

ORDINANCE NO. 2020-28

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
NEWPORT BEACH, CALIFORNIA, ADOPTING ZONING
CODE AMENDMENT NO. CA2019-004 TO AMEND TITLE
20 (PLANNING AND ZONING) OF THE CITY OF NEWPORT
BEACH MUNICIPAL CODE RELATED TO RESIDENTIAL
DESIGN STANDARDS (PA2019-070)**

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

WHEREAS, as a result of growing community concerns related to the loss of small residential cottages and the bulk and mass associated with new single-unit and two-unit dwelling developments in the City, the City Council held a study session on April 23, 2019;

WHEREAS, on May 14, 2019, the City Council initiated portions of the zoning code amendment under Resolution No. 2019-43 authorizing staff to investigate code revisions to reduce third floor mass and overall building bulk associated with single-unit and two-unit developments;

WHEREAS, on May 28, 2019, the City Council initiated the remaining portion of the zoning code amendment under Resolution No. 2019-45 authorizing staff to initiate code revisions to restrict single-unit and two-unit dwellings developed on lots zoned for RM (Multiple Residential) to the development standards applicable to the standards of the R-2 (Two-Unit Residential) Zoning District;

WHEREAS, the zoning code revisions attached hereto as Exhibit "A" would reduce the bulk and mass associated with residential development by clarifying the definition of gross floor area, regulating covered third floor decks, applying third floor and open volume standards currently applicable to R-1 (Single-Unit Residential) and R-2 (Two-Unit Residential) Zoning Districts to R-BI (Two-Unit Residential Balboa Island) with some exceptions, and applying certain third floor step backs to lots 25 feet wide or less in the R-2 (Two-Unit Residential) and single- and two-unit dwellings in the RM (Multiple Residential) Zoning Districts ("Zoning Code Amendment");

WHEREAS, on August 19, 2019, the Community Development Department staff hosted a community meeting attended by 64 interested members of the public, including design professionals in order to receive community feedback on the draft Zoning Code Amendment;

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

WHEREAS, on March 9, 2020, the Community Development Department staff hosted a second community meeting attended by 25 interested members of the public, including design professionals, in order to receive additional community feedback on the refinements to the draft Zoning Code Amendment;

WHEREAS, a telephonic public hearing was held by the Planning Commission on May 7, 2020, in the City Council Chambers located at 100 Civic Center Drive, Newport Beach, California, observing restrictions due to the Declaration of a State Emergency and Proclamation of Local Emergency related to COVID-19. A notice of time, place and purpose of the public hearing was given in accordance with the California Government Code Section 54950 *et seq.* ("Ralph M. Brown Act") and Chapter 20.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing;

WHEREAS, at the conclusion of the hearing, the Planning Commission recommended staff seek guidance from the California Department of Housing and Community Development ("HCD") as to whether the proposed Zoning Code Amendment complied with Housing Crisis Act of 2019 (Senate Bill 330), which generally prohibits a locality from enacting a development policy, standard or condition that reduces intensity, imposes moratoriums, enforces subjective design standards or implements any provision that limits approvals or caps population;

WHEREAS, at the request of the City, HCD reviewed the proposed Zoning Code Amendment, including the May 7, 2020 Planning Commission agenda materials for compliance with the Housing Crisis Act of 2019;

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

WHEREAS, a telephonic public hearing was held by the Planning Commission on September 17, 2020, in the City Council Chambers located at 100 Civic Center Drive, Newport Beach, California, observing restrictions due to the Declaration of a State Emergency and Proclamation of Local Emergency related to COVID-19. A notice of time, place and purpose of the public hearing was given in accordance with the Ralph M. Brown Act and Chapter 20.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing. At the conclusion of the hearing, the Planning Commission adopted Resolution No. PC2020-031 by a majority vote (5 ayes, 2 nays) recommending to the City Council approval of Zoning Code Amendment No. CA 2019-004; and

WHEREAS, a telephonic public hearing was held by the City Council on November 24, 2020, in the City Council Chambers located at 100 Civic Center Drive, Newport Beach, California, observing restrictions due to the Declaration of a State Emergency and Proclamation of Local Emergency related to COVID-19. A notice of time, place and purpose of the public hearing was given in accordance with the Ralph M. Brown Act and Chapter 20.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the City Council at this public hearing.

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

Section 1: The City Council does hereby approve the Zoning Code Amendment No. CA2019-004 attached hereto as Exhibit A and incorporated herein by reference.

Zoning Code Amendments are legislative acts. Neither Chapter 20.66 (Amendments) of the NBMC nor California Government Code Section 65850 *et seq.*, require specific findings for approval of zoning code amendments. Notwithstanding the foregoing, Zoning Code Amendment No. CA 2019-004 is consistent with the following land use policies of the General Plan, Title 20 (Planning and Zoning), City Council policy and state law:

General Plan Consistency

1. City of Newport Beach General Plan Land Use Policies LU 5.1.5 (Character and Quality of Single-Family Residential Dwellings) residential units be designed to sustain the high level of architectural design quality that characterizes Newport Beach's neighborhoods in consideration of articulation and modulation of building

masses and elevations to avoid appearance of “box-like” buildings; compatibility with neighborhood development in density, scale, and street facing elevations; architectural treatment of all elevations visible from public places; entries and windows on street facing elevations to visually “open” the house to the neighborhood; and orientation to desirable sunlight and views.

2. General Plan LU 5.1.9 (Character and Quality of Multi-Family Residential) requires multi-family dwellings be designed to convey high quality architectural character in accordance with a number of principles including treatment of the elevations of buildings facing public streets and pedestrian ways as the principal facades with respect to architectural treatment to achieve the highest level of urban design and neighborhood quality; architectural treatment of building elevations and modulation of mass to convey the character of separate living units or clusters of living units, avoiding the appearance of a singular building volume; modulate roof profiles to reduce the apparent scale of large structures and provide visual interest and variety and to incorporate usable and functional private open space for each unit.

Facts in Support

1. Applying additional step backs to covered third floor decks and additional openings are necessary in order to articulate the building masses and avoid the appearance of “box-like” buildings provide functional private open space for units.
2. Additionally, the Zoning Code Amendment will improve the architectural treatment visible from public places and improve compatibility of new development with the density, scale, and street elevations of existing communities; and modulate roof profiles to reduce the apparent scale of large structures and to provide visual interest and variety.

Zoning Code Consistency

1. In 2010, the City adopted revisions to Title 20 (Planning and Zoning) of the Newport Beach Municipal Code (“NBMC”) (“2010 Zoning Code Update”) in order to streamline the review process and simplify the development standards applicable to residential development, while maintaining allowable building envelopes and preserving the character of existing communities. The 2010 Zoning Code Update attempted to regulate third floor mass and bulk in Section 20.48.180 (Residential Development Standards and Design Criteria) of the NBMC through third floor area limits, third floor

step backs for enclosed floor area, and open volume area standards to increase building modulation.

2. While the 2010 Zoning Code Update included these third floor limits on unenclosed covered deck areas and unfinished attics in the R-1 (Single-Unit Residential) and R-2 (Two-Unit Residential) Zoning Districts, they were inadvertently excluded in the RM (Multiple Residential) and R-BI (Two-Unit Residential, Balboa Island) Zoning Districts, resulting in third floor and open volume area standards not being applied in the Balboa Island residential community or to single- and two-unit dwellings constructed on RM lots citywide.

Facts in Support

1. The Zoning Code Amendment would apply the third floor limits to R-BI (Two-Unit Residential, Balboa Island) and RM (Multiple Residential) Zoning Districts with some exceptions.
2. Clarification of the definition of gross floor area to include unfinished attics and covered decks is necessary in order to prevent the unpermitted conversions of unfinished attics and covered patios as living area as well as to reduce bulk/massing.
3. Application of these standards, including proposed revisions, to these communities and zoning districts is essential to preserve community character and uniformly regulate bulk and scale.
4. Application of front and rear third floor step back requirements to lots zoned R-2 (Two Unit Residential) that are 25 feet wide or less will improve building scale as viewed from streets and alleys.
5. The Zoning Code Amendment would create new objective standards that regulate bulk and articulation of new single-unit and two-unit dwellings and would not result in the reduction of allowable density on a lot.

Consistency with State Law

Housing Crisis Act of 2019 (Senate Bill 330) places certain limitations on local government's ability to adopt zoning ordinances applicable to housing. Specifically, Government Code section 66300(b)(1)(A) generally prohibits a locality from enacting a

development policy, standard or condition that reduces intensity, imposes moratoriums, enforces subjective design standards or implements any provision that limits approvals or caps population.

Facts in Support

1. The Zoning Code Amendment would not reduce the number of residential units allowed nor reduce the allowable floor area on any site, therefore, the Zoning Code Amendment would not result in a less intensive use as proscribed by Section 66300(b)(1)(A). Rather, the Zoning Code Amendment limits the configuration of the allowed floor area on a site, restricting the bulk and mass on the third floor of a single-family home or duplex. However, that floor area can be made up on the ground and second floors.
2. Additionally, as a result of the City's public outreach, the City made a number of refinements to the Zoning Code Amendment, as proposed, in order to address community concerns. In only one scenario, the third floor step back requirements resulted in a *de minimus* reduction in maximum buildable area to certain RM (Multiple Residential) lots. In order to address community concerns, the Zoning Code Amendment as proposed does not apply third floor area limits to those RM (Multiple Residential) lots.
3. Finally, on July 31, 2020, at the City's request, the California Department of Housing and Community Development issued a letter to the City finding that upon review of the Zoning Code Amendment, the revisions do not trigger the Housing Crisis Act "less intensive use" provisions of Section 66300(b)(1)(A). Under the Zoning Code Amendment, each lot will maintain the same allowed height limits, building setbacks, and floor area limits as previously entitled, and the application of third floor and open volume regulations would not preclude the ability for a homeowner to achieve the same development intensity.

Section 2: This ordinance will be effective thirty (30) calendar days after its adoption. Notwithstanding the foregoing, application of this ordinance will be tolled for the following residential projects that have applied for and/or been granted a permit, provided the residential project is consistent with prior discretionary approvals, the City's General Plan, and the NBMC in effect on the effective date of Ordinance:

1. An application for a coastal development permit, variance, modification permit, or site development permit for a residential project deemed complete in accordance with Section 20.50.060 as of the effective date of this ordinance.
2. An application for any building permit or zoning clearance for a residential project submitted prior to February 1, 2021.
3. An application for a building permit or zoning clearance for a residential project that has been granted a coastal development permit, variance, modification permit, or site development permit for a residential project that has not expired.

Section 3: The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

Section 4: If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 5: The City Council finds the introduction and adoption of this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. The proposed action is also exempt pursuant to CEQA Guidelines Section 15061(b)(3), the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The Amendment itself does not authorize development that would directly result in physical change to the environment.

Section 6: Except as expressly modified in this ordinance, all other sections, subsections, terms, clauses and phrases set forth in the Newport Beach Municipal Code shall remain unchanged and shall be in full force and effect.

Section 7: The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the ordinance, or a summary thereof, to be published pursuant to City Charter Section 414.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 24th day of November, 2020, and adopted on the 8th day of December, 2020, by the following vote, to-wit:

AYES: _____

NAYS: _____

ABSENT: _____

RECUSED: _____

WILL O'NEILL, MAYOR

ATTEST:

LEILANI I. BROWN, CITY CLERK

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



AARON C. HARP, CITY ATTORNEY

Attachment(s): Exhibit A - Zoning Code Amendment No. CA2019-004

Exhibit A

Zoning Code Amendment No. CA2019-004

Section 1. Table 2-3 of Section 20.18.020 (Residential Zoning Districts Land Uses and Permit Regulations) of Chapter 20.18 (Residential Zoning Districts (R-A, R-1, R-BI, R-2, RM, RMD)) of Title 20 (Planning and Zoning) of the NBMC, revising the “Open Space” row and adding a “Residential Development Standards” row shall be amended as follows:

TABLE 2-3

DEVELOPMENT STANDARDS FOR TWO-UNIT AND MULTI-UNIT RESIDENTIAL ZONING DISTRICTS

Development Feature	RM	RMD	RM-6,000	Additional Requirements
Open Space	Minimum required open space (applicable to 3 or more units).			
	Common: 75 square feet/unit Minimum dimension shall be 15 feet. Private: 5% of the gross floor area for each unit. Minimum dimension shall be 6 feet.	N/A	Common: 75 square feet/unit Minimum dimension shall be 15 feet. Private: 5% of the gross floor area for each unit. Minimum dimension shall be 6 feet.	Single-unit and two-unit dwellings developed on a single site shall comply with Open Volume Area standards of Section <u>20.48.180</u> (Residential Development Standards and Design Criteria). The minimum dimension is for length and width.
Residential Development Standards	See Section <u>20.48.180</u> .			

Section 2: Subsection A of Section 20.48.180 (Residential Development Standards and Design Criteria) of Chapter 20.48 (Standards for Specific Land Uses) of Title 20 (Planning and Zoning) of the NBMC, shall be amended as follows:

20.48.180 Residential Development Standards and Design Criteria.

A. Development Standards.

1. **Applicability.** The development standards in this subsection shall apply to all R-1, R-BI, R-2, and RM Zoning Districts Citywide, except as provided below:

a. **Exceptions.** This subsection shall not apply to:

- i. R-1-6,000, R-1-7,200, R-1-10,000, RMD, and RM-6000 Zoning Districts;
- ii. Planned community zoning districts; or
- iii. Residential developments consisting of three or more units on a lot in the RM Zoning District.

b. **Limited Application.** This subsection shall be limited in its application below:

- i. For lots twenty-five (25) feet wide or less in the R-2 Zoning District, only subsection (A)(2)(c) shall apply.
- ii. For residential developments consisting of one or two units on a lot in the RM Zoning District, only subsections (A)(2)(c) and (A)(3) shall apply.

2. Third Floor Limitations.

a. **Allowed Floor Area.** The maximum gross floor area that may be located on a third floor shall not be greater than either of the following:

- i. Fifteen (15) percent of the total buildable area for lots wider than thirty (30) feet; or
- ii. Twenty (20) percent of the total buildable area for lots thirty (30) feet wide or less.

On sloping lots, if the slope of the grade on which the structure is located is greater than five percent, subject to Section 20.30.050(B)(3), the Director shall determine which story is the third story for the purpose of implementing this requirement.

For example, on a thirty (30) foot wide lot, if the total buildable area of the lot is two thousand five hundred fifty (2,550) square feet, then the maximum square footage that may be located on the third floor is five hundred ten (510) square feet (two thousand five hundred fifty (2,550) sq. ft. x twenty percent (20%) = five hundred ten (510) sq. ft.).

b. Allowed Combined Floor Area and Covered Deck Area. The combined total maximum gross floor area and covered deck area that may be located on a third floor shall not be greater than fifty (50) percent of the total buildable area.

c. Location of Third Floor Structure. Enclosed floor area and covered deck area located on the third floor shall be set back a minimum of fifteen (15) feet from the front and rear setback lines and for lots thirty (30) feet in width or greater a minimum of two feet from each side setback line, including bay windows.

3. Open Volume Area Required.

a. Calculation. Open volume area shall be provided in addition to the required setback areas and shall be a minimum area equal to fifteen (15) percent of the buildable area of the lot.

b. Location. The open volume area may be provided anywhere on the lot within the buildable area and below twenty-four (24) feet from grade. The open air space volume may be provided on any level or combination of levels and may extend across the entire structure or any portion thereof.

c. Minimum Dimensions. The open volume area shall meet the following standards:

- i. Have a minimum dimension of at least five feet in depth from the wall plane on which it is located and a minimum clear vertical dimension of at least seven and one-half feet; and
- ii. Be open to the outdoors on at least one side.

Section 3: The definition of “Floor Area, Gross” of Section 20.70.020 (Definitions of Specialized Terms and Phrases) of Chapter 20.70 (Definitions) of Title 20 (Planning and Zoning) of the NBMC, shall be amended as follows:

Floor Area, Gross.

1. Single-Unit and Two-Unit Dwellings.

a. For single-unit and two-unit dwellings, the following areas shall be included in calculations of gross floor area:

- i. The area within and including the surrounding exterior walls;
- ii. Covered decks, balconies or patios above the first floor;
- iii. Any interior portion of a structure that is accessible and that measures more than six feet from floor to ceiling; and
- iv. Covered parking spaces which are open only on one side.

b. The following areas shall be excluded:

- i. Stairwells and elevator shafts above the first level; and
- ii. Covered decks, balconies or patios open on at least two sides, with the exception of required safety railings and minimal structural supports. Railings shall be constructed of either transparent material (except for supports) or opaque material (e.g., decorative grillwork, wrought iron, latticework, or similar open materials) so that at least forty (40) percent of the railing is open.

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

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

- i. The area within surrounding exterior walls; and
 - ii. Any interior portion of a structure that is accessible and that measures more than four feet from floor to ceiling.
- b. The following areas shall be excluded:
- i. Stairwells and elevator shafts above the first level;
 - ii. Outdoor dining areas associated with an eating and drinking establishment, and
 - iii. Parking structures associated with an allowed use within the same development.

PROPOSED