house permanent residents and operate more like institutional and boarding housing uses than as single housekeeping units. These uses are concentrated in residential zoning districts R-1.5, R-2 and MFR. Uses such as parolee/probationer homes, group residential uses, non-residential uses, and other uses operate as businesses in residentially zoned areas of the City and place

incompatible uses in residential neighborhoods, contrary to the policies in the City's Land Use Element.

13. Evidence presented to the City reveals that certain areas of the City, including West Newport and the central Balboa Peninsula have significantly higher numbers of group residential uses than other parts of the city, and than other parts of the state. City staff distributed a questionnaire asking about impacts caused by group residential uses and revealed the following concerns and secondary impacts: extensive secondhand smoke; impacts to traffic and parking; conversion of garages to other uses; slower or gridlocked transportation routes, if such routes are blocked by transit vans; more frequent deliveries (laundry, food, medicine, office goods) than is typical for a residential area; noise and traffic associated with more frequent trash collection; lack of frequent trash collection, in some instances, leading to vermin and odors; persons unwillingly removed from the facilities left "on the streets" with few resources to return home, leading to scavenging or petty theft; excessive debris, including cigarette butts, on sidewalks, in gutters, on streets; and/or illegal smoking in public places where smoking is banned, including Oceanfront Walk and beaches; excessive noise, fighting and loud offensive language. Such activity changes the residential character of the neighborhood and is not beneficial to persons in recovery as they attempt to re-integrate their new sober lifestyle into typical society. Such effects essentially "institutionalize" their recovery efforts as well as the neighborhood.

14. In the R-1.5, R-2 and MFR Districts near the beach, where residential care facilities are clustered, most properties are narrow, not more than 30 feet wide, with building set back only three feet from the property line, resulting in neighboring windows less than six feet away from each other. Only one arterial roadway, Balboa Boulevard, exists in the area. Other roads are only 30 feet wide, with alleys as narrow as 10 feet across. Because of these crowded conditions, and to implement the City's Land Use Element and to maintain the character of residential neighborhoods, the City does not permit group residential units, such as boarding houses, dormitories, fraternities, and sororities, to be located in residential zoning districts. As stated above, such group residential uses are frequently transient and institutional in nature and differ in character and create impacts on residential neighborhoods from single housekeeping units.

15. The City has received evidence that, in several instances, two or more licensed or unlicensed residential care programs are administered by the same owner, operator, management company or licensee, in a manner in which participants in two or more care programs participate simultaneously in any care or recovery activities commonly administered. In such case, the use shall be subject to the regulations of the ordinance as such use evades the intent of California laws allowing facilities serving six or fewer persons in one dwelling unit to be treated as single family homes.

16. The City is concerned with the impacts of group residential uses and residential care uses on the residential character of the neighborhood and how it impacts the disabled. The loss of residential characteristics of a neighborhood in which residential care facilities serving the disabled cluster has an adverse effect on the welfare of the individuals receiving services from the facility and defeats the purpose of community-based recovery. The American Planning Association's Policy Guide on Community Residences, which supports community residences, states that community residences should be scattered throughout residential districts rather than

being concentrated on any single block or in any single neighborhood. If several residential care facilities locate next to one another, or are placed on the same block, the ability of the residential care facilities to achieve normalization and community integration would be compromised. The existing social structure of a neighborhood can accommodate no more than one or two residential care facilities on a single block. The Departments of Justice and Housing Urban Development have stated that a neighborhood composed largely of residential care facilities could adversely affect individuals with disabilities and would be inconsistent with the objective of integrating persons with disabilities into the community. The California Research Bureau similarly found that facilities should be scattered throughout residential districts, and facilities so densely clustered as to recreate an institutional environment would defeat the purpose of community-based care.

17. The City desires to maintain zoning provisions benefiting disabled persons by allowing disabled persons to live in residential districts in residential care facilities, while forbidding all other group homes in residential districts, but desires to ensure that the uses are consistent with the residential character of neighborhoods and do not recreate an institutional environment that would defeat the purpose of community-based care. The City further desires to ensure that unlicensed residential care facilities purporting to serve the disabled are operating in compliance with City, state, and federal laws and regulations. To achieve these purposes and to provide disabled persons with an equal opportunity to use and enjoy a dwelling in the City's residential zoning districts, and in recognition of the services that may be required by the disabled, the proposed ordinance allows residential care facilities, general and small unlicensed, to be located in the MFR zone with a use permit, while prohibiting all other group residential uses. Residential care facilities, small licensed, continue to be permitted in all residential districts as required by State law. Land Use Element Policy 6.2.7 provides that the City shall regulate residential and day care facilities to the maximum extent allowed by federal and state law to minimize impacts on residential neighborhoods.

18. To ensure that the City complies with federal and state law, the proposed ordinance contains standards and procedures for granting a reasonable accommodation to its zoning and land use regulations, policies and practices when needed to provide an individual with a disability an equal opportunity to use and enjoy a dwelling, where such an accommodation does not cause an undue financial or administrative burden or does not result in a fundamental alteration in the nature of the City's zoning program, as those terms are defined in fair housing laws and interpretive case law.

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

Section 1. The following definitions contained in Section 20.03.030 (Definitions) of Chapter 20.03 of Title 20 (Planning and Zoning) of the Newport Beach Municipal Code are hereby amended to read as follows:

“Section 20.03.030 Definitions

Bedroom: An enclosed space in a structure that is designed such that it could be used for sleeping purposes and meets the room dimension requirements of the most recent edition of the Uniform Building Code, is not accessed directly from the garage, and has one or more windows.

Block: An area of land that is bounded on all sides by streets or by streets and a shoreline or by streets and a cul-de-sac or by any other form of termination of the street (i.e. dead-end not a cul-de-sac).

Fair Housing Laws: The Federal Fair Housing Act, the Americans with Disabilities Act, and California's Fair Employment and Housing Act, as each Act may be amended from time to time, and each Act's implementing regulations.

Family: One or more persons living together as a single housekeeping unit in a dwelling unit.

Hearing Officer: A hearing officer shall mean a person designated by the City Council to conduct hearings as set forth in Chapter 20.91A and Chapter 20.98. A hearing officer shall be selected in a manner that avoids the potential for pecuniary interest or other bias. The compensation, if any, of the hearing officer shall be paid by the City and shall not be conditioned on achieving a particular outcome.

Individual with a Disability: As more specifically defined under the fair housing laws, a person who has a physical or mental impairment that limits one or more major life activities, a person who is regarded as having that type of impairment, or a person who has a record of that type of impairment, not including current, illegal use of a controlled substance.

Integral Facilities: Any combination of two or more Residential Care (Small Licensed, Small Unlicensed, or General) facilities which may or may not be located on the same or contiguous parcels of land, that are under the control and management of the same owner, operator, management company or licensee or any affiliate of any of them, and are integrated components of one operation shall be referred to as Integral Facilities and shall be considered one facility for purposes of applying federal, state and local laws to its operation. Examples of such Integral Facilities include, but are not limited to, the provision of housing in one facility and recovery programming, treatment, meals, or any other service or services to program participants in another facility or facilities or by assigning staff or a consultant or consultants to provide services to the same program participants in more than one licensed or unlicensed facility.

Integral Uses: Any two or more licensed or unlicensed residential care programs commonly administered by the same owner, operator, management company or licensee, or any affiliate of any of them, in a manner in which participants in two or more care programs participate simultaneously in any care or recovery activity or activities so commonly administered. Any such Integral Use shall be considered one use for purposes of applying federal, state and local laws to its operation.

Nonconforming Structure: A structure that was lawfully erected, but which does not conform with the property development regulations prescribed in the regulations for the district in which the structure is located by reason of adoption or amendment of this code or by reason of annexation of territory to the City. A structure shall not be considered to have been "lawfully erected" and is an illegal structure if, at the time of construction or modification, it was constructed or modified without required permits, including but not limited to permits required by any federal, state, or local government agency.

Nonconforming Use: A use of a structure or land that was lawfully established and maintained, but which does not conform with the use regulations or required conditions for the district in which it is located by reason of adoption or amendment of this code or by reason of annexation of territory to the City. A nonconforming use includes a use that was lawfully established and maintained but is conditionally permitted in the district and has not obtained a use permit. A use shall not be considered to have been "lawfully established and maintained" if it was established without required permits or licenses or has been operated at any time without required permits or licenses. The required permits and licenses include, but are not limited to, those required by any federal, state, or local government.

Single Housekeeping Unit: The functional equivalent of a traditional family, whose members are an interactive group of persons jointly occupying a single dwelling unit, including the joint use of and responsibility for common areas, and sharing household activities and responsibilities such as meals, chores, household maintenance, and expenses, and where, if the unit is rented, all adult residents have chosen to jointly occupy the entire premises of the dwelling unit, under a single written lease with joint use and responsibility for the premises, and the makeup of the household occupying the unit is determined by the residents of the unit rather than the landlord or property manager.

Section 2. The definition of “campus” contained in Section 20.03.030 of the Newport Beach Municipal Code is hereby deleted.

Section 3. Section 20.05.030 (Residential Use Classifications) of Chapter 20.05 (Use Classifications) of Title 20 (Planning and Zoning) of the Newport Beach Municipal Code is hereby amended in its entirety to read as follows:

“Section 20.05.030 Residential Use Classifications

A. Boarding or Rooming House. A residence or dwelling unit, or part thereof, wherein a room or rooms are rented under two or more separate written or oral rental agreements, leases or

subleases or combination thereof, whether or not the owner, agent or rental manager resides within the residence.

B. Day Care, Limited. Non-residential, non-medical care and supervision of fourteen or fewer persons on a less than twenty-four hour basis. This classification includes, but is not limited to, nursery schools, preschools, and day care centers for children (large and small family day care homes) and adults.

1. Large Family Child Care Homes. Day care facilities located in single-family residences where an occupant of the residence provides care and supervision for nine to fourteen children. Children under the age of 10 years who reside in the home count as children served by the day care facility.

2. Small Family Child Care Homes. Day care facilities located in single-family residences where an occupant of the residence provides care and supervision for eight or fewer children. Children under the age of 10 years who reside in the home count as children served by the day care facility.

C. Group Residential. Shared living quarters, occupied by two or more persons not living together as a single housekeeping unit. This classification includes, without limitation, boarding or rooming houses, dormitories, fraternities, sororities, and private residential clubs, but excludes residential care facilities (general, small licensed, and small unlicensed) and residential hotels (see Single-Room Occupancy (SRO) Residential Hotels, Section 20.05.050(EE)(4)).

D. Integral Facilities. Any combination of two or more Residential Care (Small Licensed, Small Unlicensed, or General) facilities which may or may not be located on the same or contiguous parcels of land, that are under the control and management of the same owner, operator, management company or licensee or any affiliate of any of them, and are integrated components of one operation shall be referred to as Integral Facilities and shall be considered one facility for purposes of applying federal, state and local laws to its operation. Examples of such Integral Facilities include, but are not limited to, the provision of housing in one facility and recovery programming, treatment, meals, or any other service or services to program participants in another facility or facilities or by assigning staff or a consultant or consultants to provide services to the same program participants in more than one licensed or unlicensed facility.

E. Integral Uses. Any two or more licensed or unlicensed residential care programs commonly administered by the same owner, operator, management company or licensee, or any affiliate of any of them, in a manner in which participants in two or more care programs participate simultaneously in any care or recovery activity or activities so commonly administered. Any such Integral Use shall be considered one use for purposes of applying federal, state and local laws to its operation.

F. Multifamily Residential. Three or more dwelling units on a site. This classification includes mobile home and factory-built housing.

G. Parolee-Probationer Home. Any residential structure or unit, whether owned and/or operated by an individual or a for-profit or nonprofit entity, which houses two or more parolees - probationers unrelated by blood, marriage, or legal adoption, in exchange for monetary or non-

monetary consideration given and/or paid by the parolee - probationer and/or any public or private entity or person on behalf of the parolee – probationer. A parolee – probationer includes: (i) any individual who has been convicted of a federal crime, sentenced to a United States prison, and received conditional and revocable release in the community under the supervision of a federal parole officer; (ii) any individual who has served a term of imprisonment in a State prison and who is serving a period of supervised community custody, as defined in Penal Code Section 3000, and is under the jurisdiction of the California Department of Corrections, Parole and Community Services Division; (iii) an adult or juvenile sentenced to a term in the California Youth Authority and who has received conditional and revocable release in the community under the supervision of a Youth Authority Parole Officer; or (iv) any individual who has been convicted of a felony, sentenced to any correctional facility, including County correctional facilities, and is under the jurisdiction of any federal, state, or County parole or probation officer. For the purposes of this paragraph, “felony” means a felony as defined by any California or United States statute.

H. Residential Care Facilities, General. Any place, site or building, or groups of places, sites or buildings, licensed by the state or unlicensed, in which seven or more individuals with a disability reside who are not living together as a single housekeeping unit and in which every person residing in the facility (excluding the licensee, members of the licensee's family, or persons employed as facility staff) is an individual with a disability.

I. Residential Care Facilities, Small Licensed. State licensed facilities that provide care, services, or treatment in a community residential setting for six or fewer adults, children, or adults and children and which are required by State law to be treated as a single housekeeping unit for zoning purposes. Small licensed residential care facilities shall be subject to all land use and property development regulations applicable to single housekeeping units.

J. Residential Care Facilities, Small Unlicensed. Any place, site or building, or groups of places, sites or buildings, which is not licensed by the State of California and is not required by law to be licensed by the State, in which six or fewer individuals with a disability reside who are not living together as a single housekeeping unit and in which every person residing in the facility (excluding persons employed as facility staff) is an individual with a disability.

K. Single-Family Residential. “Single-Family Residential” means a building or buildings containing one dwelling unit located on a single lot for occupancy by one family. This classification includes mobile homes and factory built housing.

L. Two-Family Residential. “Two-Family Residential” means a building or buildings containing two dwelling units located on a single lot, each unit limited to occupancy by a single family. This classification includes mobile homes and factory built housing.”

Section 4. Paragraph “R” of Section 20.05.040 of the Newport Beach Municipal Code containing the definition of “Residential Care, General” is hereby deleted. The remaining paragraphs in such section shall be relettered accordingly.

Section 5. Section 20.10.020 (Residential Districts: Land Use Regulations) of the Newport Beach Municipal Code is hereby amended in its entirety to read as follows:

“Section 20.10.020 Residential Districts: Land Use Regulations

The following schedule establishes the land uses defined in Chapter 20.05 as permitted or conditionally permitted in residential districts, and includes special requirements, if any, applicable to specific uses. The letter “P” designates use classifications permitted in residential districts. The letter “L” designates use classifications subject to certain limitations prescribed under the “Additional Use Regulations” which follows. The letters “UP” designate use classifications permitted on approval of a use permit, as provided in Chapter 20.91 or 20.91A. The letters “PD/U” designate use classifications permitted on approval of a use permit issued by the Planning Director, as provided in Chapter 20.91 or 20.91A. The letters “P/UP” designate use classifications which are permitted when located on the site of another permitted use, but which require a use permit when located on the site of a conditional use. Letters in parentheses in the “Additional Regulations” column refer to “Additional Use Regulations” following the schedule. Where letters in parentheses are opposite a use classification heading, referenced regulations shall apply to all use classifications under the heading.

Residential Districts: Land Use Regulations

P = Permitted
 UP = Use permit
 UP-OFC = Use permit issued by a Hearing Officer
 PD/U = Use permit issued by the Planning Director
 L = Limited (see Additional Use Regulations)
 --- = Not Permitted

	R-A	R-1	R-1.5	R-2	MFR	Additional Regulations
RESIDENTIAL						(A), (B), (C), (O), (P), (Q) (N)
DAY CARE, LIMITED						
-LARGE FAMILY CHILD CARE HOMES	PD/U	PD/ U	PD/U	PD/U	PD/U	
-SMALL FAMILY CHILD CARE HOMES	P	P	P	P	P	
GROUP RESIDENTIAL	---	---	---	---	---	
MULTI-FAMILY RESIDENTIAL	---	---	---	---	P	(D)
PAROLEE/PROBATIONER HOME	---	---	---	---	---	
RESIDENTIAL CARE FACILITIES, GENERAL LICENSED	---	---	---	---	UP- OFC	
RESIDENTIAL CARE FACILITIES, GENERAL UNLICENSED	---	---	---	---	UP- OFC	
RESIDENTIAL CARE FACILITIES, SMALL LICENSED	P	P	P	P	P	
RESIDENTIAL CARE FACILITIES, SMALL UNLICENSED	---	---	---	---	UP- OFC	
INTEGRAL FACILITIES/INTEGRAL USES	---	---	---	---	UP- OFC	
SINGLE FAMILY RESIDENTIAL	P	P	P	P	P	(D), (E), (M)
TWO-FAMILY RESIDENTIAL	---	---	P	P	P	(D)
PUBLIC AND SEMI-PUBLIC						(A), (B), (C), (P), (Q)
CEMETERIES	---	L-1	L-1	L-1	L-1	
CLUBS AND LODGES	---	L-2	L-2	L-2	L-2	

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 L = Limited (see Additional Use Regulations)
 --- = Not Permitted

	R-A	R-1	R-1.5	R-2	MFR	Additional Regulations
DAY CARE, GENERAL	---	UP	UP	UP	UP	(N)
GOVERNMENT OFFICES	---	UP	UP	UP	UP	
PARK & RECREATION FACILITIES	UP	UP	UP	UP	UP	
PUBLIC SAFETY FACILITIES	UP	UP	UP	UP	UP	
RELIGIOUS ASSEMBLY	UP	UP	UP	UP	UP	
SCHOOLS, PUBLIC AND PRIVATE	UP	UP	UP	UP	UP	
UTILITIES, MAJOR	UP	UP	UP	UP	UP	
UTILITIES, MINOR	P	P	P	P	P	
COMMERCIAL USES						(A), (B), (C), (P), (Q)
HORTICULTURE, LIMITED	P	---	---	---	---	
NURSERIES	PD/U	---	---	---	---	
VEHICLE/EQUIPMENT SALES AND SERVICES						
-COMMERCIAL PARKING FACILITY	---	L-3	L-3	L-3	L-3	
VISITOR ACCOMMODATIONS						
-BED & BREAKFAST INNS	---	---	---	UP	UP	(F)
AGRICULTURAL AND EXTRACTIVE USES						(A), (B), (C), (Q)

Residential Districts: Land Use Regulations

P = Permitted
 UP = Use permit
 UP-OFC = Use permit issued by a Hearing Officer
 PD/U = Use permit issued by the Planning Director
 L = Limited (see Additional Use Regulations)
 --- = Not Permitted

	R-A	R-1	R-1.5	R-2	MFR	Additional Regulations
ANIMAL HUSBANDRY	PD/U		---	---	---	(G)
CROP PRODUCTION	P	---	---	---	---	
MINING AND PROCESSING	L-4	L-4	L-4	L-4	L-4	(H)
ACCESSORY USES						(A), (B), (C), (Q)
ACCESSORY STRUCTURES AND USES	P/UP	P/U P	P/UP	P/UP	P/UP	(I)
TEMPORARY USES						(A), (B), (C), (Q)
CIRCUSES AND CARNIVALS	P	P	P	P	P	(K)
COMMERCIAL FILMING, LIMITED	P	P	P	P	P	(K)
PERSONAL PROPERTY SALES	P	P	P	P	P	(L)
HELIPORTS, TEMPORARY	L-5	---	---	---	L-5	(J)
REAL ESTATE OFFICES, TEMPORARY	L-5	L-5	L-5	L-5	L-5	(B)

Residential Districts: Additional Land Use Regulations

- L-1 20 acres minimum.
- L-2 Limited to yacht clubs, use permit required.
- L-3 Public or no fee private lots for automobiles may be permitted in any residential district adjacent to any commercial or industrial district subject to the securing of a use permit in each case.
- L-4 See Chapter 20.81: Oil Wells.
- L-5 Subject to the approval of the Planning Director.

- (A) See Section 20.60.025: Relocatable Buildings.
- (B) See Section 20.60.015: Temporary Structures and Uses.
- (C) See Section 20.60.050: Outdoor Lighting.
- (D) With the exception of uses in the R-1 Zone, any dwelling unit otherwise permitted by this Code may be used for short term lodging purposes as defined in Chapter 5.95 of the Municipal Code subject to the securing of:
 - 1. A Business License pursuant to Chapter 5.04 of the Municipal Code.
 - 2. A Transient Occupancy Registration Certificate pursuant to Section 3.16.060 of the Municipal Code.
 - 3. A Short Term Lodging Permit pursuant to Chapter 5.95 of the Municipal Code.
- (E) See Chapter 20.85: Accessory Dwelling Units.
- (F) See Section 20.60.110: Bed and Breakfast Inns.
- (G) Keeping of Animals in the R-A District. The following regulations shall apply to the keeping of animals in the R-A District:
 - 1. Large Animals. The keeping of large animals (as defined in Section 20.030.030) shall be subject to the following regulations:
 - a. Horses. One horse may be kept for each 10,000 square feet of lot area, up to a maximum of 3 horses, provided the horse or horses are kept for recreational purposes only. The keeping of 4 or more horses for recreational uses shall require a use permit issued by the Planning Director. The keeping of horses for commercial purposes shall require a use permit issued by the Planning Commission.
 - b. Other Large Animals. Other large animals, including goats, sheep, pigs and cows, may be kept on lots of 15,000 square feet or more and the number shall not exceed 2 adult animals of any one species.
 - c. Total Number Permitted. The total number of large animals shall not exceed 6. Offspring are exempt until such time as they are weaned.
 - 2. Domestic and Exotic Animals. The number of domestic and exotic animals (as defined in Section 20.03.030) shall not exceed 6. Offspring are exempt up to the age of 3 months. The keeping of 4 or more dogs over the age of three 3 months shall require a kennel license pursuant to Section 7.04.090 of the Municipal Code. The keeping of wild animals shall require a permit pursuant to Chapter 7.08 of the Municipal Code.

3. Small Animals. The number of small animals, other than domestic and exotic animals (as defined in Section 20.03.030), shall not exceed 6. Offspring are exempt up to the age of 3 months.
4. Control.
 - a. Domestic Animals. No such animals, except for cats, shall be permitted to run at large, but shall be confined, at all times within a suitable enclosure or otherwise under the control of the owner of the property.
 - b. Other Animals. No animal, other than domestic animals, shall be permitted to run at large, but shall be confined, at all times within a suitable enclosure.

(H) See Chapter 20.81: Oil Wells.

(I) See Section 20.60.100: Home Occupations in Residential Districts.

(J) See Section 20.60.055: Heliports and Helistops

(K) Special event permit required, see Chapter 5.10 of the Municipal Code.

(L) See Section 20.60.120: Personal Property Sales in Residential Districts.

(M) See Section 20.60.125: Design Standards for Mobile Homes on Individual Lots.

(N) See Section 20.60.130: Day Care Facilities for Children.

(O): No residential use constituting a single housekeeping unit may offer or provide services to persons not residing on the site, unless the City has approved a use permit allowing such use, or in compliance with Section 20.60.100: Home Occupations in Residential Districts.

(P): Persons with disabilities may request a reasonable accommodation from the provisions of the zoning ordinances under Chapter 20.98: Reasonable Accommodations.

(Q): All uses must obtain business licenses if required by Chapter 5.04 of the Municipal Code.”

Section 6. Section 20.35.030 (PC District: Land Use Regulations) of the Newport Beach

Municipal Code is hereby amended in its entirety to read as follows:

“20.35.030 PC District: Land Use Regulations

- A. Existing Uses. Land uses existing at the time of establishment of a PC District shall be permitted to continue as a nonconforming use, pursuant to Chapter 20.62: Nonconforming Structures and Uses. Existing land uses shall either be incorporated as part of the development plan or shall terminate in accordance with a specific abatement schedule submitted and approved as part of the development plan. Existing land uses which are prohibited by any provisions of this code shall be terminated prior to final approval of the development plan.

- B. New Uses. No use, other than a use existing at the time of establishment of a PC District, shall be permitted in a PC District except in accord with a valid PC development plan. Any permitted or conditionally permitted use authorized by this code and consistent with the General Plan land use designation or designations for land within the PC District may be included in an approved PC development plan.

Exceptions:

- 1. The Planning Director may approve temporary uses and structures pursuant to Section 20.60.015: Temporary Structures and Uses.

- 2. Residential Care Facilities, Small Licensed, shall be permitted if residential uses are otherwise permitted by the PC development plan.”

Section 7. Section 20.41.050 (Residential Development: Land Use Regulations) of Chapter 20.41 (Specific Plan District #4 Newport Shores) of Title 20 (Planning and Zoning) of the Newport Beach Municipal Code is hereby amended in its entirety to read as follows:

“20.41.050 Residential Development: Land Use Regulations

The following schedule establishes the land uses defined in Chapter 20.05 as permitted or conditionally permitted in the Newport Shores Specific Plan District residential development areas, and includes special requirements, if any, applicable to specific uses. The letter "P" designates use classifications permitted in the Newport Shores Specific Plan District residential development areas. The letter "L" designates use classifications subject to certain limitations prescribed under the "Additional Use Regulations" which follows. The letters "UP" designate use classifications permitted on approval of a use permit, as provided in Chapter 20.91. The letters "PD/U" designate use classifications permitted on approval of a use permit issued by the Planning Director, as provided in Chapter 20.91. The letters "P/UP" designate use classifications which are permitted when located on the site of another permitted use, but which require a use permit when located on the site of a conditional use. Letters in parentheses in the "Additional Regulations" column refer to "Additional Use Regulations" following the schedule. Where letters in parentheses are opposite a use classification heading, referenced regulations shall apply to all use classifications under the heading.

Residential Development: Land Use Regulations

P = Permitted

UP = Use permit

PD/U = Use permit issued by the Planning Director

L = Limited (see Additional Use Regulations)--- = Not Permitted

	Residential	Additional Regulations
<i>RESIDENTIAL</i>		(A), (B), (C), (H), (I), (J), (K)
DAY CARE, LIMITED		
-LARGE FAMILY CHILD CARE HOMES	PD/U	
-SMALL FAMILY CHILD CARE HOMES	P	
GROUP RESIDENTIAL	---	
MULTI-FAMILY RESIDENTIAL	L-1	(D)
PAROLEE/PROBATIONER HOME	---	
RESIDENTIAL CARE FACILITIES, SMALL LICENSED	P	
RESIDENTIAL CARE FACILITIES, SMALL-UNLICENSED	---	
RESIDENTIAL CARE FACILITIES, GENERAL-LICENSED	---	
RESIDENTIAL CARE FACILITIES, GENERAL UNLICENSED	---	
INTEGRAL FACILITIES/INTEGRAL USES	---	
SINGLE FAMILY RESIDENTIAL	P	(D), (E)
TWO-FAMILY RESIDENTIAL	P	(D)
<i>PUBLIC AND SEMI-PUBLIC</i>		(A), (B), (C), (J), (K)
CLUBS AND LODGES	UP	
UTILITIES, MINOR	P	
<i>ACCESSORY USES</i>		(A), (B), (C), (K)
ACCESSORY STRUCTURES AND USES	P/UP	(F)

Residential Development: Land Use Regulations

P = Permitted

UP = Use permit

PD/U = Use permit issued by the Planning Director

L = Limited (see Additional Use Regulations)--- = Not Permitted

	Residential	Additional Regulations
<i>TEMPORARY USES</i>		(A), (B), (C), (K)
PERSONAL PROPERTY SALES	P	(G)
REAL ESTATE OFFICES, TEMPORARY	L-2	

Residential Development: Additional Land Use Regulations

- L-1 Use permit required for multi-family residential uses containing three or more dwelling units. The Planning Commission before approving a use permit for any development containing three or more dwelling units shall find:
1. That the development will not be detrimental to or out of character with the surrounding development.
 2. That the development does not exceed the density, height, and floor area limits established in this section.
 3. That in addition to the basic outdoor living space requirement of ten percent of the buildable area, there will be additional outdoor living space.
- L-2 Subject to the approval of the Planning Director.
- (A) See Section 20.60.025: Relocatable Buildings.
- (B) See Section 20.60.015: Temporary Structures and Uses.
- (C) See Section 20.60.050: Outdoor Lighting.
- (D) Any dwelling unit otherwise permitted by this Code may be used for short term lodging purposes as defined in Chapter 5.95 of the Municipal Code subject to the securing of:
1. A Business License pursuant to Chapter 5.04 of the Municipal Code.

2. A Transient Occupancy Registration Certificate pursuant to Section 3.16.060 of the Municipal Code.
 3. A Short Term Lodging Permit pursuant to Chapter 5.95 of the Municipal Code.
- (E) See Chapter 20.85: Accessory Dwelling Units.
- (F) See Section 20.60.100: Home Occupations in Residential Districts.
- (G) See Section 20.60.120: Personal Property Sales in Residential Districts.
- (H) See Section 20.60.130: Day Care Facilities for Children.
- (I) Purposely left blank.
- (J) No residential use constituting a single housekeeping unit may offer or provide services to persons not residing on the site, unless the City has approved a use permit allowing such use, or in compliance with Section 20.60.100: Home Occupations in Residential Districts.
- (K) Persons with disabilities may request a reasonable accommodation from the provisions of the zoning ordinances under Chapter 20.98: Reasonable Accommodations.
- (L) All uses must obtain business licenses if required by Chapter 5.04 of the Municipal Code.”

Section 8. Section 20.41.070 (Commercial Development: Land Use Regulations) of Chapter 20.41 (Specific Plan District #4 Newport Shores) of Title 20 (Planning and Zoning) of the Newport Beach Municipal Code is hereby amended in its entirety to read as follows:

“20.41.070 Commercial Development: Land Use Regulations

The following schedule establishes the land uses defined in Chapter 20.05 as permitted or conditionally permitted in commercial development areas, and includes special requirements, if any, applicable to specific uses. The letter "P" designates use classifications permitted in commercial development areas. The letter "L" designates use classifications subject to certain limitations prescribed under the "Additional Use Regulations" which follows. The letters "UP" designate use classifications permitted on approval of a use permit, as provided in Chapter 20.91. The letters "PD/U" designate use classifications permitted on approval of a use permit issued by the Planning Director, as provided in Chapter 20.91. The letters "P/UP" designate use classifications which are permitted when located on the site of another permitted use, but which

require a use permit when located on the site of a conditional use. Letters in parentheses in the "Additional Regulations" column refer to "Additional Use Regulations" following the schedule. Where letters in parentheses are opposite a use classification heading, referenced regulations shall apply to all use classifications under the heading.

Commercial Development: Land Use Regulations

P = Permitted

UP = Use Permit

PD/U = Use permit issued by the Planning Director

L = Limited (see Additional Use Regulations)

--- = Not Permitted

	Commercial	Additional Regulations
<i>PUBLIC AND SEMI-PUBLIC</i>		(A), (B), (C)
CLUBS AND LODGES	---	(K)
CULTURAL INSTITUTIONS	P	(K)
DAY CARE, GENERAL	UP	
RELIGIOUS ASSEMBLY	L-1	
UTILITIES, MINOR	P	
 <i>COMMERCIAL USES</i>		 (A), (B), (C)
ANIMAL SALES AND SERVICES		
-ANIMAL BOARDING	---	
-ANIMAL GROOMING	PD/U	
-ANIMAL HOSPITALS	UP	
-ANIMAL RETAIL SALES	PD/U	
ARTISTS' STUDIOS	P	(G)
BANKS/SAVINGS AND LOANS	P	
-WITH DRIVE-UP/DRIVE THROUGH SERVICE	UP	

Commercial Development: Land Use Regulations

P = Permitted

UP = Use Permit

PD/U = Use permit issued by the Planning Director

L = Limited (see Additional Use Regulations)--- = Not Permitted

	Commercial	Additional Regulations
BUILDING MATERIALS AND SERVICES	P	
CATERING SERVICES	P	
COMMERCIAL RECREATION AND ENTERTAINMENT	UP	(G), (K)
EATING AND DRINKING ESTABLISHMENTS	UP	
-FULL SERVICE, HIGH TURNOVER	UP	(D), (G), (K)
-FULL SERVICE, LOW TURNOVER	UP	(D), (G), (K)
-FULL SERVICE, SMALL SCALE	PD/U	(D), (G), (K)
-TAKE-OUT SERVICE	UP	(D), (G), (K)
-TAKE-OUT SERVICE, LIMITED	PD/U	(D), (G), (K)
-ACCESSORY	P	(D), (G), (K)
-BARS AND COCKTAIL LOUNGES	UP	(D), (G), (K)
FOOD AND BEVERAGE SALES	P	(K)
MARINE SALES AND SERVICES		
-BOAT RENTAL, AND SALES	UP	
-ENTERTAINMENT AND EXCURSION SERVICES	L-3	
OFFICES, BUSINESS AND PROFESSIONAL	L-4	
PERSONAL IMPROVEMENT SERVICES	PD/U	(G)
PERSONAL SERVICES	P	
-MASSAGE ESTABLISHMENTS	UP	(E)

Commercial Development: Land Use Regulations

P = Permitted

UP = Use Permit

PD/U = Use permit issued by the Planning Director

L = Limited (see Additional Use Regulations)

--- = Not Permitted

	Commercial	Additional Regulations
POSTAL SERVICES	P	
PRINTING AND DUPLICATING SERVICES	P	
RETAIL SALES	P	
TRAVEL SERVICES	P	
VEHICLE/EQUIPMENT SALES AND SERVICES		
-SERVICE STATIONS	UP	(F), (K)
VISITOR ACCOMMODATIONS		
-BED AND BREAKFAST INNS	PD/U	
-HOTELS, MOTELS AND TIME-SHARES	UP	(H)
<i>ACCESSORY USES</i>		(A), (B), (C)
ACCESSORY STRUCTURES AND USES	P/UP	
<i>TEMPORARY USES</i>		(A), (B), (C)
CHRISTMAS TREE/PUMPKIN SALES	L-2	(B)
OUTDOOR STORAGE & DISPLAY, TEMPORARY	P	(J)
REAL ESTATE OFFICES, TEMPORARY	P	(B)

L-1 Limited to facilities occupying less than 5,000 square feet; use permit required.

L-2 Subject to the approval of the Planning Director.

- L-3 Permitted, provided operations have first secured a marine activities permit issued by the Harbor Resources Director (see Chapter 17.10 of the Municipal Code).
- L-4 Services involving the assembly or meetings of seven or more persons shall be limited to above the first floor, where the first floor is occupied by a permitted use or use permitted with a use permit.
 - (A) See Section 20.60.025, Relocatable Buildings.
 - (B) See Section 20.60.015, Temporary Structures and Uses.
 - (C) See Section 20.60.050, Outdoor Lighting.
 - (D) See Chapter 20.82, Eating and Drinking Establishments.
 - (E) See Chapter 20.87, Massage Establishments.
 - (F) See Chapter 20.80, Automobile Service Stations.
 - (G) See Section 20.60.085, Uses Requiring City Manager Approval.
 - (H) See Chapter 20.84, Time Share Developments.
 - (I) Special events permit required, see Chapter 5.10 of the Municipal Code.
 - (J) See Section 20.60.105, Outdoor Storage and Display.
 - (K) See Chapter 20.89, Alcoholic Beverage Outlets.”

Section 9. Paragraph “B” of Section 20.43.040 (Commercial Development: Land Use Regulations) of the Newport Beach Municipal Code is hereby amended in its entirety to read as follows:

“Section 20.43.040 (Cannery Village/McFadden Square - Commercial)

- B. The following schedule establishes the land uses defined in Chapter 20.05 as permitted or conditionally permitted in Cannery Village/McFadden Square Specific Plan District, and includes special requirements, if any, applicable to specific uses. The letter "P" designates use classifications permitted in Cannery Village/McFadden Square Specific Plan District. The letter "L" designates use classifications subject to certain limitations prescribed under the "Additional Use Regulations" which follows. The letters "UP" designate use classifications permitted on approval of a use permit, as provided in Chapter 20.91. The letters

"PD/U" designate use classifications permitted on approval of a use permit issued by the Planning Director, as provided in Chapter 20.91. The letters "P/UP" designate use classifications which are permitted when located on the site of another permitted use, but which require a use permit when located on the site of a conditional use. Letters in parentheses in the "Additional Regulations" column refer to "Additional Use Regulations" following the schedule. Where letters in parentheses are opposite a use classification heading, referenced regulations shall apply to all use classifications under the heading.

**Cannery Village/McFadden Square Specific Plan District:
Commercial Land Use Regulations**

P = Permitted
 UP = Use permit
 PD/U = Use permit issued by the Planning Director
 L = Limited (see Additional Use Regulations)
 --- = Not Permitted

	SR	RMC	RSC	Additional Regulations
<i>RESIDENTIAL</i>				(A), (B), (C), (D), (I), (N), (O), (P)
GROUP RESIDENTIAL	---	---	---	
SINGLE FAMILY RESIDENTIAL	L-1	L-1	L-1	
MULTI-FAMILY RESIDENTIAL	L-1	L-1	L-1	
PAROLEE/PROBATIONER HOME	---	---	---	
RESIDENTIAL CARE FACILITIES, SMALL LICENSED	L-1	L-1	L-1	
RESIDENTIAL CARE FACILITIES, SMALL UNLICENSED	---	---	---	
RESIDENTIAL CARE FACILITIES, GENERAL-LICENSED	---	---	---	
RESIDENTIAL CARE FACILITIES, GENERAL UNLICENSED	---	---	---	
INTEGRAL FACILITIES/INTEGRAL USES	---	---	---	
TWO-FAMILY RESIDENTIAL	L-1	L-1	L-1	

**Cannery Village/McFadden Square Specific Plan District:
Commercial Land Use Regulations**

P = Permitted
 UP = Use permit
 PD/U = Use permit issued by the Planning Director
 L = Limited (see Additional Use Regulations)
 --- = Not Permitted

	SR	RMC	RSC	Additional Regulations
<i>PUBLIC AND SEMI-PUBLIC</i>				(A), (B), (C), (I), (O), (P)
CLUBS AND LODGES	---	---	---	
CULTURAL INSTITUTIONS	UP	L-5	UP	(M)
DAY CARE, GENERAL	---	---	UP	
GOVERNMENT OFFICES	---	UP	UP	
MARINAS	---	P	---	(E)
RELIGIOUS ASSEMBLY	---	---	UP	
UTILITIES, MINOR	P	P	P	
<i>COMMERCIAL USES</i>				(A), (B), (C), (I), (O), (P)
ANIMAL SALES AND SERVICES				
-ANIMAL GROOMING	---	UP	UP	
-ANIMAL HOSPITALS	---	UP	UP	
-ANIMAL RETAIL SALES	---	UP	UP	(J)
ARTISTS' STUDIOS	P	---	---	
BANKS/SAVINGS AND LOANS	P	L-7	P	
CATERING SERVICES	P	P	P	
COMMERCIAL RECREATION AND ENTERTAINMENT	---	UP	UP	(J), (M)
EATING AND DRINKING ESTABLISHMENTS	UP	UP	UP	

**Cannery Village/McFadden Square Specific Plan District:
Commercial Land Use Regulations**

P = Permitted
 UP = Use permit
 PD/U = Use permit issued by the Planning Director
 L = Limited (see Additional Use Regulations)
 --- = Not Permitted

	SR	RMC	RSC	Additional Regulations
-FULL SERVICE, HIGH TURNOVER	UP	UP	UP	(F), (J), (M)
-FULL SERVICE, LOW TURNOVER	UP	UP	UP	(F), (J), (M)
-FULL SERVICE, SMALL SCALE	PD/U	PD/U	PD/U	(F), (J), (M)
-TAKE-OUT SERVICE	UP	UP	UP	(F), (J), (M)
-TAKE-OUT SERVICE, LIMITED	PD/U	PD/U	PD/U	(F), (J), (M)
-ACCESSORY	P	P	P	(F), (J), (M)
-BARS AND COCKTAIL LOUNGES	UP	UP	UP	(M)
FOOD AND BEVERAGE SALES	---	---	P	(M)
MARINE SALES AND SERVICES				
-BOAT RENTAL AND SALES	---	P	---	(E), (I)
-BOAT STORAGE	---	P	---	(E), (I)
-BOAT YARDS	---	P	---	(E), (I)
-ENTERTAINMENT AND EXCURSION SERVICES	L-9	L-9	L-9	(E), (I)
-MARINE SERVICE STATION	---	UP	---	(E)
-RETAIL MARINE SALES	---	P	---	
OFFICES, BUSINESS AND PROFESSIONAL	L-2	L-4	L-2	
PERSONAL IMPROVEMENT SERVICES	UP	L-5	UP	(J)
PERSONAL SERVICES	---	L-7	P	(G)
-DRY CLEANERS	---	---	UP	

**Cannery Village/McFadden Square Specific Plan District:
Commercial Land Use Regulations**

P = Permitted
 UP = Use permit
 PD/U = Use permit issued by the Planning Director
 L = Limited (see Additional Use Regulations)
 --- = Not Permitted

	SR	RMC	RSC	Additional Regulations
-LIMITED	P	L-7	P	
-SELF SERVICE LAUNDRIES	---	---	UP	
RETAIL SALES	L-3	P	P	
TRAVEL SERVICES	P	L-6	P	
VISITOR ACCOMMODATIONS				
-BED AND BREAKFAST INNS	PD/U	PD/U	PD/U	
-HOTELS, MOTELS AND TIME-SHARES	UP	UP	UP	(K)
INDUSTRIAL				(A), (B), (C), (I), (P)
INDUSTRY, CUSTOM	---	L-7	---	
INDUSTRY, LIMITED	---	L-7	---	
INDUSTRY, MARINE-RELATED	---	UP	UP	(E)
ACCESSORY USES				(A), (B), (C), (P)
ACCESSORY STRUCTURES AND USES	P/UP	P/UP	P/UP	
TEMPORARY USES				(A), (B), (C), (P)
ANIMAL SHOWS	P	P	P	(H)
CHRISTMAS TREE/PUMPKIN SALES	L-8	L-8	L-8	(B)
CIRCUSES AND CARNIVALS	P	P	P	(H)

**Cannery Village/McFadden Square Specific Plan District:
Commercial Land Use Regulations**

P = Permitted
 UP = Use permit
 PD/U = Use permit issued by the Planning Director
 L = Limited (see Additional Use Regulations)
 --- = Not Permitted

	SR	RMC	RSC	Additional Regulations
COMMERCIAL FILMING, LIMITED	P	P	P	(H)
FAIRS AND FESTIVALS	P	P	P	(H)
HELIPORTS, TEMPORARY	L-8	L-8	L-8	(L)
OUTDOOR STORAGE & DISPLAY, TEMPORARY	P	---	P	(I)
REAL ESTATE OFFICES, TEMPORARY	L-8	L-8	L-8	(B)
RECREATION AND ENTERTAINMENT EVENTS	P	P	P	(H)
TRADE FAIRS	P	P	P	(H)

**Cannery Village/McFadden Square Specific Plan District:
Additional Commercial Land Use Regulations**

- L-1 Limited to above the first floor, where the first floor is occupied by a permitted use or use permitted with a use permit.
- L-2 Business and professional offices not providing services to the general public or not ancillary to an otherwise permitted use, such as corporate offices, shall be permitted only above the first floor. Services involving the assembly or meetings of seven or more persons shall be limited to above the first floor, where the first floor is occupied by a permitted use or use permitted with a use permit
- L-3 Limited to businesses retailing in goods generally oriented to the casual pedestrian shopper, including antiques, books, clothing, hand crafted items, hobby materials, jewelry, stationary, and works of art. All other uses are subject to the approval of the Planning Director for compatibility with the objectives of this district.
- L-4 Marine-related facilities permitted as an incentive use; other facilities in this use classification permitted when in conjunction with an incentive use under the provisions of Section 20.60.080: Marine Incentive Uses. Services involving the assembly or meetings

of seven or more persons shall be limited to above the first floor, where the first floor is occupied by a permitted use or use permitted with a use permit.

- L-5 Marine-related facilities permitted with a use permit as an incentive use; other facilities in this use classification permitted with a use permit when in conjunction with an incentive use under the provisions of Section 20.60.080: Marine Incentive Uses.
 - L-6 Permitted when in conjunction with an incentive use under the provisions of Section 20.60.080: Marine Incentive Uses.
 - L-7 Permitted with a use permit when in conjunction with an incentive use under the provisions of Section 20.60.080: Marine Incentive Uses.
 - L-8 Subject to the approval of the Planning Director.
 - L-9 Permitted, provided operations have first secured a marine activities permit issued by the Harbor Resources Director (see Chapter 17.10 of the Municipal Code).
 - L-10 Limited to above the first floor, where the first floor is occupied by a permitted use or use permitted with a use permit; use permit required.
-
- (A) See Section 20.60.025: Relocatable Buildings.
 - (B) See Section 20.60.015: Temporary Structures and Uses.
 - (C) See Section 20.60.050: Outdoor Lighting.
 - (D) In areas designated for commercial or retail uses and subject to a variable floor area ratio, residential uses are permitted on the second floor or above only. No residential uses shall be permitted in the commercial area subject to a fixed floor area ratio, specifically the shopping center located immediately southwesterly of the intersection of Newport Boulevard and 32nd Street on Parcels 1, 2, and 3 of Record of Survey 35-25 filed with the Orange County Recorder.
 - (E) See Section 20.60.070: Waterfront Development Regulations and Section 20.60.080: Marine Incentive Uses.
 - (F) See Chapter 20.72: Eating and Drinking Establishments.
 - (G) Independent massage establishments not permitted (See Chapter 20.87: Massage Establishments).
 - (H) Special event permit required, see Chapter 5.10 of the Municipal Code.
 - (I) See Section 20.60.105: Outdoor Storage & Display.
 - (J) See Section 20.60.085: Uses Requiring City Manager Approval.

- (K) See Chapter 20.84: Time Share Developments.
- (L) See Section 20.60.055: Heliports and Helistops.
- (M) See Chapter 20.89: Alcoholic Beverage Outlets.
- (N) No residential use constituting a single housekeeping unit may offer or provide services to persons not residing on the site, unless the City has approved a use permit allowing such use, or in compliance with Section 20.60.100: Home Occupations in Residential Districts.
- (O): Persons with disabilities may request a reasonable accommodation from the provisions of the zoning ordinances under Chapter 20.98: Reasonable Accommodations.
- (P): All uses must obtain business licenses if required by Chapter 5.04 of the Municipal Code.”

Section 10. Section 20.43.060 (Residential Land Use Regulations) of Chapter 20.43 (Specific Plan District #6 Cannery Village/McFadden Square) of the Newport Beach Municipal Code is hereby amended in its entirety to read as follows:

“20.43.060 Residential Land Use Regulations

A. Land Use Designations. The following residential land use designations are established:

1. SP-6 (R-1) District.
2. SP-6 (R-2) District.
3. SP-6 (MFR) District.

These designations preserve the existing residential districts within the Cannery Village/McFadden Square Specific Plan District, and maintain the development standards that have guided the orderly development of these districts.

The designations, locations and boundaries of these uses are delineated upon the map entitled "Cannery Village/McFadden Square Specific Plan District, Land Use Plan Map", which map and all information and notations thereon are made a part of this section by reference.

- B. In the following schedule, the letter "P" designates use classifications permitted in the Cannery Village/McFadden Square Specific Plan District residential areas. The letter "L" designates use classifications subject to certain limitations prescribed under the "Additional Use Regulations" which follows. The letters "UP" designate use classifications permitted on approval of a use permit, as provided in Chapter 20.91 or 20.91A. The letters "P/UP" designate use classifications which are permitted when located on the site of another permitted use, but which require a use permit when located on the site of a conditional use. Letters in parentheses in the "Additional Regulations" column refer to "Additional Use Regulations" following the schedule. Where letters in parentheses are opposite a use classification heading, referenced regulations shall apply to all use classifications under the heading.

**Cannery Village/McFadden Square Specific Plan District:
Residential Land Use Regulations**

	R-1	R-2	MFR	Additional Regulations
<i>RESIDENTIAL</i>				(A), (B), (C), (E), (F), (G) (D)
DAY CARE, LIMITED				
-LARGE FAMILY CHILD CARE HOMES	PD/U	PD/U	PD/U	
-SMALL FAMILY CHILD CARE HOMES	P	P	P	
GROUP RESIDENTIAL	---	---	---	
MULTI-FAMILY RESIDENTIAL	---	---	P	
PAROLEE/PROBATIONER HOME	---	---	---	
RESIDENTIAL CARE FACILITY, GENERAL-LICENSED	---	---	UP- OFC	
RESIDENTIAL CARE FACILITY, GENERAL-UNLICENSED	---	---	UP- OFC	
RESIDENTIAL CARE FACILITY, SMALL LICENSED	P	P	P	
RESIDENTIAL CARE FACILITY, SMALL UNLICENSED	---	---	UP- OFC	
INTEGRAL FACILITIES/INTEGRAL USES	---	---	UP- OFC	
SINGLE FAMILY RESIDENTIAL	P	P	P	
TWO-FAMILY RESIDENTIAL	---	P	---	

**Cannery Village/McFadden Square Specific Plan District:
Residential Land Use Regulations**

	R-1	R-2	MFR	Additional Regulations
COMMERCIAL				(A), (B), (C), (G)
VEHICLE/EQUIPMENT SALES AND SERVICES				
-COMMERCIAL PARKING FACILITY	UP	UP	UP	
<i>ACCESSORY USES</i>				(A), (B), (C), (G)
ACCESSORY STRUCTURES AND USES	P/UP	P/UP	P/UP	

**Cannery Village/McFadden Square Specific Plan District:
Additional Residential Land Use Regulations**

- (A) See Section 20.60.025: Relocatable Buildings.
- (B) See Section 20.60.015: Temporary Structures and Uses.
- (C) See Section 20.60.050: Outdoor Lighting.
- (D) See Section 20.60.130: Day Care Facilities for Children.
- (E): No residential use may offer or provide services to persons not residing on the site, unless the City has approved a use permit allowing such use, or in compliance with Section 20.60.100: Home Occupations in Residential Districts.
- (F): Persons with disabilities may request a reasonable accommodation from the provisions of the zoning ordinances under Chapter 20.98: Reasonable Accommodations.
- (G): All uses must obtain business licenses if required by Chapter 5.04 of the Municipal Code.”

Section 11. Paragraph “B” of Section 20.44.035 (Residential Equestrian District: SP-7 (REQ)) of Chapter 20.44 (Specific Plan District #7 Santa Ana Heights) of Title 20 (Planning and Zoning) of the Newport Beach Municipal Code is hereby amended in its entirety to read as follows:

“Section 20.44.035 (Santa Ana Heights – REQ District)

B. Principal Uses Permitted.

1. The following principal uses are permitted.
 - a. Single family detached dwellings or single family mobile homes (one per building site).
 - b. Residential care facilities, small licensed.
 - c. Parks, playgrounds, and athletic fields (noncommercial).
 - d. Riding and hiking trails.
 - e. Small family child care homes (See Section 20.60.130: Day Care Facilities of Children).
2. The following principal uses are permitted subject to the approval of a use permit by the Planning Director per Chapter 20.91:
 - a. Communication transmitting, reception, or relay facilities.
 - b. Public/private utility buildings and structures.
 - c. Large family child care homes (See Section 20.60.130: Day Care Facilities of Children).
3. The following principal uses are permitted subject to the approval of a use permit by the Planning Commission per Chapter 20.91:
 - a. Fire and police stations.
 - b. Churches, temples, and other places of worship.
 - c. Educational institutions.
 - d. Libraries.
 - e. Any other use which the Planning Commission finds consistent with the purpose and intent of this district.”

Section 12. Paragraph “B” of Section 20.44.040 (Residential Single Family District: SP-7 (RSF)) of Chapter 20.44 (Specific Plan District #7 Santa Ana Heights) of Title 20 (Planning and Zoning) of the Newport Beach Municipal Code is hereby amended in its entirety to read as follows:

“Section 20.44.040 Residential Single family District: SP-7 (RSF)

B. Principal Uses Permitted.

1. The following principal uses are permitted:

- a. Single-family detached dwellings or single family mobile homes (one per building site);
 - b. Residential care facilities, small licensed.
 - c. Parks, playgrounds, and athletic fields (noncommercial);
 - d. Riding and hiking trails.
 - e. Small family child care homes (See Section 20.60.130: Day Care Facilities of Children).
2. The following principal uses are permitted subject to the approval of a use permit by the Planning Director per Chapter 20.91:
- a. Communication transmitting, reception, or relay facilities;
 - b. Public/private utility buildings and structures;
 - c. Large family child care homes (see Section 20.60.130 (Day Care Facilities for Children)).
3. The following principal uses are permitted subject to the approval of a use permit by the Planning Commission per Chapter 20.91:
- a. Fire and police stations;
 - b. Churches, temples, and other places of worship;
 - c. Any other use which the Planning Commission finds consistent with the purpose and intent of this district.”

Section 13. Paragraph “B” of Section 20.45.030 (Land Use Regulations) of Chapter 20.45 (Specific Plan District #8 Central Balboa) of Title 20 (Planning and Zoning) of the Newport Beach Municipal Code is hereby amended in its entirety to read as follows:

“Section 20.45.030 Land Use Regulations

- B. The following schedule establishes the land uses defined in Chapter 20.05 as permitted or conditionally permitted in Central Balboa Specific Plan District, and includes special requirements, if any, applicable to specific uses. The letter "P" designates use classifications permitted in Central Balboa. The letter "L" designates use classifications subject to certain limitations prescribed under the "Additional Use Regulations" which follows. The letters "UP" designate use classifications permitted on approval of a use permit, as provided in Chapter 20.91 or 20.91A. The letters "PD/U" designate use classifications permitted on approval of a use permit issued by the Planning Director, as provided in Chapter

20.91. The letters "P/UP" designate use classifications which are permitted when located on the site of another permitted use, but which require a use permit when located on the site of a conditional use. Letters in parentheses in the "Additional Regulations" column refer to "Additional Use Regulations" following the schedule. Where letters in parentheses are opposite a use classification heading, referenced regulations shall apply to all use classifications under the heading.

Central Balboa: Land Use Regulations

P = Permitted
 UP = Use permit
 UP-OFC = Use permit issued by a Hearing Officer
 PD/U = Use permit issued by the Planning Director
 L = Limited (see Additional Land Use Regulations)
 --- = Not Permitted

	RSC	RP	R-2	MFR	GEIF	OS	Additional Regulations
RESIDENTIAL							(A), (B), (C), (M), (T), (U), (V), (Q)
DAY CARE, LIMITED							
-LARGE FAMILY CHILD HOMES	---	---	PD/U	PD/U	---	---	
-SMALL FAMILY CHILD CARE HOMES	---	---	P	P	---	---	
GROUP RESIDENTIAL	---	---	---	---	---	---	
MULTI-FAMILY RESIDENTIAL	L-1	---	---	P	---	---	(R)
PAROLEE/PROBATIONER HOME	---	---	---	---	---	---	
RESIDENTIAL CARE FACILITIES, GENERAL-LICENSED	---	---	---	UP-OFC	---	---	
RESIDENTIAL CARE FACILITIES, GENERAL-UNLICENSED	---	---	---	UP-OFC	---	---	
RESIDENTIAL CARE FACILITIES, SMALL LICENSED	L-1	P	P	P	---	---	
RESIDENTIAL CARE FACILITIES, SMALL UNLICENSED	---	---	---	UP-OFC	---	---	

Central Balboa: Land Use Regulations

P = Permitted
 UP = Use permit
 UP-OFC = Use permit issued by a Hearing Officer
 PD/U = Use permit issued by the Planning Director
 L = Limited (see Additional Land Use Regulations)
 --- = Not Permitted

	RSC	RP	R-2	MFR	GEIF	OS	Additional Regulations
INTEGRAL FACILITIES/INTEGRAL USES	---	---	---	UP-OFC	---	---	
SINGLE FAMILY RESIDENTIAL	L-1	P	P	P	---	L-2	(R)
TWO-FAMILY RESIDENTIAL	L-1	P	P	P	---	---	(R)
<i>PUBLIC AND SEMI-PUBLIC</i>							(A), (B), (C), (M), (U), (V)
CLUBS AND LODGES	---	---	L-3	L-3	L-4	---	(O)
CONVALESCENT FACILITIES	UP	UP	---	---	---	---	(D)
CULTURAL INSTITUTIONS	---	---	---	---	L-4	---	(O)
DAY CARE, GENERAL	UP	---	---	---	---	---	(D), (Q)
GOVERNMENT OFFICES	P	---	---	---	L-4	---	
HELIPORTS	UP	UP	UP	UP	L-4	UP	(E)
HOSPITALS	---	---	---	---	L-4	---	
MARINAS	P	---	---	---	---	UP	(F)
PARK AND RECREATION FACILITIES	P	L-3	L-3	L-3	---	P	
PUBLIC SAFETY FACILITIES	UP	---	---	---	L-4	---	
RELIGIOUS ASSEMBLY	---	---	---	---	L-4	---	

Central Balboa: Land Use Regulations

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 UP = Use permit
 UP-OFC = Use permit issued by a Hearing Officer
 PD/U = Use permit issued by the Planning Director
 L = Limited (see Additional Land Use Regulations)
 --- = Not Permitted

	RSC	RP	R-2	MFR	GEIF	OS	Additional Regulations
SCHOOLS, PUBLIC AND PRIVATE	---	---	---	---	L-4	---	
UTILITIES, MAJOR	UP	UP	UP	UP	L-4	UP	
UTILITIES, MINOR	P	P	P	P	P	P	
COMMERCIAL USES							(A), (B), (C), (M), (U), (U)
ANIMAL SALES AND SERVICES						---	
-ANIMAL GROOMING	PD/U	---	---	---	---	---	
-ANIMAL HOSPITALS	UP	---	---	---	---	---	
-ANIMAL RETAIL SALES	PD/U	---	---	---	---	---	
ARTISTS' STUDIOS	P	P	---	---	---	---	(D), (G)
BANKS/SAVINGS AND LOANS	P	---	---	---	---	---	
CATERING SERVICES	P	UP	---	---	---	---	(D)
COMMERCIAL FILMING	UP	---	---	---	---	---	(G)
COMMERCIAL RECREATION AND ENTERTAINMENT	UP	---	---	---	---	L-6	(G), (O)
EATING AND DRINKING ESTABLISHMENTS							
-FULL SERVICE, HIGH TURNOVER	UP	---	---	---	---	---	(G), (H), (I), (O)

Central Balboa: Land Use Regulations

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 PD/U = Use permit issued by the Planning Director
 L = Limited (see Additional Land Use Regulations)
 --- = Not Permitted

	RSC	RP	R-2	MFR	GEIF	OS	Additional Regulations
-FULL SERVICE, LOW TURNOVER	UP	---	---	---	---	---	(G), (H), (I), (O)
-FULL SERVICE, SMALL SCALE	PD/U	---	---	---	---	---	(G), (H), (I), (O)
-TAKE-OUT SERVICE	UP	---	---	---	---	---	(G), (H), (I), (O)
-TAKE-OUT SERVICE, LIMITED	PD/U	---	---	---	---	---	(G), (H), (I), (O)
-ACCESSORY	P	---	---	---	P	---	(G), (H), (I), (O)
-BARS AND COCKTAIL LOUNGES	UP	---	---	---	---	---	(G), (H), (I), (O)
FOOD AND BEVERAGE SALES	P	---	---	---	---	---	(O)
FUNERAL AND INTERNMENT SERVICES	UP	---	---	---	---	---	
MAINTENANCE AND REPAIR SERVICES	P	P	---	---	---	---	(D), (M)
MARINE SALES AND SERVICES							
-BOAT RENTAL, AND SALES	UP	---	---	---	---	---	(F), (M)
-ENTERTAINMENT AND EXCURSION SERVICES	L-10	---	---	---	---	---	(F)
-MARINE SERVICE STATION	PD/U	---	---	---	---	---	(F)
-RETAIL MARINE SALES	P	---	---	---	---	---	
NURSERIES	P	---	---	---	---	---	
OFFICES, BUSINESS AND PROFESSIONAL	L-11	L-11	---	---	---	---	(D)
PAWN SHOPS	P	---	---	---	---	---	(G)

Central Balboa: Land Use Regulations

P = Permitted
 UP = Use permit
 UP-OFC = Use permit issued by a Hearing Officer
 PD/U = Use permit issued by the Planning Director
 L = Limited (see Additional Land Use Regulations)
 --- = Not Permitted

	RSC	RP	R-2	MFR	GEIF	OS	Additional Regulations
PERSONAL IMPROVEMENT SERVICES	PD/U	UP	---	---	---	---	(D), (G)
PERSONAL SERVICES	P	P	---	---	---	---	(D), (H)
-DRY CLEANERS	P	---	---	---	---	---	
-DRY CLEANERS (COLLECTION ONLY)	P	---	---	---	---	---	
-FORTUNE TELLING	P	P	---	---	---	---	(D)
-SELF SERVICE LAUNDRIES	UP	---	---	---	---	---	
POSTAL SERVICES	P	P	---	---	---	---	(D)
PRINTING AND DUPLICATING SERVICES	P	P	---	---	---	---	(D)
RETAIL SALES	P	---	---	---	---	---	
SECONDHAND APPLIANCES/CLOTHING	PD/U	---	---	---	---	---	(G)
TRAVEL SERVICES	P	P	---	---	---	---	(D)
VEHICLE/EQUIPMENT SALES AND SERVICES							
-AUTOMOBILE RENTALS	L-7	---	---	---	---	---	
-COMMERCIAL PARKING FACILITY	PD/U	L-8	L-8	L-8	L-4	---	
VISITOR ACCOMMODATIONS							
-BED AND BREAKFAST INNS	PD/U	UP	UP	UP	---	---	
-HOTELS, MOTELS AND TIME-SHARES	UP	---	---	---	---	---	(N)

Central Balboa: Land Use Regulations

P = Permitted
 UP = Use permit
 UP-OFC = Use permit issued by a Hearing Officer
 PD/U = Use permit issued by the Planning Director
 L = Limited (see Additional Land Use Regulations)
 --- = Not Permitted

	RSC	RP	R-2	MFR	GEIF	OS	Additional Regulations
-SRO RESIDENTIAL HOTELS	UP	---	---	UP	---	---	
<i>ACCESSORY USES</i>							(A), (B), (C), (U)
ACCESSORY STRUCTURES AND USES	P/UP	P/UP	P/UP	P/UP	P/UP	---	(L)
<i>TEMPORARY USES</i>							(A), (B), (C), (U)
ANIMAL SHOWS	P	---	---	---	P	P	(K)
CHRISTMAS TREE/PUMPKIN SALES	L-9	---	---	---	---	---	(B)
CIRCUSES AND CARNIVALS	P	---	---	---	P	P	(K)
COMMERCIAL FILMING, LIMITED	P	---	---	---	P	P	(K)
FAIRS AND FESTIVALS	P	---	---	---	P	P	(K)
PERSONAL PROPERTY SALES	---	P	P	P	---	---	(P)
OUTDOOR STORAGE, TEMPORARY	P	---	---	---	---	---	(M)
REAL ESTATE OFFICES, TEMPORARY	L-9	L-9	L-9	L-9	---	---	
RECREATION & ENTERTAINMENT EVENTS	P	---	---	---	P	P	(K)
TRADE FAIRS	P	---	---	---	P	P	(K)

Central Balboa Specific Plan: Additional Land Use Regulations

- L-1 See Section 20.45.035 (B).
- L-2 Permitted as a security guard or caretakers residence.
- L-3 Limited to facilities developed as part of a residential development.
- L-4 In GEIF and OS districts, approval of a use permit in accordance with the provisions of Chapter 20.91 for the establishment of any new use permitted by this section, or any expansion or changes in the operational characteristics of an existing use within this zoning district, unless said use is owned and or operated by a governmental agency that is exempted from the provisions of this section by constitutional or statutory law, and is acting in its governmental capacity.
- L-5 Limited to facilities occupying less then 5,000 square feet; use permit required.
- L-6 Permitted with a use permit as part of a park or recreational facility.
- L-7 Offices only, no vehicles stored on premises.
- L-8 Permitted only when adjacent to a commercial district.
- L-9 Subject to the approval of the Planning Director.
- L-10 Permitted, provided operations have first secured a marine activities permit issued by the Harbor Resources Director (see Chapter 17.10 of the Municipal Code).
- L-11 Permitted, however, services involving the assembly or meetings of seven or more persons shall be limited to above the first floor, where the first floor is occupied by a permitted use or use permitted with a use permit.
 - (A) See Section 20.60.025: Relocatable Buildings.
 - (B) See Section 20.60.015: Temporary Structures and Uses.
 - (C) See Section 20.60.050: Outdoor Lighting.
 - (D) Commercial uses shall be permitted in the SP-8 (RP) District subject to the following provisions:
 - 1. Commercial uses are permitted on the ground floor only and on the front 50 percent of the lot.
 - 2. The commercial portion shall be limited to a floor area ratio of 0.25.
 - 3. The total gross floor area for all structures on any site shall not exceed 2.00.

4. Off-street parking for commercial uses shall be as specified in Section 20.45.050 (F).
- (E) See Section 20.60.055: Heliports and Helistops.
- (F) See Section 20.60.070: Waterfront Development Regulations.
- (G) See Section 20.60.085: Uses Requiring City Manager Approval.
- (H) See Chapter 20.82: Eating and Drinking Establishments.
- (I) In addition to the findings established in Chapter 20.82, the Planning Director or Planning Commission, as the case may be, shall make the following findings in order to approve a drive-in, take-out or small-scale eating and drinking establishment:
 1. That the operator of the food service use will be responsible for the clean-up of all on-site and off-site trash, garbage and litter generated by the use.
 2. That the operator of the food service use has submitted a practical program for monitoring and implementing the clean-up of site and adjacent areas.
- (J) Independent massage establishments not permitted (See Chapter 20.87: Massage Establishments).
- (K) Special event permit required, see Chapter 5.10 of the Municipal Code.
- (L) See Section 20.60.100: Home Occupations in Residential Districts.
- (M) See Section 20.60.105: Outdoor Storage & Display.
- (N) See Chapter 20.84: Time Share Developments.
- (O) See Chapter 20.89: Alcoholic Beverage Outlets.
- (P) See Section 20.60.120: Personal Property Sales in Residential Districts.
- (Q) See Section 20.60.130: Day Care Facilities for Children.
- (R) Any dwelling unit otherwise permitted by this Code may be used for short term lodging purposes as defined in Chapter 5.95 of the Municipal Code subject to the securing of:
 1. A Business License pursuant to Chapter 5.04 of the Municipal Code.
 2. A Transient Occupancy Registration Certificate pursuant to Section 3.16.060 of the Municipal Code.
 3. A Short Term Lodging Permit pursuant to Chapter 5.95 of the Municipal Code.

- (S): No residential use constituting a single housekeeping unit may offer or provide services to persons not residing on the site, unless the City has approved a use permit allowing such use, or in compliance with Section 20.60.100: Home Occupations in Residential Districts.
- (T): Persons with disabilities may request a reasonable accommodation from the provisions of the zoning ordinances under Chapter 20.98: Reasonable Accommodations.
- (U): All uses must obtain business licenses if required by Chapter 5.04 of the Municipal Code.”

Section 14. Chapter 20.62 (Nonconforming Structures and Uses) of Title 20 (Planning and Zoning) of the Newport Beach Municipal Code is hereby amended in its entirety to read as follows:

“CHAPTER 20.62

NONCONFORMING STRUCTURES AND USES

Sections:

20.62.010	Purpose
20.62.020	Applicability
20.62.030	Determination of Nonconformity
20.62.040	Nonconforming Structures
20.62.050	Nonconforming Parking
20.62.060	Landmark Buildings
20.62.070	Restoration of Damage or Destruction
20.62.080	Termination of Nonconforming Status
20.62.090	Abatement
20.62.100	Rights of Appeal

20.62.010 Purpose

Nonconforming uses, structures, and parking are inconsistent with a coherent zoning plan and the established standards and regulations set forth in this Title. This chapter establishes procedures for the continuance or abatement of existing structures and uses that do not conform to the provisions of the Zoning Code, especially in residential zoning districts, and which may be adverse to the general welfare of persons and property and detrimental to the orderly development of the City as envisioned by the goals and policies of the General Plan. The purpose of these provisions is to:

- A. Bring nonconforming uses and structures into conformance with the development standards set forth in the City's Zoning Code.
- B. Reduce the occurrence and limit the extent of nonconformance of nonconforming uses and structures, especially in residential zoning districts.
- C. Phase out certain nonconforming uses and structures in accordance with the abatement periods set forth below, without infringing upon the constitutional rights of property owners.

20.62.020 Applicability

Uses, buildings, structures or lots that become nonconforming due to reclassification, ordinance changes, or annexations may be continued subject to the provisions of this Chapter.

20.62.030 Determination of Nonconformity

- A. The Planning Director shall determine the nonconformity of any use, building, structure, or lot.
- B. Any use found to have been lawfully established and maintained, but which does not conform with the use regulations or required conditions for the district in which it is located by reason of adoption or amendment of this code or by reason of annexation of territory to the City, shall be deemed to be a nonconforming use. A nonconforming use includes a use that was lawfully established and maintained but is conditionally permitted in the district and has not obtained a use permit. A use shall not be considered to have been "lawfully established and maintained" and is an illegal use if it was established or operated without required permits and licenses, including but not limited to permits and licenses required by any federal, state, or local government agency.
- C. Any structure or building that was lawfully erected, but which does not conform with the property development regulations prescribed in the regulations for the district in which the structure is located by reason of adoption or amendment of this code or by reason of annexation of territory to the City, shall be deemed to be a legal nonconforming structure. A building or structure shall not be considered to have been "lawfully erected" and is an illegal structure if it was constructed without required permits, including but not limited to permits required by any federal, state, or local government agency.
- D. When a use or structure does not conform with the use regulations or required conditions for the district in which it is located, the property owner or person asserting that it is a nonconforming use or a nonconforming structure has the burden to provide sufficient documentation to the Planning Director that the use or structure was lawfully established, maintained, and erected and is nonconforming by reason of adoption or amendment of this code or by reason of annexation of territory to the City.

- E. A use or structure that was not lawfully established, maintained, or erected is contrary to the provisions of this code and the City may commence an action or proceedings for the abatement and removal of the use or structure pursuant to the provisions of Chapter 20.96.

20.62.040 Nonconforming Structures

- A. Maintenance and Repairs. Ordinary maintenance and repairs may be made to legal nonconforming structures. No structural alterations shall be made which would prolong the life of the supporting members of a structure, except as provided in this section.
- B. Interior Alterations. Changes to interior partitions or other nonstructural improvements and repairs may be made to a legal nonconforming structure, provided that the cost of the desired improvement or repair shall not exceed 50 percent of the replacement cost of the nonconforming structure, as determined by the Building Director, over any consecutive 12 month period.
- C. Structural Alterations. Structural elements of a legal nonconforming structure may be modified or repaired subject to the following provision:
 - 1. Alteration of up to 25 percent of the structural elements within any 12 month period may be permitted by right.
 - 2. Alteration of up to 50 percent of the structural elements within any 12 month period may be permitted upon the approval of a modification permit.
 - 3. Alteration of up to 75 percent of the structural elements within any 12 month period may be permitted upon the approval of a use permit by the Planning Director, subject to the findings and provisions contained in Section 20.62.040 (F).
- D. Additions. Structures legally nonconforming for reasons other than for parking, open space, floor area, or building bulk, may be enlarged, extended or expanded subject to the following provisions:
 - 1. An increase of up to 25 percent of the gross floor area within any 12 month period may be permitted by right.
 - 2. An increase of up to 50 percent of the gross floor area within any 12 month period may be permitted upon the approval of a modification permit.
 - 3. An increase of up to 75 percent of the gross floor area within any 12 month period may be permitted upon the approval of a use permit by the

Planning Director, subject to the following findings and provisions contained in Section 20.62.040 (F).

No addition shall cause an increase in the structure's inconsistency with the regulations of the Zoning Code.

E. Exceptions. The provisions of this section shall not apply to the following circumstances:

1. Seismic Retrofits. Alterations to a structure required to comply with the minimum provisions of Chapter 15.07, "Earthquake Hazard Reduction," and California Government Code Section 8875.
2. Public Health & Safety. Structural elements of a legal nonconforming structure may be modified or repaired if the Building Director determines that such modification or repair is immediately necessary to protect the health and safety of the public or occupants of the nonconforming structure, or adjacent property and the cost does not exceed 50 percent of the replacement cost of the legal nonconforming structure, as determined by the Building Director.
3. Nonconforming Parking. Structures which are nonconforming due to off-street parking and loading requirements shall be subject to the provisions of Section 20.62.050.

F. Required Findings. A use permit required for the alteration of a nonconforming structure may be approved only if the following findings are made in addition to those findings specified in Chapter 20.91.

1. The cost of the improvements to be made is minor in comparison to the value of the existing nonconforming condition.
2. The cost of correcting the nonconforming condition would exceed the cost of the other alterations proposed.
3. Retention of the nonconforming condition is necessary to maintain reasonable use of the structure.
4. The alteration does not increase the structure's inconsistency with the regulations of the Zoning Code.

20.62.050 Nonconforming Parking

A. Residential Uses. Where residential uses are nonconforming only because they do not conform to the off-street parking requirements of this code, the following alterations are permitted:

1. Number of Spaces

- a. Residential development having less than 2 parking spaces per dwelling unit:
 - (1) Repair and maintenance, interior alterations, and structural alterations, as provided for in Section 20.62.040.A through C. .
 - (2) Minor additions to existing buildings, such as the construction of bathrooms, closets and hallways, or the expansion of existing rooms, subject to the floor area limits of Section 20.62.0.040.D.1 through D.2..
 - (3) Addition of a new room provided that there is no net increase in the number of habitable rooms, upon the approval of a modification permit, subject to the floor area limits of Section 20.62.0.040.D.1 through D.3.
- b. Residential development having at least 2 parking spaces per dwelling unit may be altered or expanded as provided in Subsection A.1.a, except that:
 - (1) The approval of a modification permit shall not be required for the addition of a new room provided that there is no net increase in the number of habitable rooms.
 - (2) Additional rooms may be added upon the approval of a modification permit.

2. Size of Parking Spaces.

- a. No discretionary approvals shall be required for the alteration or expansion of buildings which are nonconforming only because amendments to this code have changed the dimensions of required parking spaces subsequent to the original construction of the building, provided that the building and any proposed addition shall conform to current provisions of this code with regard to the number of required parking spaces.
- b. Where the dimensions of required parking spaces do not meet provisions of Subsection A.2.a., above, or current standards, alteration of the structure may be permitted only upon the approval of a modification permit.

3. Covered and Enclosed Parking.

Residential development having less than the required number of enclosed parking spaces:

a. Repair and maintenance, interior alterations, and structural alterations, as provided for in Section 20.62.040.A through C.

b. Minor additions to existing buildings, such as the construction of bathrooms, closets and hallways, or the expansion of existing rooms, subject to the floor area limits of Section 20.62.0.040.D.

c. Addition of a new room provided that there is no net increase in the number of habitable rooms, upon the approval of a modification permit, subject to the floor area limits of Section 20.62.0.040.D..

B. Nonresidential Uses. Where nonresidential structures and uses are nonconforming only because they do not provide the number of parking spaces required by this code, the following shall be controlling:

1. Continuation or Change. Nonconforming structures and uses in nonresidential zoning districts, and in areas where residential uses are not provided for in Planned Community Districts or Specific Plan Districts, may be continued or changed to a use requiring the same or less on-site parking, consistent with all other provisions of this code.

2. Repair and maintenance, interior alterations, and structural alterations, as provided for in Section 20.62.040.A through C..

3. Enlargement or Intensification.

a. More Than 10% Increase

The nonconforming structure or use may be enlarged by more than 10 percent of its original gross floor area, or onsite uses may be intensified such that code required parking would increase by more than 10 percent, in any 12 month period, only if all code required parking is provided, unless a waiver or reduction of the parking requirement is authorized by use permit approved by the Planning Director.

b. Less Than 10% Increase

A nonconforming structure or use may be enlarged by less than 10 percent of its original gross floor area or intensified to generate less than a 10 percent increase in code required parking, upon the provision of code required parking attributable to the enlargement or intensification.

4. Removal. All nonconforming rights with regard to parking shall be lost for any non-accessory building which is demolished.

20.62.060 Landmark Buildings

- A. Purpose. To preserve historic structures, encourage their adaptive reuse, and revitalize the older commercial areas in which they are located by granting relief from restrictions on nonconforming uses and structures in this Chapter while maintaining the principal use and minimizing impacts on the surrounding area.
- B. Applicability. The following types of buildings are recognized as having importance to the history and architecture of the City of Newport Beach and are collectively designated as Landmark Buildings:
 1. Landmark Theaters. The term Landmark Theaters shall mean any building constructed for use as a cinema or theater that (a) was constructed on or before December 12, 1950; (b) has a single screen or stage; and (c) was designed to seat more than 300 people.
 2. Landmark Structure. The term Landmark Structure shall mean any building listed on the National Register of Historic Places, constructed prior to December 12, 1950.
- C. Exemptions. The principal use of a Landmark Building may be modified, maintained, altered, increased or intensified by way of a change in operational characteristics without obtaining a use permit required by the provisions of Section 20.82, subject to compliance with the conditions of Subsection (D) and irrespective of whether the principal use has been inactive for any period of time since inception. An accessory use may be initiated, or intensified by way of a change in operational characteristics, in a Landmark Building without obtaining a use permit required by Section 20.82 subject to compliance with the conditions of Subsection (D). Structural alterations may be made to a Landmark Building without obtaining a use permit pursuant to Section 20.62.040(C) subject to compliance with the conditions of Subsection (D). For purposes of this Section the term accessory use shall mean any use that is permitted as a matter of right or pursuant to a use permit in the zoning district in which the Landmark Building is located. For purposes of this Section, the term principal use shall mean, in the case of a Landmark Theatre, the (i) display of motion pictures; and (ii) any similar entertainment use that occurred on a regular basis within the structure from its inception to January 1, 2003. In the case of a Landmark Structure, the term principal use shall be the use that occupied the greatest amount of floor area as of January 1, 2003.
- D. Conditions. The exemptions specified in Subsection C are applicable on the following conditions.

1. Any new use that is initiated, and any use that is intensified by way of a change in operational characteristics, is accessory and remains subordinate to the then current and ongoing principal use of the Landmark Building.
2. The principal use of the Landmark Building occupies, at all times, no less than seventy percent (70%) of the of the gross floor area of the Landmark Building.
3. A use permit is issued pursuant to the provisions of Chapter 20.89 (Alcoholic Beverage Outlets) prior to the initiation of any accessory use that involves the sale or consumption of alcoholic beverages.
4. Any permit required by any other titles (other than Title 20) of the Municipal Code has been issued prior to the initiation or intensification (by way of a change in operational characteristics) of any accessory use of the Landmark Building.
5. Any accessory use in any Landmark Theater is conducted between the hours of 8:00 a.m. and 12:00 a.m.
6. The required off-street parking of all uses after any additions, intensification, modification or expansion (including credit for reductions in off-street parking resulting from the elimination of accessory uses existing on January 1, 2003) is less than the required off-street parking for the principal and accessory uses prior to any additions, intensification, modification or expansion.
7. The façade and/or exterior architectural features of the Landmark Building are not substantially altered or are restored to original condition and the exterior walls of the Landmark Building remain in substantially the same location as they existed on January 1, 2003.

20.62.070 Restoration of Damage or Destruction.

- A. Nonconforming Use. A nonconforming use occupying land, a building, or portion thereof which is otherwise conforming and damaged or destroyed by fire, explosion, earthquake, or other disaster may be reestablished, provided that restoration work is commenced within 12 months after the damage or destruction occurs and is pursued diligently to completion, and provided that an abatement period for the use has not been established pursuant to Section 20.62.090.
- B. Nonconforming Structure or Parking.
 1. Determination of Replacement Value. The replacement value of the structure shall be determined by the Building Director. However, the Building Director shall accept the appraised replacement value of the structure as determined by an independent, licensed appraiser retained by the property owner, should the property owner choose to do so. The

replacement value of the structure shall be in excess of the building foundation at the time of the damage.

2. Up To 90 % Damage or Destruction.

- a. General Provisions. A nonconforming structure, which is partially destroyed by fire, explosion, earthquake, or other disaster, may be repaired or restored as a matter of right if the cost of the repair or restoration is less than 90 percent of the replacement value of the structure. The rights conferred by this section are contingent upon diligent application for a building permit after the damage or partial destruction occurs and diligent pursuit of repairs to completion.
- b. Special Provisions. Notwithstanding the provisions of subparagraph a, where a structure is nonconforming due to an encroachment into a setback or into the required distance between buildings, and the encroachment is more than 90 percent destroyed, a modification permit shall be required for replacement or repair of the encroachment.

When a structure is nonconforming due to excessive height, bulk, gross floor area, or lack of open space, and the nonconforming condition is more than 90 percent destroyed, the nonconforming condition may be restored only after approval of a use permit approved by the Planning Director pursuant to Chapter 20.91 with the following additional findings, subject to the limitations in Subsection D below:

- (1) That replacement of the nonconforming condition is necessary to maintain reasonable use of the structure or individual condominium unit.
- (2) That replacement of the nonconforming condition is necessary to preserve a substantial property right.

3. Greater Than 90% Destruction. If a nonconforming structure is damaged or destroyed by fire, explosion, earthquake, or other disaster to an extent of more than 90 percent of its replacement value, then the nonconformity may be restored only if a use permit is first approved by the Planning Director provided application for the use permit is made within 12 months after the damage or destruction occurs and the following findings are made in addition to those findings required in accordance with Chapter 20.91 subject to the limitations in Subsection D below:

- a. That replacement of the nonconforming condition is necessary to maintain reasonable use of the property or individual condominium unit.

- b. That replacement of the nonconforming condition is necessary to preserve a substantial property right.
- 4. Removal of Portions of the Structure Not Destroyed or Damaged. If a nonconforming structure is damaged or destroyed by fire, explosion, earthquake, or other disaster to an extent of more than 50 percent of its replacement value, then a maximum additional 20 percent of the structure may be removed and replaced if necessary to pursue restoration of the structure. Any additional portions of the structure may be removed and replaced, only upon the approval of a use permit by the Planning Director and subject to the following findings in addition to those findings required in accordance with Chapter 20.91.
 - a. That substantial additional expense would be created by the necessity of working around the additional portion of the structure to be removed when repairing the damaged or destroyed portion.
 - b. That replacement of the nonconforming portion of the structure which was voluntarily removed is necessary to preserve a substantial property right; or that the rebuilt portion of the structure will more nearly conform to the provisions of this code.
- C. Aging and Deterioration. The provisions of this section shall not be construed to permit replacement of nonconforming conditions in structures undergoing renovation, remodel, or reconstruction, structures damaged by ongoing natural processes such as dry rot or termites or structure which have deteriorated due to age.
- D. Condominium Units. When a use permit is required for replacement or repair of any condominium units which are damaged or destroyed by fire earthquake, explosion, or other disaster, no reduction in the number of units shall be required. The replacement units shall be permitted to be equivalent in size and location to the units which were damaged or destroyed.

20.62.080 Termination of Nonconforming Status

- A. Unless otherwise provided in this chapter, a nonconforming use must cease operations and cannot be reestablished when one or more of the following events occur:
 - 1. The nonconforming use remains inactive for 180 consecutive days.
 - 2. The nonconforming use is converted to a conforming use.
 - 3. The nonconforming use is enlarged, extended, expanded or in any other manner changed to increase its inconsistency with the regulations of this code.

4. The abatement period expires as set forth in Section 20.62.090.

B. Exceptions

1. A nonconforming use which has been active for 180 days or more may be reestablished, subject to the approval of the Planning Director upon finding that:

- a. The use is normally permitted, either by right or by the approval of a use permit, and is nonconforming only by virtue of the required conditions of the district in which it is located; and
- b. The property or structure where the nonconforming use was located contains a substantial investment in the structural design, equipment, or fixtures that are unique to and necessary for the operation of the former use; and
- c. The property owner has made a good faith effort to reestablish the use and has maintained the property in a manner to prevent unsafe or unsightly condition during the period of inactivity.

2. A nonconforming use that has been inactive for 190 days or more may be reestablished when located within a Landmark Building, pursuant to the requirements Section 20.62.065.

C. Abatement. Whenever the Planning Director finds that any of the conditions set forth in Subsection A exist, the Planning Director shall issue a written order of abatement as specified in Section 20.62.090.D of this chapter.

20.62.090 Abatement Periods

A. Time Periods for Abatement in Residential Districts. Nonconforming uses located in Residential Districts or in an area where residential uses are provided for in the Planned Community Districts or Specific Plan Districts shall be abated and terminated upon the expiration of the periods of times set forth below.

1. Nonconforming Use of Land When No Structure Is Involved. The nonconforming uses of land not involving a structure shall be abated within one year.

2. Nonconforming Use of Land Involving a Structure. In any district, the nonconforming uses of land wherein a structure is involved shall be discontinued within the following maximum time limits:

- a. A nonconforming use of land involving a structure shall be discontinued within (i) one year, or (ii) at the expiration of the term of a lease on the property, or (iii) at the expiration of any current operating

license that is required by state law, whichever is earliest. Any such lease shall be the last lease entered into as to the subject land prior to December 7, 2007.

b. The applicable amortization period for a residential care facility under this Section 20.62.090.A.2.a may be extended, upon application to the Director on a form prescribed by the same, under one or both of the following circumstances:

i. When the owner or occupant has timely applied for a use permit or reasonable accommodation pursuant to Chapter 20.91A or Chapter 20.98 and is diligently pursuing that administrative process, as determined by the Director;

ii. When the business owner or occupant is contractually obligated to continue the provision of a program or service for one or more persons so long as any such contract provides for a normal and customary term for the provision of those services. No such term shall exceed 60 days.

Application for an extension under this Section 20.62.090.A.2.b is separate and apart from application for an extension under Section 20.62.090.B. A residential care facility may apply for an extension under either or both processes.

Exception: Multi-Family Residential uses and Two-Family Residential uses located in Residential Districts (Chapter 20.10), and in areas where residential uses are provided for in Planned Community Districts or Specific Plan Districts, which are nonconforming only in terms of their density or parking or their use as Multi-Family Residential or Two-Family Residential shall not be subject to abatement.

c. In nonresidential districts, and in areas where residential uses are not provided for in Planned Community Districts or Specific Plan Districts, the nonconforming use of land wherein a structure is involved shall be discontinued within ten years after the Planning Commission completes proceedings for the abatement of the use pursuant to Section 20.62.090.D.

d. Notwithstanding the above, any maximum abatement periods specified in Planned Community Districts or Specific Plan Districts shall be as shown in the specific plan or development plan.

Exception: No abatement period will be set for the use of a Landmark Building (see Section 20.62.060), which may be changed, expanded, increased or intensified and structural alterations may be made subject to compliance with the provisions of Section 20.62.060.

B. Extension of Abatement Period for Nonconforming Uses.

1. Purpose. A property owner may request an extension of the abatement period to amortize the property owner's investment to avoid an unconstitutional taking of property. The City will evaluate evidence of economic hardship arising from abatement, the nonconformity's impact on the community, and other factors that may affect the length of the abatement period required to avoid an unconstitutional taking.
2. Application Requirements. Except as otherwise provided herein, the owner of property subject to an abatement period, or his authorized agent, may file an application for extension of the abatement period pursuant to this Subsection 20.62.090.B. no later than 90 days prior to the expiration of the abatement period set forth in this chapter. The application shall be filed in a manner consistent with the requirements contained in Chapter 20.90, and shall include the following additional information:
 - a. The length of the requested extension of the abatement period.
 - b. Evidence in support of the findings included in Section 20.62.090.B.4 below.
3. Notice and Hearing; Hearing Officer Action. A Hearing Officer, as defined in Section 20.03.030, hereby is designated to review the application for an extension at a public hearing. Notice of the hearing shall be as specified in Chapter 20.91. Notice shall be provided to all owners and occupants of property within 300 feet of the property, as specified in Section 20.91.030.C. The Hearing Officer, by resolution, shall approve, conditionally approve, or deny the request for an extension to the abatement period. The resolution shall include findings of fact pertinent to the criteria set forth in Section 20.62.090.A.2.b. or as required by Section 20.62.090.B.
4. Findings. In reviewing an application for an extension to the abatement period, the Hearing Officer shall grant an extension only as required to avoid an unconstitutional taking of property. The Planning Commission shall consider:
 - a. The length of the abatement period in relation to the owner's investment in the use;
 - b. The length of time the use was operating prior to the date of nonconformity;
 - c. The suitability of the structure for an alternative use;
 - d. Harm to the public if the use remains beyond the abatement period;

- e. The cost and feasibility of relocating the use to another site; and
- f. Other evidence relevant to the determination of whether an extension of the abatement period is required to avoid an unconstitutional taking of property.

5. Notice to Owner. The Planning Director shall formally notify the owner of nonconforming property of the action of the Commission by mailing the owner a copy of the resolution not later than 10 days following the date of its adoption by the Planning Commission.

C. Establishment of Abatement Period in Nonresidential Districts.

- 1. Planning Commission Action. Where the Planning Commission determines that the orderly termination of a nonconforming use in a nonresidential district, or in areas where residential uses are not provided for in Planned Community Districts or Specific Plan Districts, is necessary to promote the health, safety, and general welfare and to comply with the provisions of the Zoning Code and goals and policies of the General Plan, shall establish a ten-year abatement period pursuant to Subsection A.2.
- 2. Notice and Hearing. Notice and hearing shall be provided as specified in Subsection B above.

D. Order of Abatement.

- 1. Order of Abatement. Whenever the Planning Director finds that any of the conditions set forth in Section 20.62.080.A exist, the Director shall immediately issue a written order of abatement and shall give notice to the property owners and all persons in possession of the property. Unless the nonconformity has been previously abated, the owner and/or person in possession shall comply within the time and in the manner stated in the order.
- 2. Enforcement. The City shall be authorized to enforce the provisions of this Chapter by civil action, utilization of the procedures in Chapter 20.96, or any other proceeding or method permitted by law or equity.

20.62.100 Rights of Appeal

- A. Appeals. Decisions of the Planning Director may be appealed to the Planning Commission and decisions of the Planning Commission and Hearing Officer may be appealed to the City Council.
- B. Procedures. Procedures for appeals shall be as prescribed by Chapter 20.95: Appeals, provided that, notwithstanding Section 20.95.060, the standard of review of a Hearing Officer decision shall not be de novo and the City Council shall determine whether the findings made by the Hearing Officer are supported by

substantial evidence presented during the evidentiary hearing. The City Council, acting as the appellate body, may sustain, reverse, or modify the decision of the Hearing Officer or remand the matter for further consideration, which remand shall include specific issues to be considered or a direction for a de novo hearing.”

Section 15. Paragraph “C” of Section 20.90.030 (Application Filing) of Chapter 20.90 (Zoning Administration) of Title 20(Planning and Zoning) is hereby amended to read as follows:

“C. Required Signatures. The owner, lessee, or agent of the owner of the property affected may apply for discretionary approvals. The application shall be signed by the owner of record or may be signed by the lessee or by an authorized agent if written authorization from the owner of record is filed concurrently with the application. The applicant shall make a statement in writing that he or she certifies under penalty of perjury that all the information contained in the application is true and correct. False statements therein will constitute grounds for denial or revocation as applicable.”

Section 16. Chapter 20.91 (Use Permits and Variances) of the Newport Beach Municipal Code is hereby amended in its entirety to read as follows:

“Chapter 20.91

USE PERMITS AND VARIANCES

Sections:

20.91.010	Purpose
20.91.015	Use Permit or Variance Requisite to Other Permits
20.91.020	Application for Use Permit or Variance
20.91.025	Duties of the Planning Director and the Planning Commission
20.91.030	Notice and Public Hearing
20.91.035	Required Findings
20.91.040	Conditions of Approval
20.91.045	Effective Date
20.91.050	Expiration, Time Extension, Violation, Discontinuance, and Revocation
20.91.055	Amendments and New Applications
20.91.060	Rights of Appeal

20.91.010 Purpose

This article provides the flexibility in application of land use and development regulations necessary to achieve the purposes of this code by establishing procedures for approval, conditional approval, or disapproval of use permit and variance applications.

Use permits are required for use classifications typically having unusual site development features or operating characteristics requiring special consideration so that they may be designed, located, and operated compatibly with uses on adjoining properties and in the surrounding area.

Variations are intended to resolve practical difficulties or unnecessary physical hardships that may result from the size, shape, or dimensions of a site or the location of existing structures thereon; from geographic, topographic, or other physical conditions on the site or in the immediate vicinity; or from street locations or traffic conditions in the immediate vicinity of the site. Variations may be granted with respect to property development regulations and performance standards, but do not extend to land use regulations.

20.91.015 Use Permit or Variance Requisite to Other Permits

No building permit or certificate of occupancy shall be issued in any case where a use permit or variance is required by the terms of this code unless and until such use permit or variance has been granted by the Planning Director or the Planning Commission or by the affirmative vote of the City Council on appeal or review and then only in accordance with the terms and conditions of the use permit or variance granted.

20.91.020 Application for Use Permit or Variance

An application for a use permit or variance shall be filed in a manner consistent with the requirements contained in Chapter 20.90, Application Filing and Fees. If the application is for a use permit in a Residential District (Chapter 20.10) or in an area where residential uses are provided for in Planned Community Districts or Specific Plan Districts, the application shall be accompanied by the additional information specified in Chapter 20.91A.

20.91.025 Duties of the Planning Director and the Planning Commission

A. Authority. The Planning Commission shall approve, conditionally approve, or disapprove applications for use permits or variances, unless the authority for an administrative decision on a use permit is specifically assigned to the Planning Director in the individual chapters of this code.

Exception. The City Council shall have final decision-making authority on the applications for use permits and variances filed concurrently with amendments to the general plan, zoning code, or a planned community development plan or with a development agreement.

- B. Rendering of Decision. After the conclusion of the hearing on any application for a use permit or variance, the Planning Commission shall render a decision within thirty-five (35) days. Where the authority for an administrative decision on a use permit is assigned to the Planning Director, the Planning Director shall render a decision within fourteen (14) days of the acceptance of a completed application.
- C. Report to the Planning Commission and City Council. The Planning Director shall report the discussion of the Planning Commission on a use permit or variance to the City Council at the next regular meeting or within 5 days of the decision, whichever occurs first. Upon rendering a decision on a use permit, the Planning Director shall report to the Planning Commission and the City Council at the next regular meeting or within 5 days of the decision, whichever occurs first.
- D. Notice of Decision. Upon the rendering of a decision on a use permit by the Planning Director, a notice of the decision shall be mailed to the applicant and all owners and occupants of property within 300 feet of the boundaries of the site.

20.91.030 Notice and Public Hearing

- A. Public Hearings. The Planning Commission shall hold a public hearing on an application for a use permit or variance. Public hearings are not required for applications where the authority for an administrative decision on a use permit is assigned to the Planning Director.
- B. Timing of Hearings. A public hearing shall be held on all use permit and variance applications, except as otherwise provided in this chapter, within sixty (60) days after the acceptance of a completed application.
- C. Required Notice. Notice of a public hearing or an administrative decision shall be given as follows:
 - 1. Mailed or Delivered Notice.
 - a. Residential Districts. At least 10 business days prior to the hearing or an administrative decision, notice shall be mailed to the applicant and all owners and occupants of property within 300 feet of the boundaries of the site, as shown on the last equalized assessment roll or, alternatively, from such other records as contain more recent addresses.
 - b. Nonresidential Districts. At least 10 business days prior to the hearing or an administrative decision, notice shall be mailed to the applicant and all owners of property within 300 feet, excluding intervening rights-of-way and waterways, of the boundaries of the site, as shown on the last equalized assessment roll or,

alternatively, from such other records as contain more recent addresses.

c. Notice To Occupants. Notice to occupants shall be accomplished by mailing notice to each property address within 300 feet of the boundaries of the site with notice addressed to "occupant." It shall be the responsibility of the applicant to obtain and provide to the City the names and addresses of owners and property addresses within 300 feet of the boundaries of the site as required by this section.

2. Posted Notice. Notice shall be posted in not less than 2 conspicuous places on or close to the property at least 10 business days prior to the hearing or the administrative decision.

3. Published Notice. Notice shall be published in at least one newspaper of general circulation within the City, at least 10 business days prior to the hearing.

D. Contents of Notice. The notice of public hearing or of the decision of the Planning Director shall contain:

1. A description of the location of the project site and the purpose of the application;
2. A statement of the time, place, and purpose of the public hearing or of the purpose of the administrative decision;
3. A reference to application materials on file for detailed information; and
4. A statement that any interested person or authorized agent may appear and be heard at the public hearing or their rights of appeal in case of administrative decisions.

E. Continuance. Upon the date set for a public hearing before the Planning Commission, the Planning Commission may continue the hearing to another date without giving further notice thereof if the date of the continued hearing is announced in open meeting.

20.91.035 Required Findings

The Planning Commission or the Planning Director, as the case may be, shall approve or conditionally approve an application for a use permit or variance if, on the basis of the application, plans, materials, and testimony submitted, the Planning Commission or the Planning Director finds:

A. For Use Permits.

1. That the proposed location of the use is in accord with the objectives of this code and the purposes of the district in which the site is located.
2. That the proposed location of the use permit and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan and the purpose of the district in which the site is located; will not be detrimental to the public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the neighborhood of such use; and will not be detrimental to the properties or improvements in the vicinity or to the general welfare of the city.
3. That the proposed use will comply with the provisions of this code, including any specific condition required for the proposed use in the district in which it would be located.
4. If the use is proposed within a Residential District (Chapter 20.10) or in an area where residential uses are provided for in Planned Community Districts or Specific Plan Districts, the use is consistent with the purposes specified in Chapter 20.91A and conforms to all requirements of that Chapter.

B. For Variances.

1. That because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of this code deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification.
2. That the granting of the application is necessary for the preservation and enjoyment of substantial property rights of the applicant.
3. That the granting of the application is consistent with the purposes of this code and will not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and in the same zoning district.
4. That the granting of such application will not, under the circumstances of the particular case, materially affect adversely the health or safety of persons residing or working in the neighborhood of the property of the applicant and will not under the circumstances of the particular case be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood.

20.91.040 Conditions of Approval

The Planning Commission or the Planning Director, as the case may be, may impose such conditions in connection with the granting of a use permit or variance as they deem necessary to secure the purposes of this code and may require guarantees and evidence that such conditions are being or will be complied with, including but not limited to management and operations plans. Such conditions may include, but are not limited to, requirements for off-street parking facilities and prohibitions against assembly uses as determined in each case.

20.91.045 Effective Date

Use permits and variances shall not become effective for fourteen (14) days after being granted, and in the event an appeal is filed or if the Planning Commission or the City Council shall exercise its right to review any such decision under the provisions of Chapter 20.95, the permit shall not become effective unless and until a decision granting the use permit, or variance is made by the Planning Commission or the City Council.

20.91.050 Expiration, Time Extension, Violation, Discontinuance, and Revocation

A. Expiration. Any use permit or variance granted in accordance with the terms of this code shall expire within twenty-four (24) months from the effective date of approval or at an alternative time specified as a condition of approval unless:

1. A grading permit has been issued and grading has been substantially completed; or
2. A building permit has been issued and construction has commenced; or
3. A certificate of occupancy has been issued; or
4. The use is established; or
5. A time extension has been granted.

In cases where a coastal permit is required, the time period shall not begin until the effective date of approval of the coastal permit.

B. Time Extension. The Planning Director may grant a time extension for a use permit or variance for a period or periods not to exceed three years. An application for a time extension shall be made in writing to the Planning Director no less than thirty (30) days or more than ninety (90) days prior to the expiration date.

C. Violation of Terms. Any use permit or variance granted in accordance with the terms of this code may be revoked if any of the conditions or terms of such use permit, or variance are violated, or if any law or ordinance is violated in connection therewith.

- D. Discontinuance. A use permit or variance shall lapse if the exercise of rights granted by it is discontinued for one hundred eighty (180) consecutive days.
- E. Revocation. Except as otherwise provided for in this Title, procedures for revocation shall be as prescribed by Chapter 20.96: Enforcement.

20.91.055 Amendments and New Applications

- A. Amendments. A request for changes in conditions of approval of a use permit or variance or a change to plans that would affect a condition of approval shall be treated as a new application. The Planning Director may waive the requirement for a new application if the changes are minor, do not involve substantial alterations or additions to the plan or the conditions of approval, and are consistent with the intent of the original approval.
- B. New Applications. If an application for a use permit or variance is disapproved, no new application for the same, or substantially the same, use permit or variance shall be filed within one year of the date of denial of the initial application unless the denial is made without prejudice.

20.91.060 Rights of Appeal

- A. Appeals. Decisions of the Planning Director may be appealed to the Planning Commission and decisions of the Planning Commission may be appealed to the City Council.
- B. Procedures. Except as otherwise provided for in this Title, procedures for appeals shall be as prescribed by Chapter 20.95: Appeals.”

Section 17. A new Chapter 20.91A entitled “Use Permits in Residential Districts” is hereby added to the Newport Beach Municipal Code to read as follows:

“CHAPTER 20.91A

USE PERMITS IN RESIDENTIAL DISTRICTS

Sections:

- 20.91A.010 Purpose
- 20.91A.020 Use Limits to Continue Nonconforming Use
- 20.91A.030 Application Contents
- 20.91A.040 Development and Operational Regulations
- 20.91A.050 Required Findings

20.91A.010 Purpose.

The purpose of this Chapter is as follows:

- A. To promote the public health, safety, and welfare and to implement the goals and policies of the Newport Beach General Plan by ensuring that conditional uses in residential neighborhoods do not change the character of such neighborhoods as primarily residential communities.
- B. To protect and implement the recovery and residential integration of the disabled, including those receiving treatment and counseling in connection with dependency recovery. In doing so, the City seeks to avoid the overconcentration of residential care facilities so that such facilities are reasonably dispersed throughout the community and are not congregated or overconcentrated in any particular area so as to institutionalize that area.

20.91A.020 Use Permits To Continue Nonconforming Use

Any person whose use of property in a residential district has been rendered nonconforming by passage of the Ordinance adding this Chapter 20.91A may seek the issuance of a conditional use permit to continue the use so long as the application for that permit is completed and filed within ninety (90) days following the effective date of that Ordinance. If any such person fails to file such an application for a conditional use permit within said ninety (90) day period, such a permit to continue the use may not be sought or issued.

20.91A.030 Application Contents

In addition to the application requirements contained in Chapter 20.90, an application for a use permit in a Residential District (Chapter 20.10), or in an area where residential uses are provided for in Planned Community Districts or Specific Plan Districts, shall contain the following information:

- A. Facility Users. Number and types of users of the facility (including staff, clients, visitors, students, etc., as appropriate).
- B. Characteristics of Proposed Use. Hours of operation, types of activities, and typical attendance at activities.
- C. Transportation and Parking. Expected parking demand and vehicular use; availability of public transportation or other means to transport facility users; if applicable, routes utilized to transport facility users off-site.
- D. Location Map. A location map showing all conditional uses within three blocks, including property addresses and a site plan showing uses and structures on adjacent parcels.

E. Similar Uses. A list of other uses of the same type located in the City and the authorized capacity of such use, if any, as determined by a third party entity. The applicant shall provide evidence of the need for such use by the residents of the City based on published sources. The city may complete an independent review of this data, at the applicant's expense, to determine whether there is a need for such use by its residents.

F. Applicant Information. The name and address of the applicant, including the name and address of the lessee, if the property is to be leased and is someone other than the applicant; and the name and address of the owner of the property for which a use permit is requested. If the applicant and/or lessee or owner is a partnership, corporation, firm or association, then the applicant/lessee shall provide the additional names and addresses as follows and such persons shall also sign the application: (i) every general partner of the partnership; (ii) every owner with a controlling interest in the corporation; or (iii) the person designated by the officers of a corporation as set forth in a resolution of the corporation that is be designated as the permit holder for the use permit.

G. License and Permit History. The license and permit history of the applicant(s), including whether such applicant(s), in previously operating a similar use in this or another city, county or state under license and/or permit has had such license and/or permit revoked or suspended, and the reason therefore.

H. Similar Facilities. A list of addresses of all facilities similar to that for which a use permit is requested in the State of California owned or operated by the applicant(s) within the past five (5) years and whether such facilities have been found by state or local authorities to be operating in violation of state or local law.

I. Operations and Management Plan. An operations and management plan to ensure compliance with state and local law. If the use permit is for a residential facility or a commercial facility that accommodates overnight stays, the operations and management plan shall also indicate the number of persons per bedroom, maximum number of occupants, typical length of stay, any guest or client rules of conduct and procedures for the disposal, if any, of medical waste.

20.91A.040. Approval, Modification or Revocation of Use Permit

A Hearing Officer, as defined in Section 20.03.030, is hereby designated to approve, conditionally approve or disapprove applications for use permits, and the modification or revocation thereof, in accordance with the procedures set forth in Chapter 20.91. Decisions of the Hearing Officer may be appealed to the City Council. Notwithstanding Section 20.95.060, the standard of review shall not be de novo and the City Council shall determine whether the findings made by the Hearing Officer are supported by substantial evidence presented during the evidentiary hearing. The City Council acting as the appellate body may sustain, reverse or modify the decision of the Hearing Officer or remand the matter for further consideration, which remand shall include either specific issues to be considered or a direction for a de novo hearing.

20.91A.050 Development and Operational Standards

The following standards are applicable to uses granted a use permit under this Chapter.

A. No staff, clients, guests, or any other users of the facility may smoke in an area from which the second hand smoke may be detected on any parcel other than the parcel upon which the facility is located.

B. Management and Operation. The property shall be operated in compliance with applicable state and local law and in conformance with the management and operating plan and rules of conduct submitted as part of the application for a use permit or as set forth in the conditions of approval for a use permit. Each such plan shall provide a phone number by which the operator may be contacted at all times. If applicable, the permittee shall comply with the business license provisions of Title 5 of this Code.

C. In order to ensure that unlicensed residential care facilities (small or general) are operating in a manner that is consistent with state and federal law and established industry standards and to ensure that operators do not have a pattern or practice of operating similar facilities in violation of state or local law, the standards listed below shall apply:

1. If the facility is not be required to be licensed by the State of California, owners, managers, operators, and residents shall not provide any services onsite, which would require licensure of the facility under California law.

2. There shall be no more than two residents per bedroom plus one additional resident. Notwithstanding, upon request by the applicant for additional occupancy, the hearing officer has discretion to set occupancy limits based upon the evidence provided by the applicant that additional occupancy is appropriate at the site. In determining whether to set a different occupancy limit, the Hearing Officer shall consider the characteristics of the structure, whether there will be an impact on traffic and parking and whether the public health, safety, peace, comfort, or welfare of persons residing in the facility or adjacent to the facility will be impacted.

3. If certification specific to the type of facility is available from a governmental agency or qualified nonprofit organization, the facility shall receive such certification including, without limitation, certification by Orange County under its Adult Alcohol and Drug Sober Living Facilities Certification Program.

4. The names of all persons and entities with an ownership or leasehold interest in the facility, or who will participate in operation of the facility, shall be disclosed in writing to the City, and such persons and entities shall not have a demonstrated pattern or practice of operating similar facilities in or out of the City of Newport Beach in violation of state or local law.

5. The operator of the residential facility shall provide a list of the addresses of all similar facilities in the State of California owned or operated by the operator within the past five (5) years and shall certify under penalty of perjury that none of such facilities have been found by state or local authorities to be operating in violation of state or local law. The Planning Director shall verify such information.

20.91A.060 Findings

In addition to the findings required by Section 20.91.035, the Hearing Officer shall make the following findings before approving or conditionally approving an application for a use permit in a Residential District (Chapter 20.10) or in an area where residential uses are provided for in Planned Community Districts or Specific Plan Districts:

- A. The use conforms to all applicable provisions of Section 20.91A.050.
- B. The project includes sufficient on-site parking for the use, and traffic and transportation impacts have been mitigated to a level of insignificance.
- C. The property and existing structures are physically suited to accommodate the use.
- D. The use will be compatible with the character of the surrounding neighborhood, and the addition or continued maintenance of the use will not contribute to changing the residential character of the neighborhood, such as creating an overconcentration of residential care uses in the vicinity of the proposed use. In making this finding or sustaining such a finding, the Hearing Officer and/or City Council shall consider, as appropriate, the following factors:
 1. The proximity of the use location to schools, parks, other residential care facilities, outlets for alcoholic beverages and any other uses which could be affected by or affect the operation of the subject use ;
 2. The existence of substandard physical characteristics of the area in which the use is located such as lot widths, setbacks, narrow streets, limited available parking, short blocks, and other substandard characteristics which are pervasive in certain areas of the City of Newport Beach, including portions of West Newport, Lido Isle, Balboa Peninsula, Balboa Island, Corona Del Mar and Newport Heights, which portions were depicted on a map referred to as the Nonstandard Subdivision Area presented to the Newport Beach Planning Commission on September 20, 2007 and on file with the Director of Planning; and
 3. Whether, in light of the factors applied in subsections 20.91A.D.1 and D.2, it would be appropriate to apply the American Planning Association standard of permitting one or two such uses per block. Median block lengths in different areas of Newport Beach widely range from 300 feet in the Nonstandard Subdivision Areas to as much as 1,422 feet in standard subdivision areas. The average calculable block length in much of the standard subdivision areas is 711 feet and the calculable median block length is 617 feet. The Hearing Officer shall apply the American Planning Association standard in all areas of Newport Beach in a manner which eliminates the differences in block lengths. In making this determination, the hearing officer shall be guided by average or median block lengths in standard subdivisions of the City. The Hearing Officer shall retain the

discretion to apply any degree of separation of uses, which he or she deems appropriate in any given case. A copy of the American Planning Association standard is on file with the Director of Planning.

- E. The operation of buses and vans to transport residents to and from off-site activities does not generate vehicular traffic substantially greater than that normally generated by residential activities in the surrounding area.
- F. Arrangements for delivery of goods are made within the hours that are compatible with and will not adversely affect the peace and quiet of neighboring properties.
- G. Arrangements for commercial trash collection in excess of usual residential collection are made within hours that are compatible with and will not adversely affect the peace and quiet of neighboring properties.

In approving or conditionally approving an application for a use permit, the Hearing Officer may impose conditions which are suitable to assure compatibility of the proposed use with all other uses in the vicinity.”

Section 18. Paragraph “E” of Section 20.96.040 (Revocation of Discretionary Permits) of Chapter 20.96 (Enforcement) of Title 20 (Planning and Zoning) is hereby amended to read as follows:

“E. Required Findings. The person or body conducting the hearing shall revoke the permit upon making one or more of the following findings:

1. That the permit was issued on the basis of erroneous or misleading information or misrepresentation;
2. That the applicant has made a false or misleading statement of a material fact, or an omission of a material fact in the application for the permit.
3. That the terms of conditions of approval of the permit have been violated or that other laws or regulations have been violated;
4. That there has been a discontinuance of the exercise or the entitlement granted by the permit for one hundred eighty (180) consecutive days.”

Section 19. A new Chapter 20.98 entitled “Reasonable Accommodation” is hereby added to the Newport Beach Municipal Code to read as follows:

“Chapter 20.98

Reasonable Accommodation

Sections:

20.98.010	Purpose.
20.98.015	Review Authority.
20.98.020	Application for a Reasonable Accommodation.
20.98.025	Decision.
20.98.030	Expiration, Time Extension, Violation, Discontinuance, and Revocation.
20.98.035	Amendments.

20.98.010 Purpose

In accordance with federal and state fair housing laws, it is the purpose of this Chapter to provide reasonable accommodations in the City’s zoning and land use regulations, policies, and practices when needed to provide an individual with a disability an equal opportunity to use and enjoy a dwelling.

20.98.015 Review Authority

The Hearing Officer, as defined in Section 20.03.030, is hereby designated to approve, conditionally approve, or deny all applications for a reasonable accommodation. If the project for which the request for reasonable accommodation is made requires another discretionary permit or approval, then an applicant may request that the Hearing Officer hear the request for a reasonable accommodation at the same time as the other discretionary permit or approval. If the applicant does not request a simultaneous hearing, then the request for a reasonable accommodation shall not be heard until after a final administrative decision has been made regarding the other discretionary permit or approval.

20.98.020 Application for Reasonable Accommodation

A. Applicant. A request for reasonable accommodation may be made by any person with a disability, their representative, or a developer or provider of housing for individuals with a disability. A reasonable accommodation may be approved only for the benefit of one or more individuals with a disability.

B. Application. An application for a reasonable accommodation from a zoning regulation, policy, or practice shall be made on a form provided by the Planning Department. No fee shall be required for a request for reasonable accommodation, but if the project requires another discretionary permit, then the prescribed fee shall be paid for all other discretionary permits.

C. Other Discretionary Permits. If the project for which the request for reasonable accommodation is made requires another discretionary permit or approval, then the applicant may file the request for reasonable accommodation together with the application for the other discretionary permit or approval. The processing procedures of the discretionary permit shall govern the joint processing of both the reasonable accommodation and the discretionary permit.

D. Required Submittals. In addition to materials required under other applicable provisions of this Code, an application for reasonable accommodation shall include the following:

1. Documentation that the applicant is: (i) an individual with a disability; (ii) applying on behalf of one or more individuals with a disability; or (iii) a developer or provider of housing for one or more individuals with a disability.
2. The specific exception or modification to the Zoning Code provision, policy, or practices requested by the applicant.
3. Documentation that the specific exception or modification requested by the applicant is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy the residence.
4. Any other information that the Planning Director reasonably concludes is necessary to determine whether the findings required by Section 20.98.025.B can be made, so long as any request for information regarding the disability of the individuals benefited complies with Fair Housing -Law protections and the privacy rights of the individuals affected.

20.98.025 Decision

A. Hearing Officer Action. The Hearing Officer shall issue a written determination to approve, conditionally approve, or deny a request for reasonable accommodation, and the modification or revocation thereof in compliance with Section 20.98.025.B. The reasonable accommodation request shall be heard with, and subject to, the notice, review, approval, and appeal procedures prescribed for any other discretionary permit provided that, notwithstanding Section 20.95.060, the standard of review on appeal shall not be de novo and the City Council shall determine whether the findings made by the Hearing Officer are supported by substantial evidence presented during the evidentiary hearing. The City Council, acting as the appellate body, may sustain, reverse or modify the decision of the Hearing Officer or remand the matter for further consideration, which remand shall include specific issues to be considered or a direction for a de novo hearing.

B. Findings. The written decision to approve, conditionally approve, or deny a request for reasonable accommodation shall be based on the following findings, all of which are required for approval:

1. The requested accommodation is requested by or on the behalf of one or more individuals with a disability protected under the Fair Housing Laws.
2. The requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling.
3. The requested accommodation will not impose an undue financial or administrative burden on the City as “undue financial or administrative burden” is defined in Fair Housing Laws and interpretive case law.
4. The requested accommodation will not result in a fundamental alteration in the nature of the City’s zoning program, as “fundamental alteration” is defined in Fair Housing Laws and interpretive case law.
5. The requested accommodation will not, under the specific facts of the case, result in a direct threat to the health or safety of other individuals or substantial physical damage to the property of others.

In making these findings, the decision-maker may approve alternative reasonable accommodations which provide an equivalent level of benefit to the applicant.

- C. The City may consider, but is not limited to, the following factors in determining whether the requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling.
1. Whether the requested accommodation will affirmatively enhance the quality of life of one or more individuals with a disability.
 2. Whether the individual or individuals with a disability will be denied an equal opportunity to enjoy the housing type of their choice absent the accommodation.
 3. In the case of a residential care facility, whether the requested accommodation is necessary to make facilities of a similar nature or operation economically viable in light of the particularities of the relevant market and market participants.
 4. In the case of a residential care facility, whether the existing supply of facilities of a similar nature and operation in the community is sufficient to provide individuals with a disability an equal opportunity to live in a residential setting.
- D. The City may consider, but is not limited to, the following factors in determining whether the requested accommodation would require a fundamental alteration in the nature of the City’s zoning program.
1. Whether the requested accommodation would fundamentally alter the character of the neighborhood.
 2. Whether the accommodation would result in a substantial increase in traffic or insufficient parking.

3. Whether granting the requested accommodation would substantially undermine any express purpose of either the City's General Plan or an applicable Specific Plan.
 4. In the case of a residential care facility, whether the requested accommodation would create an institutionalized environment due to the number of and distance between facilities that are similar in nature or operation.
- E. Coastal Zone Properties. For housing located in the Coastal Zone, a request for reasonable accommodation under this section may be approved by the City if it is consistent with the requisite findings set forth in 20.98.025.B, with Chapter 3 of the California Coastal Act of 1976, and with the Interpretative Guidelines for Coastal Planning and Permits as established by the California Coastal Commission dated February 11, 1977, and any subsequent amendments, and the Local Coastal Program.
- F. Rules While Decision is Pending. While a request for reasonable accommodation is pending, all laws and regulations otherwise applicable to the property that is the subject of the request shall remain in full force and effect.
- G. Effective Date. No reasonable accommodation shall become effective until the decision to grant such accommodation shall have become final by reason of the expiration of time to make an appeal. In the event an appeal is filed, the reasonable accommodation shall not become effective unless and until a decision is made by the City Council on such appeal, under the provisions of Chapter 20.95.

20.98.030 Expiration, Time Extension, Violation, Discontinuance, and Revocation

- A. Expiration. Any reasonable accommodation approved in accordance with the terms of this Chapter shall expire within twenty-four (24) months from the effective date of approval or at an alternative time specified as a condition of approval unless:
1. A building permit has been issued and construction has commenced;
 2. A certificate of occupancy has been issued;
 3. The use is established; or
 4. A time extension has been granted.
- In cases where a coastal permit is required, the time period shall not begin until the effective date of approval of the coastal permit.
- B. Time Extension. The Hearing Officer may approve a time extension for a reasonable accommodation for good cause for a period or periods not to exceed three years. An application for a time extension shall be made in writing to the Planning Director no less than thirty (30) days or more than ninety (90) days prior to the expiration date.

- C. Notice. Notice of the Hearing Officer’s decision on a time extension shall be provided as specified in Section 20.91.030.C. All written decisions shall give notice of the right to appeal and to request reasonable accommodation in the appeals process as set forth in Paragraph D below.
- D. Appeal of Determination. A time extension for a reasonable accommodation shall be final unless appealed to the City Council within 14 calendar days of the date of mailing of the determination. An appeal shall be made in writing and shall be noticed and heard pursuant to the procedures established in Chapter 20.95 of this Code, as modified by Section 20.98.025.A.
- E. Violation of Terms. Any reasonable accommodation approved in accordance with the terms of this code may be revoked if any of the conditions or terms of such reasonable accommodation are violated, or if any law or ordinance is violated in connection therewith.
- F. Discontinuance. A reasonable accommodation shall lapse if the exercise of rights granted by it is discontinued for one hundred eighty (180) consecutive days. If the persons initially occupying a residence vacate, the reasonable accommodation shall remain in effect only if the Planning Director determines that (1) the modification is physically integrated into the residential structure and cannot easily be removed or altered to comply with the Code, and (2) the accommodation is necessary to give another disabled individual an equal opportunity to enjoy the dwelling. The Planning Director may request the applicant or his or her successor-in-interest to the property to provide documentation that subsequent occupants are persons with disabilities. Failure to provide such documentation within ten (10) days of the date of a request by the City shall constitute grounds for discontinuance by the City of a previously approved reasonable accommodation.
- G. Revocation. Procedures for revocation shall be as prescribed by Chapter 20.96: Enforcement.

20.98.035 Amendments

A request for changes in conditions of approval of a reasonable accommodation, or a change to plans that would affect a condition of approval shall be treated as a new application. The Planning Director may waive the requirement for a new application if the changes are minor, do not involve substantial alterations or addition to the plan or the conditions of approval, and are consistent with the intent of the original approval.”

Section 20. Paragraph “A” of Section 5.95.010 (definitions) of Chapter 5.95 (Short Term

Lodging Permit” of the Newport Beach Municipal Code is hereby amended to read as follows:

“A. "Lodging unit" or "unit" shall mean "dwelling unit" as that term is defined in Section 20.03.030 of this Code where the dwelling unit or residence, including the bedroom, kitchen and bath, is rented or leased to a person or group of persons living as a single housekeeping unit.”

Section 21. Ordinance No. 2007-16 passed by this Council on October 17, 2007 and each and every provision contained therein hereby are repealed, provided, however, that said repeal shall not affect or excuse any violation thereof occurring prior to the effective date of this ordinance.

Section 22. Severability.

If any provision or clause of this ordinance or the application thereof is held unconstitutional or otherwise invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions, clauses or applications of this ordinance which can be implemented without the invalid provision, clause or application, and it being hereby expressly hereby declared that this ordinance, and each section, subsection, sentence, clause, and phrase hereof would have been prepared, proposed, approved, adopted, and/or ratified irrespective of the fact that any one or more sections, subsections, sentences, clauses, and/or phrases be declared invalid or unconstitutional.

Section 23.

The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in the official newspaper within fifteen (15) 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 8th day of January, 2008 and adopted on the ____ day of January 2008, by the following vote, to-wit:

AYES, COUNCILMEMBERS _____

NOES, COUNCILMEMBERS _____

ABSENT, COUNCILMEMBERS _____

MAYOR _____

ATTEST:

CITY CLERK