

# ATTACHMENT A

## Title 1

### GENERAL PROVISIONS

#### Chapters:

- 1.01 Adoption of Code
- 1.04 Code Enforcement
- 1.05 Administrative Code Enforcement Program
- 1.06 Claims and Demands Against the City
- 1.07 Insurance and Indemnification Requirements of the City for Third Party Challenges
- 1.08 Rules of Construction
- 1.10 Judicial Review of City Decisions
- 1.12 Citations and Warrants
- 1.16 Official Seal, Flag and Colors
- 1.20 Unclaimed Property
- 1.25 Municipal Election Campaign Contribution and Expenditure Control
- 1.26 Electronic Filing of Campaign Disclosure Statements
- 1.28 Lobbyist Registration and Reporting
- 1.30 Reserved
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## Chapter 1.01

### ADOPTION OF CODE

#### 1.01.020 Codification Authority.

This Code consists of all regulatory, penal and certain administrative ordinances of the City of Newport Beach, codified pursuant to the authority of ~~Section 415 of the~~ City Charter Section 415 of the City of Newport Beach and Cal. Gov. Code Sections 50022.1 through 50022.10 ~~of the California Government Code.~~

#### 1.01.030 Filing of Copies.

~~A copy of this Code shall be maintained in the Office of the City Clerk. Accordance with the provisions of Sections 50022.6 of the California Government Code, not less than three~~ One ~~copies of each primary code and secondary code, as defined in Cal. Gov. Code Section 50022.1, which is adopted by reference, shall be filed in the Office of the City Clerk in accordance with Cal. Gov. Code Section 50022.6. of this Code shall be filed for use and examination by the public in the office of the City Clerk. Additional copies shall be prepared in loose-leaf form and shall be mounted to withstand heavy usage in such binders as the City shall prescribe. Copies thereof shall be distributed to the departments and divisions of the City as the City Manager shall prescribe~~

#### 1.01.040 Amendments - Notations.

Upon the adoption of any amendment or addition to this Code, or upon the repeal of any of its provisions, the City Clerk shall certify thereto and shall make an appropriate notation in the bound volumes of ~~this~~ ise Code of the taking of such action, noting thereon the number of the ordinances pursuant to which such action is taken.

Duly certified copies of every ordinance making changes ~~in such to~~ thise Code shall be filed in the Office of the City Clerk in books for such purpose, duly indexed for ready reference.

~~The City Clerk shall prepare printed copies of such changes in the Code for insertion in the loose-leaf copies thereof and for distribution in accordance with the instructions of the City Manager.~~

Every section of ~~this~~ ise Code so changed shall have printed thereon a notation of the ordinance number pursuant to which such change is adopted.

~~At least twice yearly, the City Clerk shall cause the loose-leaf pages of the Code in which changes have been made, to be reprinted, including the notation as to the ordinance number pursuant to which such change is adopted, in order that at least twice yearly the loose-leaf copies of such Code prepared for the use and convenience of the officers and employees of the City and the general public, may be brought up to date~~

**Chapter 1.04**  
**CODE ENFORCEMENT**

**Sections:**

**1.04.010 Violations, Penalties and Enforcement.**

**1.04.020 Public Nuisances.**

~~**1.04.040 Violation of Administrative Provisions.**~~

**1.04.050 Parking Violation—Infraction.**

**1.04.060 Safety Enhancement Zone.**

**1.04.010 Violations, Penalties and Enforcement.**

The provisions of this section represent the means and methods by which the City of Newport Beach intends to secure compliance with the provisions of this Code. The City may use any or all of the enforcement options in securing compliance with the provisions of this Code and multiple enforcement options may be used to achieve compliance with respect to persons who commit continuing violations. A separate offense shall be deemed to have been committed whenever: (a) a person repeats the act that constitutes the violation; or (b) any condition or circumstance that constitutes a violation is allowed to exist for more than twenty-four (24) hours.

A. Infraction. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of this Code may be prosecuted for an infraction. Written citations for infractions may be issued by police officers or non-safety employees designated in Section 1.12.020. ~~Except where a specific fine for an infraction is provided for in this Code, or as provided in subsection~~~~Except as provided in subsection~~ (B) ~~of this section~~, any person convicted of an infraction under the provisions of this Code shall be punishable either by fines as ~~is~~ specified in the currently adopted Uniform Infraction Bail Schedule used by the Orange County Superior Courts, or where no fine is specified therein by:

1. A fine not exceeding one hundred dollars (\$100.00) for a first violation;
2. A fine not exceeding two hundred dollars (\$200.00) for a second violation of the same ordinance within one year from the date of the prior violation; and
3. A fine not exceeding five hundred dollars (\$500.00) for each additional violation of the same ordinance within one year from the date of the prior violation.

B. Safety Enhancement Zone. For any violation of this Newport Beach Municipal Code that is committed within an area that has been designated by the City Council as a Safety Enhancement Zone pursuant to Section 1.04.060, and during the time that designation is effective, the fine shall be treble the amount otherwise prescribed or where the violation is considered an infraction and no fine is specified ~~by~~ the fine shall be as follows:

1. A fine not exceeding three hundred dollars (\$300.00) for a first violation;
2. A fine not exceeding six hundred dollars (\$600.00) for a second violation of the same ordinance within one year from the date of the prior violation;
3. A fine not exceeding one thousand dollars (\$1,000.00) for each additional violation of the same ordinance within one year from the date of the prior violation.

C. Misdemeanor. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of this Code may be prosecuted for a misdemeanor. Written citations for misdemeanors may be issued by police officers or by non-safety employees designated by Section 1.12.020. Any person convicted of a misdemeanor under the provisions of this Code shall be punished by a fine not exceeding one thousand dollars (\$1,000.00) or imprisonment for a term not exceeding six (6) months, or by both such fine and imprisonment.

D. Civil Action. The City Attorney, ~~by and at the request of the City Council,~~ may institute an action in any court of competent jurisdiction to restrain, enjoin or abate the condition(s) found to be in violation of the provisions of this Code, as provided by law. In any civil action, in addition to all other remedies, costs, fines and fees, the court may impose civil penalties payable to the City in an amount not to exceed one thousand dollars (\$1,000.00) per violation for each day the violation is found to exist against any person who commits, continues, operates, allows or maintains any violation of any provision of this Code. In determining the amount of the civil penalties to be assessed on a daily rate for each violation, the court may consider some or all of the following factors:

1. The duration of the violation;
2. The frequency of recurrence of the violation;
3. The seriousness of the violation;
4. The history of the violation;
5. The person's conduct after issuance of any notice;
7. The economic impact of the penalty;
8. The impact of the violation upon the community; and
9. Any other factors that justice may require.

E. Administrative Code Enforcement Program. Upon a finding by the City official vested with the authority to enforce the various provisions of this Code that a violation exists, ~~he or she~~ the City official may take any action authorized under the provisions of Chapter 1.05.

**~~1.04.040 Violation of Administrative Provisions.~~**

~~The violation of any administrative provisions of this Code by any officer or employee of the City may be deemed a failure to perform the duties under, or to observe the rules and regulations of the department, office or board within the meaning of the Civil Service Ordinance and rules and regulations of the City.~~

**1.04.050 Parking Violation—Infraction.**

Any person violating any provision of Sections 12.12.010 ~~or 12.12.040~~, Chapter 12.40, Chapter 12.44, except Sections 12.44.130 and 12.44.140, or Chapter 12.48 of this Code shall be guilty of an infraction.

#### **1.04.060 Safety Enhancement Zone.**

A. Designation Process. The City Council may by ordinance, or by resolution upon a finding that there is a need to take immediate action to protect the public health, safety and welfare, designate a specific geographical area as a "Safety Enhancement Zone" and specify the date and/or time that the designation is effective upon a finding that the geographical area is subject to unique conditions and circumstances during a specific period of time that create the potential for a significant threat to public health and safety and that the threat would be reduced by enhanced penalties for violations of provisions of ~~this Newport Beach Municipal Code~~ and increased responsibilities on the part of residents and occupants in the area. The ordinance or resolution establishing a Safety Enhancement Zone shall contain the following provisions: (a) a description of the geographical area comprising the Safety Enhancement Zone; (b) the date and time during which the Safety Enhancement Zone designation is applicable to the geographical area; (c) the factual basis for the designation; (d) the manner in which general notice of the Safety Enhancement Zone and the penalties for violations shall be given; and (e) the manner in which specific notice of additional duties, responsibilities and/or restrictions shall be given to owners or occupants of property affected by the Safety Enhancement Zone designation.

B. West Newport Safety Enhancement Zone. The City Council designates as a Safety Enhancement Zone the area bounded by the Pacific Ocean on the south, 32nd Street and Newport Boulevard on the east, Pacific Coast Highway on the north and 54th Street on the west. This designation is effective from 12:01 a.m. on July 4th to 3:00 a.m. on July 5th during each year that the designation is in effect. The factual basis for this designation is found in Section 1 of ~~this Ordinance 2003-5~~. Notice of the Safety Enhancement Zone designation shall be posted on or before 6:00 p.m. on July 3rd at no less than three (3) locations along Pacific Coast Highway, four (4) locations along Newport Boulevard/32nd Street, four (4) locations along Oceanfront Walk/Seashore Drive and two (2) locations along 54th Street. In addition, letters advising of the Safety Enhancement Zone designation and the fines, penalties and provisions affected by the designation shall be sent, on or before June 15th to each address and each owner of property (ownership determined on the basis of the most recent property tax information available to the City) within the Safety Enhancement Zone.

## Chapter 1.05

### ADMINISTRATIVE CODE ENFORCEMENT PROGRAM

#### 1.05.005 Legislative Findings and Statement of Purpose.

A. The City Council finds that the enforcement of ~~the Newport Beach Municipal Code (the “Code”)~~ throughout the City is an important public service and is vital to the protection of the public’s health, safety and quality of life.

C. The procedures established in this chapter are in addition to criminal, civil or other legal remedies that may be available to the City to enforce violations of ~~this~~ Code or applicable State ~~laws~~Codes.

E. The City Council finds that the adoption and implementation of this administrative code enforcement program is within the power and authority of the City ~~of Newport Beach~~ as a charter city and will achieve the following goals:

1. To promote and protect the public health, safety and welfare of the citizens of the City ~~of Newport Beach~~;
2. To help ensure compliance with ~~this~~ Code and State ~~laws~~Codes, ordinances and regulations in a timely and efficient manner;
3. To provide for an administrative process to appeal the imposition of administrative citations, fines, penalties and costs that will fully comport with due process and provide those alleged to be in violation of ~~this~~ Code with the right to a fair hearing without the need for legal counsel;
4. To provide a method to hold parties responsible when they fail or refuse to comply with the provisions of ~~this~~ Code, ordinances, agreements or terms and conditions on entitlements in the City ~~of Newport Beach~~; and
5. To reduce the burden on the judicial system and minimize the time and expense of defending the alleged violation on the part of the responsible person.

#### 1.05.020 Authority and Administrative Citation Fines.

A. Any responsible person violating any provision of this Code may be issued an administrative citation by an Enforcement Officer as provided in this chapter. A violation of this Code includes, but is not limited to, all violations of ~~this Newport Beach Municipal Code~~, any codes adopted by the City Council (i.e., Building Code, Fire Code, etc.), and the failure to comply with any condition imposed by any entitlement, permit, agreement or environmental document issued or approved pursuant to this Code or State law.

F. In the case of administrative citations issued for violations of Chapter 5.28 ~~(Live Entertainment Establishments)~~; Chapter 5.32 ~~(Cafe Dances)~~; Chapter 5.95 ~~(Short Term Lodging Permit)~~; Section 6.04.100 (Prohibited Material); Section 6.04.110 (Accumulation Limitation); Section 10.50.020(H) ~~(violation of terms or conditions of a use permit issued by the City)~~; Section 12.63.030 (Franchise to Operate Required); Section 12.63.120 (Recycling Requirement); Section 12.63.130 (City Inspection Authority); Section 14.36.030 resulting in bay or beach closure ~~(Illicit Connections and Prohibited Discharges)~~; Cal.ifornia Fire Code Section 107.5 (as adopted by Section 9.04.010); Cal.ifornia Fire Code Section 107.5.1 (as adopted by Section 9.04.010); Section 17.45.030 [Waste and Refuse]; or Chapter 17.10

{Marine Activities Permit}}, administrative fines shall be assessed in the following amounts when authorized by the City Manager ~~or his or her designee~~:

1. A fine not exceeding one thousand dollars (\$1,000.00) for a first violation;
2. A fine not exceeding two thousand dollars (\$2,000.00) for a second violation of the same ordinance or permit within one year from the date of the prior violation; and
3. A fine not exceeding three thousand dollars (\$3,000.00) for a third violation, or any subsequent violation, within one year from the date of the prior violations.

#### **1.05.050 Administrative Costs Recovery.**

G. Any responsible person aggrieved by the Hearing Officer's decision under this section may obtain judicial review of that decision by filing a petition for review with the Orange County Superior Court in accordance with Cal. Code Civ. Proc. Section 1094.5 ~~the timelines and provisions set forth in California Code of Civil Procedure Section 1094.6.~~

#### **1.05.060 Appeal of Administrative Citation.**

A. Any recipient of an administrative citation may contest that there was a violation of thise Code or that he or she is the responsible person by completing a request for hearing form and returning it to the City's Finance Department within twenty-one (21) ~~calendar~~ days from the date of service of the administrative citation, together with an advance deposit of the fine or a notice that a request for an advance deposit hardship waiver pursuant to subsection (B) of this section has been filed. Any administrative citation fine which has been deposited shall be refunded if it is determined, after a hearing, that the person charged in the administrative citation was not responsible for the violation(s) or that there was no violation(s) as charged in the administrative citation.

B. Any responsible person who requests a hearing to contest that there was a violation of thise Code or that he or she is the responsible person for the violation and who is financially unable to make the advance deposit of the fine as required may file a request for an advance deposit hardship waiver within fifteen (15) ~~calendar~~ days from the date of service of the citation. The failure of any person to timely file a written request for an advance deposit hardship waiver with the City's Finance Director, ~~or his or her designee~~, shall be deemed a failure to exhaust the person's administrative remedies with regard to the advance deposit hardship waiver.

1. The request for an advance deposit hardship waiver shall be in writing and describe with particularity the responsible person's actual financial inability demonstrating why all or a part of the fine cannot be paid. Further, the written request for an advance deposit hardship waiver must be accompanied by a sworn affidavit, together with any supporting documents or materials, demonstrating to the satisfaction of the City's Finance Director, ~~or his or her designee~~, the responsible person's actual financial inability that necessitates an advance deposit hardship waiver. The City's Finance Director, ~~or his or her designee~~, is entitled to request additional documentation and information from the responsible person in order to fully assess the waiver request. The failure of any responsible person to timely submit all requested additional documentation and information to the City's Finance Director, ~~or his or her designee~~, as requested

shall be deemed a failure to exhaust the responsible person's administrative remedies with regard to the advance deposit hardship waiver.

2. Once a complete written request for an advance deposit hardship waiver is filed with the City's Finance Director, ~~or his or her designee~~, the requirement of depositing the full amount of the fine shall be stayed until the City's Finance Director, ~~or his or her designee~~, determines whether to grant, grant in part, or deny the request. The written determination of the City's Finance Director, ~~or his or her designee~~, shall be served on the person requesting the advance deposit hardship waiver as provided for in this Code. The written determination of the City's Finance Director, ~~or his or her designee~~, shall be final.

3. If the City's Finance Director, ~~or his or her designee~~, grants the advance deposit hardship waiver, the responsible person shall not be required to deposit the fine in advance of the hearing.

4. If the City's Finance Director, ~~or his or her designee~~, grants in part the advance deposit hardship waiver, the responsible person shall remit that amount of the fine as a deposit that the City's Finance Director, ~~or his or her designee~~, determines the responsible person has the ability to pay within ten (10) ~~calendar~~ days of that decision or twenty-one (21) ~~calendar~~ days from service of the administrative citation, whichever is later.

5. If the City's Finance Director, ~~or his or her designee~~, denies the request for an advance deposit hardship waiver, the responsible person shall remit the full amount of the fine as a deposit to the City within ten (10) ~~calendar~~ days of that decision or twenty-one (21) ~~calendar~~ days from service of the administrative citation, whichever is later.

6. The granting, or granting in part, of any request for an advance deposit hardship waiver shall not excuse or discharge any continuation or repeated occurrence of any violation of this Code, nor shall it bar further enforcement action by the City.

7. The granting, or granting in part, of any request for an advance deposit hardship waiver shall not excuse the responsible person from paying the full amount of the fine if the administrative citation is upheld by the hearing officer following an administrative hearing.

#### **1.05.065 Administrative Penalties.**

K. Within forty-five (45) days of the completion of the administrative hearing on an administrative penalties notice and order, the Hearing Officer shall issue an administrative penalties enforcement order. The administrative penalties enforcement order shall become final as to the City and take effect on the date it is signed by the Hearing Officer. The administrative penalties enforcement order shall be subject to judicial review pursuant to Cal. Code Civ. Proc. Section 1094.5.

O. Any responsible person aggrieved by an administrative penalties enforcement order may obtain judicial review of that order by filing a petition for review with the Orange County Superior Court in accordance with the timelines and provisions set forth in California Code of Civil Procedure Cal. Code. Civ. Proc. Section 1094.6.

**1.05.110 Right to Judicial Review of Hearing Officer’s Decision on Administrative Citation.**

Any person aggrieved by an administrative decision of a Hearing Officer on an administrative citation may obtain review of the administrative decision by filing a petition for review with the Orange County Superior Court in accordance with the timelines and provisions as set forth in [California Government Code Cal. Gov. Code](#) Section 53069.4.

## Chapter 1.06

### CLAIMS AND DEMANDS AGAINST THE CITY

#### Sections:

**1.06.010 Purpose and Intent.**

**1.06.020 Claims Against City.**

**1.06.030 Application; Effective Date.**

~~**1.06.040 Severability.**~~

#### **1.06.010 Purpose and Intent.**

The Government Claims Act (~~Cal. Government~~ Code Section 810 et seq.) provides that no suit for money or damages may be brought against the City unless a claim has been timely presented to the City. The general claim procedures are governed by the provisions of Cal. Gov. Code, Title 1, Division 3.6, Part 3~~Chapter 1 of Part 3 of Division 3.6 of the Government Code of the State~~, commencing with Section 900 ~~and following~~, which also provide that local ordinances shall govern those claims which are excluded by the Act and which are not expressly governed by another State statute.

The time periods and procedures for presenting a claim set forth in this chapter are intended to apply to all claims excluded by the Act or, not expressly governed by statute, including claims which currently exist, whether or not they have been presented to the City. This chapter is not intended to extinguish existing claims without providing a reasonable period for the presentation of those claims.

#### **1.06.020 Claims Against City.**

A. All claims and demands against the City for damages or money, which are not governed by any other statute or regulation expressly related thereto, including those claims exempted by ~~Cal. Government~~ Code Section 905, shall be presented within the time and in the manner prescribed by Cal. Gov. Code, Title 1, Division 3.6, Part 3~~of Division 3.6 of Title 1~~ (Section 900 et seq.)~~of the Government Code~~.

B. All claims or demands against the City shall be made in writing and filed with the City Clerk. All claims shall be signed by the claimant or by ~~his or her~~Claimant's ~~G~~uardian, conservator, executor or administrator. No claim may be filed on behalf of a class of persons unless signed by the representative claimant along with sufficient information to ascertain the class itself~~every member of that class as required by this subsection~~.

C. In accordance with ~~Cal. Government~~ Code Sections 935 (b) and 945.4, all claims shall be presented as provided in this section prior to the filing of suit on such claims.

### **1.06.030 Application; Effective Date.**

As of the effective date of the ordinance codified in this chapter, the provisions of this chapter shall be applicable to any claim described in this chapter which is not otherwise time-barred. If the application of the time periods established by this chapter would extinguish an existing claim which is not otherwise time-barred, then the date by which that claim must be presented to the City shall be the sooner of:

- A. The date any applicable claims period would have expired; or
- B. Six (6) months after the effective date of the ordinance codified in this chapter for claims described in the first sentence of ~~Cal. Gov. Government~~ Code Section 911.2 or one (1) year after the effective date of the ordinance codified in this chapter for claims described in the second sentence of that section. Nothing in this chapter shall be construed to extend the time for the presentation of any claim which time was established by statute, ordinance, or other law in effect, prior to the adoption of the ordinance codified in this chapter.

### **~~1.06.040 Severability.~~**

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

## Chapter 1.07

### INSURANCE AND INDEMNIFICATION REQUIREMENTS OF THE CITY FOR THIRD PARTY CHALLENGES

#### Sections:

**1.07.010 Purpose and Findings.**

**1.07.020 Definitions.**

**1.07.025 Insurance.**

**1.07.030 Indemnification Required.**

**1.07.040 Conditions.**

**1.07.050 Indemnification—Payment on Demand.**

**1.07.010 Purpose and Findings.**

A. The City Council finds that the issuance of licenses, permits and other approvals pursuant to the provisions of this Code creates a risk to the City that is associated with a result of issuing those licenses, permits and approvals, which are primarily for the benefit of the applicant, licensee or permittee. This is especially true for projects for which discretionary City approvals are necessary and for which ~~project proponents make application to the City may~~, in addition to other legal requirements, ~~require~~ environmental review by the City is required pursuant to ~~the California Environmental Quality Act (“CEQA”)~~ because, among other things, substantial City time and effort are expended in complying with CEQA’s requirements and other legal requirements necessary before granting such approvals.

B. Judicial challenges arising from or related to the issuance of licenses, permits and other approvals, especially to the City’s CEQA determinations for projects requiring discretionary approvals, are costly and time consuming. In addition, project opponents often seek an award of attorneys’ fees or costs in such challenges. As project applicants, licensees, and permittees are the primary beneficiaries of such approvals, it is appropriate that such applicants, licensees and permittees should bear the expense of defending against any such judicial challenge, and bear the responsibility for any costs, attorneys’ fees, and damages which may be awarded to a successful challenger.

**1.07.020 Definitions.**

In this chapter the following words or phrases shall have the following meanings:

“Application” means an initial written request required by the City which commences the City’s processing of the project that requires a discretionary approval and approval of a CEQA document.

“CEQA” means the California Environmental Quality ~~Control~~ Act and the State CEQA Guidelines (Cal. Pub. Resources Code Section 21000 et seq. and 14 CCR Section 15000 et seq.) and any action taken pursuant thereto including, but not limited to, an environmental impact report, subsequent environmental impact report, supplemental environmental impact report, mitigated negative declaration, negative declaration,

addendum to an environmental impact report or negative declaration, statutory exemption, categorical exemption, or a determination that no CEQA document is required.

~~“City” means the City of Newport Beach, its City Council, Boards and commissions, officials, officers, attorneys, employees, agents, and zoning administrator.~~

“Project” means any amendment, modification permit, use permit, variance or other City issued permit that requires discretionary approval in accordance with this Code.

#### **1.07.025 Insurance.**

For any license, permit or approval issued pursuant to this Code, the City may add as a condition of approval a requirement that the applicant, licensee, or permittee obtain insurance that will substantially protect the City from liability. The Risk Manager shall have the authority to determine all insurance requirements including, but not limited to, certificates, language, type, amount, endorsements, and waivers of subrogation. Insurance required by the Risk Manager or as otherwise provided for under the provisions of this Code shall be governed by the following requirements:

A. Each certificate of insurance shall require approval by the Risk Manager;

B. Insurance furnished must contain a condition that it cannot be modified or cancelled without at least thirty (30) days’ written notice to the City;

C. All insurers shall be authorized by the California Insurance Commissioner to transact the business of insurance in the State of California, with an assigned policyholders’ rating and financial size category class determined to be appropriate by the Risk Manager; and

D. Any other requirements the Risk Manager deems necessary to protect the interests of the City.

The City Manager or Risk Manager may waive any of the requirements set forth in this section if they determine the requirement is unnecessary to protect the interests of the City.

#### **1.07.030 Indemnification Required.**

A. For any license, permit or approval issued pursuant to this Code, the City may add as a condition of approval a requirement that the licensee, permittee, or applicant indemnify, defend, indemnify, release and hold harmless the City, its City Council, boards and commissions, officers, agents, volunteers, and employees, from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney’s fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to the license, permit, or approval. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys’ fees, and other expenses incurred in connection with such claim, action, or proceeding whether incurred by licensee, permittee, or applicant, the City, and/or the parties initiating or bringing such proceeding.

B. Any applicant for a discretionary permit under any provision of this Code which also requires a determination under CEQA shall be provided notice of the provisions of this chapter. Any project approval may, in the discretion of the approving body, be conditioned to indemnify the City according to the provisions of this chapter, as follows:

A.—Defend, indemnify, release and hold harmless the City, its City Council, boards and commissions, zoning administrator, officers, agents, volunteers, and employees from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney’s fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to the project, the project’s approval based on the City’s CEQA determination and/or the City’s failure to comply with the requirements of any federal, Sstate, or local laws, including, but not limited to, CEQA, General Plan and zoning requirements. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys’ fees, and other expenses incurred in connection with such claim, action, or proceeding whether incurred by the applicant, the City, and/or the parties initiating or bringing such proceeding.

**1.07.040 Conditions.**

Any indemnification required under the provisions of this chapter shall be subject to the following:

- A1. The City shall promptly notify the applicant, licensee or permittee of any claim, action, or proceeding related to any license, permit or approval or that is brought to attack, set aside, void or annul a discretionary project approval, and/or approval of a related CEQA document;
- B2. The City shall retain the right to participate in the defense of the claim, action or proceeding including selection of defense counsel;
- C3. The applicant, licensee or permittee shall not be required to pay or perform any settlement unless the settlement is approved by the applicant, licensee or permittee; and
- D4. The applicant, licensee or permittee shall indemnify the City for all of City’s costs, fees, and damages which City incurs in enforcing the indemnification agreement.

**1.07.050 Indemnification—Payment on Demand.**

The applicant, licensee or permittee shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this chapter.

## Chapter 1.08

### RULES OF CONSTRUCTION

#### Sections:

- 1.08.010 Effect of General Provisions.
- 1.08.020 Effect of Title, Chapter and Section Headings.
- 1.08.030 Territorial Limitation.
- 1.08.040 Unlawful Acts or Omissions Inclusive.
- 1.08.050 Authority of Designated Officials ~~seputies~~.
- 1.08.055 Hearing Officer.
- 1.08.060 Writing Defined.
- 1.08.070 Extent of Reference.
- 1.08.080 Service of Notices.
- 1.08.090 Proof of Service of Notice.
- 1.08.100 Posting of Public Notices.
- 1.08.105 Consumer Price Index Adjustments.
- 1.08.110 Interpretive Provisions.
- 1.08.120 Definitions.

## Chapter 1.08

### RULES OF CONSTRUCTION

#### **1.08.050 Authority of Designated Officials~~puties~~.**

~~A. Unless a person is specifically prohibited from doing so by the City Charter, State or federal law, when this Code vests a duty, obligation or responsibility in an official, department director, or employee, the official, department director or employee may designate a City position or another person to act on their behalf.~~

~~B. Any official, department director, or employee who vests a duty, obligation or responsibility in a designee, shall inform the City Clerk of the designation. The City Clerk shall maintain a list of all designations and shall provide a copy to the public upon request. Whenever a power is granted to, or a duty is imposed upon a public officer, or employee, the power may be exercised, or the duty may be performed by a deputy of such officer or employee or by a person otherwise duly authorized pursuant to law or ordinance, unless this Code expressly provides otherwise.~~

#### **1.08.070 Extent of Reference.**

~~Whenever a reference is made to any portion of this Code, or to any ordinances of this City, to any State law, rules or regulations or to any federal law, rules or regulations, the reference applies to includes all amendments and additions now or hereafter made thereto and/or any successor statute.~~

#### **1.08.100 Posting of Public Notices.**

~~Wherever any section of this Code requires the posting of a notice in a public place, such notice shall also be posted on the bulletin board of the in accordance with all legal requirements at City Hall of the City of Newport Beach.~~

#### **1.08.105 Consumer Price Index Adjustments.**

~~Whenever this Code calls for an increase of an amount, limit or rate schedule that is set forth in this Code to reflect the change in the Consumer Price Index, as defined in Section 1.08.120, the increase shall apply to the current amount, limit or rate schedule that is then in effect on the date adjustment. Unless another adjustment date is specifically set forth in this Code, the effective date of any adjustment shall be July 1. Unless another time period for calculating the change in the Consumer Price Index is specifically set forth in this Code, the increase to the amount or limit shall be determined by calculating the percentage change from March of the prior year to March of the current year.~~

#### **1.08.120 Definitions.**

~~Unless a more specific definition is provided or the context in which they are used clearly requires otherwise, the following terms and phrases used in this Code shall have the meaning ascribed to them in this part:~~

~~Assistant City Manager. The term "Assistant City Manager" means the Assistant City Manager of the City Manager's Office.~~

Building Official. The term “Building Official” means the Building Manager or Chief Building Official of the City’s Community Development Department or the person designated by the Community Development Director as the Building Official.

California Code of Regulations. The terms “California Code of Regulations or “CCR” means the state administrative regulations that are cited as “title number CCR section number” or “title number CCR division number, chapter number, article number, section number.

California Environmental Quality Act or CEQA. The terms “California Environmental Quality Act” or “CEQA” means the California Environmental Quality Act (Cal. Pub. Resources Code Section 21000 et seq.) and the State CEQA Guidelines (14 CCR Section 15000 et seq.).

Chief of Police. The terms “Chief of Police” or “Police Chief” means the individual who manages and directs the City’s Police Department.

City. The term “City” means the City of Newport Beach, a municipal corporation and charter city, or, when referring to territory or territorial limits, it means the area within the territorial City limits of the City and such territory outside the City over which the City has jurisdiction or control by virtue of any law.

City Attorney. The term “City Attorney” means the City Council appointed official who occupies the position as the City Attorney of the City.

City Charter. The term “City Charter” means the City Charter of the City of Newport Beach.

City Clerk. The term “City Clerk” means the City Council appointed official who occupies the position as the City Clerk of the City.

City Council. The term “City Council” means the City Council of the City of Newport Beach.

City Hall. The terms “City Hall” or “Civic Center” means the City’s Civic Center located at 100 Civic Center Drive, Newport Beach, California, that includes most administrative offices of the City and related parking.

City Manager. The term “City Manager” means the City Council appointed official ~~of the City~~ who occupies the position as the chief administrative officer of the City.

City Engineer. The term “City Engineer” means the City Engineer of the City’s Public Works Department, or the individual designated by the Public Works Director as the City Engineer.

City Treasurer. The term “City Treasurer” means the individual appointed as the City’s Finance Director.

Code. The term “Code” means the Newport Beach Municipal Code.

Community Development Director. The term “Community Development Director” means the individual who manages and directs the City’s Community Development Department.

Consumer Price Index. The term “Consumer Price Index” means the Los Angeles-Long Beach-Anaheim, California Area, All Urban Consumers, All Items, Base Period (1982-84=100), or successor index, as published by the United States Department of Labor, Bureau of Labor Statistics.

Council. The term “Council” means the City Council of this City.

County. The term “County” means the County of Orange.

Day. The terms “day” or “days” means a calendar day, unless otherwise specifically provided.

Day care center. The term “Day care center” means a child care—infant center, and child care center (preschool) licensed by the State of California Department of Social Services that is not located on a residentially zoned property including, but not limited to, Bright Horizons at Newport Beach; Carden Hall; Catalyst Kids-Newport Heights; Christ Church by the Sea Children’s Center; Environmental Nature Center (ENC) Nature Preschool; Miraculous Milestones; Montessori Way Learning Center, Inc., Newport Coast Child Development Preschool; Newport Harbor Lutheran Church; St. Andrew’s Preschool; St. Mark Community Preschool; St. Matthew’s Montessori Preschool; Temple Bat Yahm; and Tutor Time Child Care/Learning Center.

Designee. The term “designee” means a position, employee, or person that is authorized to fulfill a duty, obligation or responsibility.

District Attorney. The term “District Attorney” means the Orange County District Attorney.

Fair Political Practices Commission. The terms “Fair Political Practices Commission” or “FPPC” means the five-member independent, non-partisan commission that has primary responsibility for the impartial and effective administration of the Political Reform Act.

Finance Director. The term “Finance Director” means the individual who manages and directs the City’s Finance Department.

Fire Chief. The term “Fire Chief” means the individual who manages and directs the Fire Department.

Fire Marshal. The term “Fire Marshal” shall mean the Fire Marshal of the City’s Fire Department or the individual designated by the Fire Chief as the Fire Marshal.

Harbor Commission. The term “Harbor Commission” shall mean the Harbor Commission of the City.

Harbor Department. The term “Harbor Department” shall mean the Harbor Department of the City. Any provision within this Code or any uncodified ordinance or resolution referring to the Harbor Resources Division shall mean the Harbor Department.

Harbormaster. The term “Harbormaster” shall mean the individual who manages and directs the Harbor Department. Any provision within this Code or any uncodified ordinance or resolution referring to the Harbor Resources Manager shall mean the Harbormaster.

Health Officer. The term “Health Officer” means the Orange County Health Officer.

Human Resources Director. The term “Human Resources Director” means the individual who manages and directs the City’s Human Resources Department.

Library Services Director. The term “Library Services Director” means the individual who manages and directs the City’s Public Library System.

Oath. The term “oath” means and includes affirmation.

Office. The term “office” means use of the title of any officer, employee, or office, or ordinance means such officer, employee, office, or ordinance of the City of Newport Beach.

Owner. The term “owner” applied to a building or land, means and include any part owner, joint owner, tenant, tenant in common or joint tenant, of the whole or a part of such building or land.

Pacific Ocean. The term “Pacific Ocean” means the waters off of the City from the beach to a point three (3) nautical miles seaward.

Person. The term “person” means and includes any individual, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, assignee for the benefit of creditors, trustee, trustee in bankruptcy, syndicate, the United States, this State, any county, city and county, municipality, district, or other political subdivision of the State, or any other group or combination acting as a unit.~~and include any person, firm, association, organization, partnership, business trust, company or corporation.~~

Public park of public facility. The terms “public park” or “park facility” means all publicly owned, managed or leased land that is open to the public, walking or hiking trails, parks and park-related buildings, facilities and improvements, and any school facilities when they are in use as recreational or community center facilities and under the control of the Director of the Recreation and Senior Services Department including, but not limited to, Arroyo Park; 38th Street Park; Back Bay View Park; Bayside Park; Bayview Park; Begonia Park; Big Canyon Park; Bob Henry Park; Bolsa Park; Bonita Canyon Sports Park; Bonita Creek Park & Community Center; Buffalo Hills Park; Canyon Watch Park; Carroll Beek Community Center and Balboa Island Park; Castaways Park; Channel Place Park; Civic Center Community Center; Civic Center Park; Cliff Drive Park and Community Center; Coastal Peak Park; Corona del Mar Pocket Park; Corona del Mar State Beach; Dog Park; Eastbluff Park & Boys and Girls Club; Galaxy View Park; Gateway Park; Grant Howald Park & Community Youth Center; Harbor View Nature Park; Harbor Watch Park; Inspiration Point; Irvine Terrace Park; Jasmine Creek Park; John Wayne Park and Theater Arts Center; Kings Road Park; L Street Park; Lake Ave Park; Lido Park; Lincoln Athletic Center; Lookout Point; Los Trancos Canyon View Park (lower, middle, upper); Lower Castaways Park; M Street Park; Marian Bergeson Aquatic Center; Marina Park; Mariners Park and VJ Community Center; Mesa Birch Park; Miramar Park; Myrtle Park; Newport Aquatic Center; Newport Coast Community Center; Newport Island Park; Newport Shores Park; North Star Beach; OASIS Senior Center; Old School Park; Peninsula Park; Rhine Wharf Park; San Joaquin Hills Park and Lawn Bowling Center; San Miguel Park; Spyglass Hill Park; Spyglass Hill Reservoir Park; Sunset Ridge Park; Sunset View Park; Upper Buck Gully Reserve; Uptown Park; Veteran’s Memorial Park; West Jetty View Park; West Newport Community Center; West Newport Park; and Westcliff Park.

Public Works Director. The term “Public Works Director” means the individual who manages and directs the City’s Public Works Department.

Recreation and Senior Services Director. The term “Recreation and Senior Services Director” means the individual who manages and directs the City’s Recreation and Senior Services Department.

Revenue Division. The term “Revenue Division” means the City’s Finance Department Revenue Division.

Risk Manager. The term “Risk Manager” means the Risk Manager of the City’s Human Resources Department, or the individual appointed by the Human Resources Director as the Risk Manager.

School. The term “School” means an institution of learning, whether public or private, which offers in-person instruction in grades K through twelve (12) in those courses of study required by the California Education Code and is licensed by the State Board of Education. This definition includes all kindergarten,

elementary, junior high, senior high or any special institution of learning under the jurisdiction of the State Department of Education including, but not limited to, Andersen Elementary School; Carden Hall; Corona del Mar Middle and High School; Eastbluff Elementary School; Ensign Intermediate School; Harbor Day School; Harbor View Preschool and Elementary School; Lincoln Elementary School; Mariners Elementary School; Newport Christian Academy; Newport Coast Preschool and Elementary School; Newport Preschool & Elementary School; Newport Harbor High School; Newport Heights Elementary School; Our Lady Queen of Angels Catholic School; Pacifica Christian High School; and Sage Hill High School.

State. The term “State” means the State of California.

Streets. The term “street” means and include all streets, roads, highways, avenues, lanes, alleys, courts, boulevards, places, squares, curbs, or other public ways in this City, which have been or may hereafter be dedicated and open to public use, or such other public property so designated in any law of this State.

Tenant, Occupant. The term “tenant or occupant” applied to a building or land means and include any person who occupies the whole or part of such building or land, whether alone or with others.

Utilities Director. The term “Utilities Director” means the individual who manages and directs the City’s Utilities Department.

**Chapter 1.10**

**JUDICIAL REVIEW OF CITY DECISIONS**

**Sections:**

**1.10.010 Applicability of Cal. Civ. Proc. Section 1094.6.**

**1.10.020 - Notice of Time Limit for Review.**

**1.10.010 Applicability of Cal. Code of Civ. Proc. Section 1094.6.**

Cal. Civ. Proc. Section 1094.6 is applicable to the decisions of the City Council, and of any department, board, commission, officer or agent of the City revoking or denying an application for a permit, license or other entitlement or denying an application or allowance which is subject to the judicial review pursuant to Cal. Civ. Proc. Section 1094.5.

**1.10.020 - Notice of Time Limit for Review.**

The City Council, and any department, board, commission, officer, agent or employee of the City which makes such a decision shall give notice to the affected party that the time in which to seek judicial review of decision subject to the judicial review pursuant to Cal. Civ. Proc. Section 1094.5 is governed by Cal. Civ. Proc. Section 1094.6.

## Chapter 1.12

### CITATIONS AND WARRANTS

#### Sections:

1.12.010 Chapter 5c of Penal Code Adopted by Reference.

1.12.020 ~~NBMC~~ Authority of Public Officers or Employees to Issue Citations.

1.12.030 Violation of Promise to Appear.

#### 1.12.010 Chapter 5c of Penal Code Adopted by Reference.

Except as provided in this chapter, the provisions of ~~Cal. Pen. Code Part 2, Title 3, Part 2, Chapter 5c, Title 3, Part 2, of the Cal. Penal Code of the State of California, as amended,~~ Chapter 5c, Title 3, Part 2, are hereby adopted and made a part of this chapter as though fully set forth. The peace officer employees of the City are authorized to issue infraction citations for violations of this Code as an alternative to their existing authority to issue citations and arrest for misdemeanors.

#### 1.12.020 ~~NBMC~~ Authority of Public Officer or Employees to Issue Citations.

A. The following designated public officers and employees shall have the power to issue citations for any violations ~~of the ordinances and laws specified in this of this Code:~~

A1. ~~Animal Control Officers, Community Service Officers, Custody Officers, Parking Control Officers, Police Officers and employees holding positions in the Police Department designated by the Police Chief;~~

2. ~~The Community Development Director, Harbormaster, Public Works Director, and employees holding positions in these departments designated by the director of the department;~~

3. ~~Code Enforcement Officers; and~~

4. ~~Municipal Compliance Officers who may be employed by contract.~~

B. The following designated public officers and employees shall have the power to issue citations for violations of the following provisions of this Code:

B1. ~~The Fire Chief, Public Works Director and Harbormaster, and other employees holding positions in the Fire Department members of the staff~~ designated by the Fire Chief, ~~Public Works Director and Harbormaster,~~ shall have the power to issue citations for any violation of Titles 5, 9, 11 and 17, Chapters 7.04, 7.16, 7.20, and 7.30, and Sections 6.04.050, 6.04.190 and 10.06.010.

C2. The Revenue Manager and ~~other employees holding positions in the Finance Department designated by the department staff designated by the~~ Finance Director shall have the power to issue citations for any violations of Titles 3, 5, 6 and 10, ~~Section 12.40.060 and~~ Chapters 12.62 and 12.63, and Section 12.40.060.

~~3.F.~~ The Building Official, and other employees holding positions in the Building Division staff designated by the Building Official, shall have the power to issue citations for any violation of Title 15 of this Code.

~~4.I.~~ Park Patrol Officers shall have the power to issue citations for violations of Chapters 11.03 and 11.04 of this Code and for violations of any provision of this Code occurring in parks or parking violations occurring in parking lots servicing parks and other City facilities.

~~J.~~ 5. The City Clerk shall have the power to issue administrative citations for violations of Chapter 1.28.

C. The following designated public officers and employees shall have the power to issue citations for violations of the-of the following provisions of state or local law:

1. Animal Control Officers, Community Services Officers, Custody Officers, Police Officers, and Parking Control Officers, volunteers (as authorized by Section 22507.9 of the Vehicle Code for handicapped parking enforcement) and other employees holding positions in the designated members of the Police Department staff shall have the power to issue citations for any violation of this Code and any Code of the State of California, as assigned designated by the Chief of Police shall have the power to issue citations for violations of Cal. Veh. Code, to the maximum extent allowed under State law, including, but not limited to, Cal. Veh. Section 22507.8 and local ordinances and resolutions adopted pursuant to Cal. Veh. Section 22511.7.

2. The Fire Chief, Public Works Director and Harbormaster and other employees holding positions in these departments designated by them, shall have the power to issue citations for any violation of Sections 22500.1 and 22514 of the Cal. Vehicle Code, the Cal. Fish & Game Code, of the State of California, Title 14 of the California Code of Regulations, the provisions of the Health and Safety Code of the State of California that pertain to animals and the provisions of Cal. Harb. & Nav. Code, Division 3, Chapter 5 of Division 3 of the Harbors and Navigation Code of the State of California any provision of State or local law related to fire suppression or fire prevention and any provision of State and local laws pertaining to the handling, use, storage or disposal of hazardous materials or waste.

~~D.~~ ~~The Public Works Director and department staff designated by the Director shall have the power to issue citations for any violation of Chapters 6.04 and 6.06.~~

~~E.~~ ~~The Community Development Director, Public Works Director, Harbormaster and code enforcement staff within said departments, as designated by the Directors, shall have the power to issue citations for any violation of this Code.~~

~~G.~~ ~~The Fire Chief, Public Works Director and Harbormaster, and members of staff designated by the Fire Chief, Public Works Director and Harbormaster, shall have the power to issue citations for any violation of Title 9, Sections 22500.1 and 22514 of the California Vehicle Code, any provision of State or local law related to fire suppression or fire prevention and any provision of State and local laws pertaining to the handling, use, storage or disposal of hazardous materials or waste.~~

~~H.~~ ~~The Municipal Compliance Officer who may be employed by contract shall have the power to issue citations for any violation of this Code.~~

~~I.—Park Patrol Officers shall have the power to issue citations for violations of Chapters 11.03 and 11.04 of this Code and for violations of any provision of this Code occurring in parks or parking violations occurring in parking lots servicing parks and other City facilities.~~

~~J.—The City Clerk shall have the power to issue administrative citations for violations of Chapter 1.28.D. The City Clerk shall be informed, in writing, by the Police Chief, Fire Chief, Harbormaster, or Department Director of all positions authorized to issue citations pursuant to this section and the City Clerk shall maintain a list of all positions designated pursuant to this section. The City Clerk shall provide a copy of the designated position list to the public upon request.~~

~~E. Nothing in this section shall be considered to limit any authority otherwise vested in the named officers and employees, provided elsewhere in this Code, or by State law.~~

## Chapter 1.25

### MUNICIPAL ELECTION CAMPAIGN CONTRIBUTIONS AND EXPENDITURE CONTROL\*

#### 1.25.010 Purpose and Findings.

F. The contribution limitations imposed by this chapter are consistent with the spirit, intent and letter of the Political Reform Act of 1974 (~~Title 9 of the California Government Code, Sections 81000, et seq.~~).

#### 1.25.015 Intent.

The intent of this chapter is to impose limits on the amount of money that may be contributed to a candidate or candidate's controlled committee to achieve the purposes specified in Section 1.25.010. This chapter is not intended, and shall not be construed, to establish any reporting, filing, or procedural requirement in addition to, or different from, the Political Reform Act or the regulations adopted by the ~~Fair Political Practices Commission ("FPPC")~~ FPPC, being 2 CCR Division 6, Section 18104 et seq..

#### 1.25.030 Campaign Contributions—Limitations.

A. Contributions by Persons to Candidate or Candidate's Controlled Committee. No person shall knowingly and willfully contribute to a candidate and/or the candidate's controlled committee, with respect to any single election, an amount that would cause the total contributed by such person to the candidate and the candidate's controlled committee, when combined, to exceed one thousand ~~two~~four hundred dollars (\$1,~~2~~400.00).

B. Acceptance or Solicitation by Candidate or Candidate's Controlled Committee. No candidate or candidate's controlled committee shall knowingly and willfully solicit or accept any contribution from any person, which would cause the total amount contributed by such person, with respect to any single election, to the candidate and the candidate's controlled committee, when combined, to exceed the sum of one thousand ~~four~~two hundred dollars (\$1,~~4~~200.00).

C. Adjustment for Cost of Living Changes. The campaign contribution limits and contribution acceptance and solicitation limits set forth in subsections (A) and (B) of this section shall be automatically adjusted in two-year intervals, beginning July 1, 2025. The time period for calculating the increase to the contribution limit shall be from March two years prior to an adjustment to March of the year of adjustment. beginning in 20251, by the City Clerk to reflect changes in the Consumer Price Index, in accordance with Section 1.08.105, for All Urban Consumers (CPI-U) in the selected local area of Los Angeles-Long Beach-Anaheim, California. In June of each year there is to be an adjustment, the City Clerk shall determine the new limit by comparing the last published index number that is closest in time to the date the adjustment in limits is to be made, and the corresponding index number for 2019. [(A-B)/B\*100=i, where A=Most recent index, B=Corresponding index for 2019, i=Adjustment in percent]. Adjustments made pursuant to this subsection shall be rounded to the nearest one hundred dollars (\$100.00), shall be announced by the City Clerk in June of the year an adjustment is to be made, and shall be effective July 1st.

D. Demand for Return of Excess Contributions. It shall not be a violation of subsection (A) of this section if the person: (1) first became aware the person violated the limitations set forth in subsection (A) of this section when the person received a return of the excess contribution(s) from the candidate or candidate's controlled committee; or (2) if the person demands, in writing, a return of the portion of any contribution(s) donated in excess of the limitations imposed by subsection (A) of this section within

fourteen (14) ~~calendar~~ days from the date the City provides written notice to the person of the alleged violation of subsection (A) of this section or the date the person discovers that the person's contribution(s) exceed the contribution limit set forth in subsection (A) of this section, whichever is sooner. A copy of the written notification by the person demanding the return of the portion of any contribution(s) donated in excess of the limitations imposed by subsection (A) of this section shall be provided via certified mail or courier delivery to the last known address of the candidate or the candidate's controlled committee. If the excess contributions were not returned by the candidate or candidate's controlled committee prior to sending the written demand, the person shall provide the City Clerk with a copy of the written demand, and proof of delivery thereof, within fourteen (14) ~~calendar~~ days of the date the demand is made.

E. Return of Excess Contributions. It shall not be a violation of subsection (B) of this section if the candidate or candidate's controlled committee returns the portion of any contribution(s) donated in excess of the limitations imposed by subsection (B) of this section within fourteen (14) ~~calendar~~ days from the date the City provides written notice to the candidate or candidate's controlled committee of the alleged violation of subsection (B) of this section or the date the candidate or candidate's controlled committee discovers that the contribution(s) exceed the contribution limit set forth in subsection (B) of this section, whichever is sooner. If the City notified the candidate or candidate's controlled committee that the contributions exceeded the limitations imposed by subsection (B) of this section, written notification showing the donor's name, the amount returned, and the date of the return shall be provided to the City Clerk within fourteen (14) ~~calendar~~ days of the date of the return.

F. Contributions by Candidates. The provisions of subsections (A) and (B) of this section shall not apply to contributions from a candidate to his or her controlled committee nor to the expenditure, by the candidate, of his or her personal funds.

G. Contributions to Committees. Contributions made to any person or a committee, and not to a candidate or candidate's controlled committee, shall not be considered as contributions to the candidate or candidate's controlled committee notwithstanding the fact that such person or committee supports the candidate or uses the contribution with a view to bringing about the nomination or election of the candidate.

H. Anonymous Contributions. No candidate or candidate's controlled committee shall knowingly and willfully accept anonymous contributions, with respect to any single election, which would cause the total amount of anonymous contributions received by the candidate and the candidate's controlled committee, when combined, to exceed one hundred dollars (\$100.00). Subject to the provisions of State law, it shall not be a violation of this subsection if the candidate or candidate's controlled committee pays to the City, for deposit into the general fund to be used to defray the costs of municipal elections, the portion of any contributions accepted in excess of the limitations imposed by this subsection within fourteen (14) ~~calendar~~ days from the date the City provides written notice to the candidate or candidate's controlled committee of the alleged violation of this subsection or within fourteen (14) ~~calendar~~ days of the date the candidate or candidate's controlled committee discovers the contribution(s) exceed the contribution limit set forth in this subsection, whichever is sooner.

I. Notice from the City. For purposes of this section, written notification by the City shall be by certified mail to the person to be notified at the person's last known address. Service by certified mail shall be deemed completed at the time of deposit with the post office.

J. City Clerk. If the City Clerk has a good faith belief that a person, candidate, or candidate's controlled committee has violated this section, the City Clerk shall refer the matter to the District Attorney.

K. Recall Elections.

1. The campaign contribution limits set forth in this section shall not apply to any Councilmember or Councilmember's controlled committee established to oppose the qualification of a recall measure and, if the qualification is successful, the recall election after the Councilmember receives a notice of intent to recall pursuant to Cal. Elec. Code Section 11021.

2. The campaign contribution limits set forth in this section shall apply to any candidate running to replace the Councilmember in a recall election.

3. After the failure of a recall petition or after the recall election, any remaining funds received by the Councilmember or Councilmember's controlled committee established to oppose the qualification of a recall measure and if the qualification is successful, the recall election, shall be treated as surplus funds and shall be expended within sixty (60) days after the failure of the recall petition or after the recall election for a purpose specified in Cal. Elec. Code Section 89519 (b).

## Chapter 1.26

### ELECTRONIC FILING OF CAMPAIGN DISCLOSURE STATEMENTS

#### 1.26.010 Definitions.

Unless otherwise defined below, the terms used in this chapter shall have the same definitions as specified in the Political Reform Act (Cal.~~ifornia~~ Gov.~~ernment~~ Code Section 81000 et seq.) and FPPC regulations (~~2 CCR California Code of Regulations, Title 2, Section 18104 et seq. Division 6~~), ~~or any successor statutes or regulations~~. In those cases where definitions in the Political Reform Act or FPPC regulations contain a specific reference to any State election, candidate, or electoral criteria, the definition shall be modified to reflect the municipal equivalent, or, in the absence of a municipal equivalent, to delete the specific reference.

“City Clerk’s online system” means the web-based filing system utilized by the Newport Beach City Clerk’s Office for the submission of statements, reports or other documents required by Chapter 4 of the Political Reform Act (Cal.~~ifornia~~ Gov.~~ernment~~ Code Section 84100 et seq.) ~~or any successor statute~~.

“Statements” means statements, reports, or other documents required by Chapter 4 of the Political Reform Act (Cal.~~ifornia~~ Gov.~~ernment~~ Code Section 84100 et seq.) ~~or any successor statute~~.

#### 1.26.020 General.

A. Any elected officer, candidate, or committee required to file original statements with the Newport Beach City Clerk’s Office may file such statements using the City Clerk’s online system according to procedures established by the City Clerk. These procedures shall ensure that the online system complies with the requirements set forth in Cal.~~ifornia~~ Gov.~~ernment~~ Code Section 84615. ~~From and after December 31, 2018, e~~Elected officers, candidates and committees required to file original statements with the City Clerk shall file such statements using the City Clerk’s online system, unless exempt from the requirement to file online pursuant to Cal.~~ifornia~~ Gov.~~ernment~~ Code Section 84615, ~~or any successor statute~~, because the officer, candidate or committee receives less than ~~twoone~~ thousand dollars (\$~~21~~,000.00) in contributions and makes less than ~~twoone~~ thousand dollars (\$~~21~~,000.00) in expenditures in a calendar year.

C. The City Clerk’s online system shall only accept a filing in the standardized record format that is developed by the California Secretary of State pursuant to Cal.~~ifornia~~ Gov.~~ernment~~ Code ~~S~~Subsection 84602(a)(~~32~~), ~~or any successor statute~~, and that is compatible with the Secretary of State’s system for receiving an online or electronic filing.

#### 1.26.030 Procedures for Utilizing Online Filing.

~~A. — Until December 30, 2018, an elected officer, candidate, or committee may choose to opt in to the electronic filing system by electronically filing a statement that is required to be filed with the City Clerk pursuant to Chapter 4 of the Political Reform Act, or any successor statute. Once the elected officer, candidate or committee has opted in, all subsequent statements shall be filed electronically. An elected officer, candidate, or committee may opt out of the electronic filing system by filing original statements in paper format with the City Clerk. Thereafter, the elected officer, candidate or committee shall file all original statements in paper format with the City Clerk. From and after December 31, 2018, electronic~~

~~filing is mandatory unless the officer, candidate or committee is exempt as described in Section 1.26.020(A), or any successor statute.~~

AB. Any elected officer, candidate, or committee who has electronically filed a statement using the City Clerk's online system is not required to file a copy of that document in paper format with the City Clerk.

BC. Any elected officer, candidate, or committee who is required to file an original statement with the California Secretary of State and a copy of that statement with the City Clerk's Office may, but is not required to, file the copy of the required statement using the City Clerk's online system.

CD. The City Clerk's online system shall issue an electronic confirmation that notifies the filer that the statement was received, which notification shall include the date and the time that the statement was received and the method by which the filer may view and print the data received by the City Clerk. The date of filing for a statement filed online shall be the day that it is received by the City Clerk.

DE. If the City Clerk's online system is not capable of accepting a statement, an elected officer, candidate, or committee shall file that statement in paper format with the City Clerk.

EF. The City Clerk's online system shall enable electronic filers to complete and submit filings free of charge.

## Chapter 1.28

### LOBBYIST REGISTRATION AND REPORTING

#### 1.28.020 Definitions.

F. ~~“Person” means any individual and any form of business entity including, but not limited to, a domestic or foreign corporation, association, syndicate, joint stock corporation, partnership of every kind, club, business or trust, society, or limited liability company.~~

**Chapter 2.08**  
**CITY MANAGER**

**Sections:**

**2.08.010 Establishment Authority.**

**2.08.020 Bond for Manager Pro Tempore.**

**2.08.030 Compensation—Expenses.**

**2.08.040 Powers and Duties.**

~~**2.08.050 Removal.**~~

**2.08.060 Subject to Civil Service Provisions.**

**2.08.030 Compensation – Expenses.**

In addition to the compensation fixed by the City Council, the City Manager shall be reimbursed for all sums necessarily incurred or paid by ~~the City Manager~~ him in the performance of ~~the City Manager's~~ his duties within the amounts fixed in the budget for such purposes and for ~~the City Manager's~~ his expenses incurred when traveling on business pertaining to the City under the direction of the City Council; ~~provided, however, that reimbursement for such expenses for traveling shall be made only after a verified itemized claim setting forth the sums expended for which reimbursement is requested has been presented to the City Council and approved by it.~~

**2.08.040 Powers and Duties.**

B. To consolidate or combine duties, offices, positions, departments or units under ~~his~~ the City Manager's direction within the limits established by the City Charter, this Code, or the annual budget, ~~and subject to City Council approval~~; provided, however, that nothing herein contained shall be construed to supersede the authority of the Civil Service Board in the matter of classification of City officers or employees subject to Civil Service ~~or prohibit the City Manager from authorizing the Assistant City Manager to perform the duties of a Department Director for a limited term~~;

D. To recommend to the City Council for adoption such measures and ordinances as ~~the City Manager~~ he deems necessary or expedient;

E. To make investigations into the affairs of the City, and any department or division thereof under ~~the City Manager's~~ his direction and control;

I. To avoid all activities outside the City government which are inconsistent with the policies of the City Council or the duties of ~~the City Manager's~~ his office;

K. To perform such other duties and exercise such other powers as may be delegated to ~~the City Manager~~ him from time to time by ordinance or resolution of the City Council.

**~~2.08.050 Removal.~~**

~~In case of his intended removal by the Council, the City Manager shall be furnished with a written notice stating the Council's intention to remove him and the reasons therefor at least thirty (30) days before the effective date of his removal.~~

~~Upon furnishing the City Manager with written notice of the intended removal, the City Council may suspend him from duty, but his compensation shall continue until a decision on the question of his removal is made by the City Council.~~

~~In acting on the question of removal, the City Council shall exercise its uncontrolled discretion and its action shall be final and shall not depend upon any particular showing or degree of proof.~~

## Chapter 2.12

### ADMINISTRATIVE DEPARTMENTS

#### 2.12.030 Community Development Department.

The Community Development Department shall be under the supervision of the Community Development Director. ~~The term "Planning Director" or "Building Director" as found in the Newport Beach Municipal Code, or in any contract or agreement to which the City is a party, shall be deemed hereafter to refer to the Community Development Director.~~ The functions of the Community Development Department shall include:

- A. Administration and enforcement of the provisions of this Code relating to planning, zoning and subdivisions, nuisance abatement and Code enforcement, and advising and assisting the Planning Commission in such administration vested in that Commission;
- B. Administration and enforcement of the building, electrical, plumbing and mechanical codes, including grading and swimming pool regulations;
- C. Administration and enforcement of State regulations governing energy conservation and sound transmission;
- D. Preparation and presentation of reports to the City Council and the Planning Commission on various aspects of City planning;
- E. Preparation and maintenance of the General Plan;
- F. Advising the public on zoning and planning matters;
- G. Receipt and processing of subdivision maps; and
- H. Such other functions as may be delegated by the City Manager or the City Council.

#### 2.12.040 Finance Department.

The Finance Department shall be under the supervision of the Finance Director, who shall have charge of financial affairs of the City. ~~The term "Administrative Services Director" as found in the Newport Beach Municipal Code, or in any contract or agreement to which the City is a party, shall be deemed hereafter to refer to the Finance Director.~~ The financial functions of the Finance Department, in addition to those duties imposed by the City Charter, shall include:

- A. Enforcement of the City's business license and transient occupancy tax regulations;
- B. Management of the City's finances, financial statements, audits, revenue collection and billing, financial management system budget, payroll, accounting, cashiering, treasury and investments;
- C. Purchase of supplies, equipment, training, and services used by City departments;
- D. Disposal of obsolete and surplus City property;
- E. Management of the City's parking program, including meters and lots; and
- F. Such other functions as may be delegated by the City Manager or the City Council.

### **2.12.050 Fire Department.**

The Fire Department shall be under the supervision of the Fire Chief. ~~The term “Marine Director” as used in this Code shall be deemed hereafter to refer to the Fire Chief.~~ The functions of the Fire Department shall include:

#### A. Administration.

1. Ensure fulfillment of the Fire Department mission through planning, preparation, designation of funding, and securing of equipment and materials required to support personnel, operations, and programs.

2. Prepare residents for disasters and emergencies through community preparedness programs.

#### B. Prevention.

1. Identify and prevent hazards to life, health, property and the environment.
2. Apply and enforce California State laws and local ordinances.
3. Plan and prepare City staff and residents to address potential disasters.

#### C. Operations.

1. Respond to and mitigate all threats to life, health, property and the environment.
2. Provide training and education to support expertise and safe operations.
3. Monitor for quality assurance.

#### D. Lifeguards.

1. Respond to and mitigate all threats to life and health on the City beaches and waterways.
2. Provide training and education to support expertise and safe operations.

- ~~3. Plan and prepare residents to assist emergency responders through community preparedness programs.~~

E. Collaborate with the Orange County Harbor Patrol and/or the U.S. Coast Guard to prevent and/or respond to accidents of a marine nature within the City limits or contiguous unincorporated territory under County contractual agreements.

F. Such other functions as may be delegated by the City Manager or the City Council.

### **2.12.060 Human Resources Department.**

The Human Resources Department shall be under the supervision of the Human Resources Director. The functions of the Human Resources Department shall include:

A. Establishment and maintenance of the City’s personnel policies, employee classifications and compensation policies and other conditions of employment to assist the City Manager in carrying out the provisions of Chapters 2.24 and 2.28 of ~~this Newport Beach Municipal~~ Code;

### **2.12.080 Utilities Department.**

The Utilities Department shall be under the supervision of the Utilities Director. ~~The terms “Utilities Director,” “Utilities Manager,” and “Utilities General Manager,” as found in the Newport Beach Municipal Code, or in any contract or agreement to which the City is a party, shall be deemed hereafter to refer to the Utilities Director of the “Utilities Department.” The term “Utilities Division,” as found in the Newport Beach Municipal Code, or in any contract or agreement to which the City is a party, shall be deemed hereafter to refer to the “Utilities Department.” The term “Municipal Operations Department” as found in the Newport Beach Municipal Code, or in any contract or agreement to which the City is a party, shall be deemed hereafter to refer to the Utilities Department whenever the reference to the Municipal Operations Department is in reference to one or more of the below functions. The term “Municipal Operations Director,” as found in the Newport Beach Municipal Code, or in any contract or agreement to which the City is a party, shall be deemed hereafter to refer to the Utilities Director whenever the reference to the Municipal Operations Director is in reference to the person’s involvement in one or more of the below functions.~~ The functions of the Utilities Department shall include:

- A. Maintenance and operation of the City water system;
- B. Maintenance and operation of the City sewer system;
- C. Maintenance and operation of the City’s street sweeping program;
- D. Maintenance and operation of the City’s storm drain system;
- E. Maintenance and operation of the City street lighting system;
- F. Management of the City’s oil and gas operations;
- G. Management of the regulations found in Chapter 14.04; and
- H. Such other functions as may be delegated by the City Manager or the City Council.

### **2.12.100 Public Works Department.**

The Public Works Department shall be under the supervision of the Public Works Director who shall also be the City Engineer Pro Tem ~~and the Superintendent of Streets. The term “General Services Director,” as found in the Newport Beach Municipal Code, or in any contract or agreement to which the City is a party, shall be deemed hereafter to refer to the “Deputy Public Works Director-Municipal Operations.” The term “Municipal Operations Department,” as found in the Newport Beach Municipal Code, or in any contract or agreement to which the City is a party, shall be deemed hereafter to refer to the Public Works Department whenever the reference to the Municipal Operations Department is in reference to one or more of the below functions. The term “Municipal Operations Director,” as found in the Newport Beach Municipal Code, or in any contract or agreement to which the City is a party, shall be deemed hereafter to refer to the “Deputy Public Works Director-Municipal Operations” whenever the reference to the Municipal Operations Director is in reference to the person’s involvement in one or more of the below functions.~~ The functions of the Public Works Department shall include:

- A. Planning, installation, design, preparation, review and approval of plans, specifications and working details, operations and maintenance, and administration of contracts for the construction of public works,

including streets, storm drains, water quality sewers, water, harbors, street lighting, traffic signals and other public facilities;

- B. Right-of-way acquisition;
- C. Subdivision engineering and development services;
- D. Traffic engineering services;
- E. Engineering services for other City departments;
- F. Engineering planning for water, sewer and electrical systems;
- G. Water quality inspections and reporting as required by law;
- H. Activities over and management of the City's tidelands assets in Upper and Lower Newport Bay;
- I. Street and beach cleaning;
- J. Administration and enforcement of State regulations and provisions of this Code related to the collection, transport, diversion and disposal of solid waste~~Refuse and garbage collection and disposal~~;
- K. Maintenance and repair of streets, alleys, curbs, sidewalks, storm drains, bridges, piers, bulkheads and floats;
- L. Maintenance and repair of City equipment;
- M. Signage and carpentry;
- N. Street striping, and barricade, curb, crosswalk, parking stall, and pavement painting;
- O. Street name and regulation sign posting maintenance;
- P. Custodial maintenance and minor repair services for City-owned and occupied buildings and facilities;
- Q. Landscaping and maintenance of City parks, parkway trees, and planted areas on City-owned property, easements and rights-of-way;
- R. Maintenance of electrical equipment in City buildings; and
- S. Such other functions as may be delegated by the City Manager or the City Council.

**2.12.120 Harbor Department.**

The Harbor Department shall be under the supervision of the Harbormaster who shall serve as the head of the Department. The functions of the Harbor Department shall include:

- A. Management of the City's resources in Newport Harbor, including administration of Title 17;
- B. Operation of a headquarters at Marina Park or other location selected by the City Manager;
- C. Patrol of Newport Harbor;
- D. Provision of code enforcement on the waters of Newport Harbor;

- E. Management of the City's marinas, moorings, docks, wharfs and visitor-serving harbor facilities and amenities;
- F. Promotion of harbor and boating safety;
- G. Addressing inquiries from residents and visitors regarding Newport Harbor;
- H. Management of City-owned marinas;
- I. Providing staff to act as the liaison to the City's Harbor Commission;
- J. Management of a pollution prevention program in Newport Harbor; and
- K. Such other functions as may be delegated by the City Manager.

**Chapter 2.20**  
**EMERGENCY SERVICES**

**Sections:**

**2.20.00E** Prior History Note for Chapter 2.20.

**2.20.010** Purpose.

**2.20.020** Emergency Defined.

**2.20.030** ~~Disaster~~**Emergency** Council—Members.

**2.20.040** ~~Disaster~~**Emergency** Council—Powers.

**2.20.050** Emergency Operations Plan.

**2.20.060** Director and Assistant Director of Emergency Services—Powers and Duties.

**2.20.065** **Review and Termination of Proclamation of Emergency.**

**2.20.070** Director—Assistant Director—Emergency Powers.

**2.20.080** Emergency Organization.

**2.20.090** Expenditures.

**2.20.100** Violation.

**~~2.20.110~~—Severability.**

**2.20.010** Purpose.

The purpose of this chapter is to provide for the preparation and implementation of plans for the protection of persons and property to provide services within the ~~is~~ City in the event of an emergency, to empower certain City officials and staff to promulgate orders and regulations necessary to provide for the protection of life and property or to preserve public order and safety, and to provide for the coordination of the emergency service functions of this City with all other public agencies and affected private persons, corporations, and organizations. This article is intended to comply with the California Emergency Services Act, Cal. Gov. Code Section 8550 et. seq.

**2.20.020** Emergency Defined.

As used in this article, the terms state of emergency, local emergency, and state of war emergency have the same meanings as in Cal. Gov. Code Section 8558. The term “emergency” shall mean a state of emergency, local emergency, and state of war emergency. As used in this chapter, “local emergency” or “emergency” means the actual or threatened existence of conditions of disaster or of extreme peril to the safety of persons and property within the City caused by such conditions as air pollution, fire, flood, storm, tsunami, drought, sudden and severe energy shortage, plant or animal infestation or disease, the Governor’s warning of an earthquake or volcanic eruption, riot, or other conditions, except those resulting

~~from a labor controversy, which are, or are likely to be, beyond the control of the services, personnel, equipment and facilities of the City, and the control of which requires the combined forces of this City with other political subdivision~~

#### **2.20.030 ~~Disaster~~Emergency Council – Members.**

The City of Newport Beach ~~Disaster~~Emergency Council is hereby created and shall consist of the following members:

- A. The Mayor, who shall be ~~the~~ chairman, or in ~~his or her~~the Mayor's absence, the Mayor Pro Tempore;
- B. The remaining members of the City Council;
- C. Other officers and employees of the City of Newport Beach, and representatives of civic, business, labor, veterans, professional, or other organizations within the community, as may be ~~designated as appointed by the chair, subject to confirmation by the City Council~~ members by the emergency operations plan.

#### **2.20.040 ~~Disaster~~Emergency Council—Powers.**

The ~~Disaster~~Emergency Council is empowered to review, and recommend for adoption by the City Council, emergency and mutual aid plans and agreements and such ordinances, resolutions, rules, and regulations as are necessary to implement these plans and agreements, and to perform such other functions as may be designated in the emergency operations plan. The ~~Disaster~~Emergency Council shall meet upon call of the Mayor or in his or her absence the Mayor Pro Tempore or the City Manager.

#### **2.20.050 Emergency Operations Plan.**

The City Council ~~shall~~has adopted an emergency operations plan~~. The plan shall that~~ provides for the effective mobilization of all of the resources of the City, both public and private, to meet any condition constituting an ~~emergency local emergency, state of emergency, or state of war emergency as those terms are defined in this chapter or by state law~~. The ~~Emergency Council~~Disaster Council shall periodically review the plan and propose, to the City Council, changes which will ~~e~~insure the maximum effectiveness of the plan. The plan shall be considered supplementary to this chapter, but shall have the effect of law whenever an emergency, as provided in this chapter, has been proclaimed.

#### **2.20.060 Director and Assistant Director of Emergency Services—Powers and Duties.**

~~When there is an emergency- within the territorial limits of the City or which may impact the City, T~~he Director of Emergency Services, who shall be the City Manager, and Assistant Director of Emergency Services, who shall be appointed by the Director shall have the following powers and duties:

- A. Request the City Council proclaim the existence or threatened existence of a local emergency~~, and the termination thereof,~~ if the Council is in session. The Director or Assistant Director may issue such a proclamation if the Council is not in session, and in such event, the City Council shall take action to ratify the proclamation at the earliest practicable time, but in no event more than seven (7) days after issuance of the proclamation ~~or the proclamation shall have no further force or effect;~~
- B. Request the Governor proclaim a state of emergency when, in the opinion of the Director or Assistant Director, resources available locally are inadequate to cope with the emergency;

C. Control and direct the efforts of the emergency organization of the City to accomplish the purposes of this chapter including, but not limited to, training of employees for emergency and disaster-related functions, disseminating to the public information related to emergency preparedness activities, and recommending to the City Council the adoption of mutual aid agreements;

D. Direct cooperation between, and coordination of, the services and staff of the emergency organization of the City and resolve questions of authority and responsibility that may arise between them;

E. Represent the emergency organization of the City in all dealings with public or private agencies pertaining to emergencies as defined in this chapter; and

F. Prepare and maintain, on a current basis, the emergency operations plan as provided, and described, in this chapter, and submit the plan to the ~~City Council~~Disaster Council for approval.

#### **2.20.065 Review and Termination of Proclamation of Emergency.**

The City Council shall review the need for continuing the local emergency at least once every 60 days until the governing body terminates the local emergency. The City Council shall proclaim the termination of the local emergency at the earliest possible date that conditions warrant.

#### **2.20.070 Director—Assistant Director—Emergency Powers.**

In the event of the proclamation of an emergency which impacts the City, or which may impact the City local emergency, the proclamation of a state of emergency by the President, Governor, or State Director of Office of Emergency Services, the Director is empowered, within limitations specified in the City Charter, to do the following:

A. Make, issue, and enforce rules, orders or regulations reasonably related to the protection of life and/or property, or the preservation of public order and safety, which orders shall not apply to the Disaster Council or Disaster Service Workers when they are working in their official capacity. These rules, orders and regulations shall include, but not be limited to, any one or more of the following:

1. An order imposing a curfew within the entire City, or designated boundaries. The order imposing the curfew shall prohibit the presence of any person on any public highway, sidewalk or place, and may prohibit presence in any outdoor place, public or private,
2. An order prohibiting access to, travel along, or egress from any public or private street, highway or road within the City,
3. An order prohibiting or restricting the sale of alcoholic beverages in or from any business in all or a portion of the City;

B. All rules, orders and regulations made and issued pursuant to this chapter, and any amendment or rescission thereof, shall be in writing and given widespread publicity and notice. No rule, order or regulation issued pursuant to this chapter shall be effective unless and until widespread publicity and notice have been given, and, in the case of any curfew order, such order shall not be effective until notice of the curfew order has been given within the boundaries of the area subject to the curfew by mobile sound trucks or vehicles equipped with public announcement systems. Rules, orders and regulations issued pursuant to this chapter shall remain in effect for the period specified in the declaration of emergency, but no rule, order or regulation shall remain in effect for more than seven (7) days unless

confirmed and ratified by the City Council. All rules, orders and regulations issued pursuant to this chapter shall be ratified and confirmed at the earliest practicable time by the City Council, but in no event shall confirmation and ratification occur more than seven (7) days after issuance. Prior to confirmation and ratification, the Director or Assistant Director shall provide the City Council with the written emergency proclamation, all other related documents, and a report explaining the facts and circumstances which prompted the emergency proclamation and issuance of emergency rules, orders and regulations;

C. To obtain vital services, supplies, equipment and such other properties ~~as are~~ found lacking and needed for the protection of the life and property ~~of the people~~, and to bind the City to pay fair market value for the goods and services, and if required immediately, to commandeer the same for public use, within the confines of the City Charter and State law;

D. To require emergency services of any City officer or employee, and to requisition the necessary City material, and in the event of the proclamation of extreme emergency by the Governor, in the region in which this City is located, to request the aid of as many citizens of this community as the Governor deems necessary in the execution of these duties. Such person shall be entitled to all privileges, benefits and immunities as provided by Sstate law for registered emergency services and disaster workers and volunteers;

E. Exercise all ordinary powers of the City Manager, as well as all special powers conferred upon the Manager by this chapter, by any provision of State or local law, by any agreement approved by the City Council, by the emergency operations plan then in effect, or special power vested in City by any other lawful authority; and

F. Designate the order of succession to the office of Director of Emergency Services to take effect in the event the Director, and Assistant Director, are unavailable to take appropriate action pursuant to the provisions of this chapter. The order of succession shall be approved by the City Council and shall be specified in the emergency operations plan.

#### **2.20.100 Violation.**

~~It shall be a misdemeanor punishable as provided in Section 1.04.010 of the Municipal Code of the City of Newport Beach, for any No~~ person during an emergency shallto:

A. ~~Wilfully~~Willfully obstruct, hinder, or delay any member of the Emergency Organization in the enforcement of any lawful order, rule or regulation issued pursuant to this chapter, or in the performance of any duty imposed upon the member by virtue of this chapter;

B. Do any act forbidden by any lawful rules or regulations issued pursuant to this chapter, or to imperil the lives or property of inhabitants of this City, or to prevent, hinder, or delay the defense or protection thereof; or

C. Wear, carry or display, without lawful authority, any means of identification specified by the emergency agency of the State ~~of California~~ or the City ~~of Newport Beach~~.

#### **2.20.110 Severability**

~~If any section, subsection, sentence, clause or phrase of this chapter is, for any reason, held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the~~

~~validity of the remaining portions of this chapter. The City Council hereby declares that it would have passed the ordinance codified in this chapter and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether a portion of the ordinance codified in this chapter would be subsequently declared invalid or unconstitutional.~~

**Chapter 2.24**  
**CIVIL SERVICE SYSTEM**

**2.24.010 Definitions.**

~~City. The term "City" shall mean the City of Newport Beach.~~

~~City Charter. The term "City Charter" shall mean the City Charter of the City of Newport Beach.~~

~~City Council. The term "City Council" shall mean the City Council of the City of Newport Beach.~~

**2.24.060 Responsibilities and Authority of City Manager.**

~~D.— Delegation of Authority. Any or all of the above functions and any or all functions designated to be performed by the City Manager under the rules and regulations may be delegated by the City Manager in writing to his or her designee. The City Manager's designee shall have the authority to conduct the functions delegated as if he or she were the City Manager.~~

**2.24.100 Selection of Fire and Police Chiefs.**

The selection of the Police Chief and Fire Chief shall be made by the City Manager from among the candidates who meet the minimum qualifications for the class after completion of a qualifications' appraisal process. The City Manager ~~or his designee~~ shall screen applicants for the minimum qualifications for the class. The top candidates who meet the minimum qualifications shall be examined in a qualifications' appraisal process established by the City Manager. The City Manager shall appoint a member, or members, of the Board to serve on a qualifications' appraisal panel within the qualifications' appraisal process. The City Manager shall choose a candidate from the eligibility list for the class compiled after completion of the qualifications' appraisal process.

## Chapter 2.28

### PERSONNEL POLICY, COMPENSATION PLAN

#### Sections:

**2.28.010 Establishment of Classifications and Salary Ranges.**

**2.28.020 Uniform Personnel Policies.**

~~**2.28.030—Annual Review by City Manager.**~~

~~**2.28.030 Annual Review by City Manager.**~~

~~The City Manager shall review the provisions of the resolutions at least annually and recommend changes deemed necessary to remove inequities or to meet the operational needs of the City.~~

**Chapter 2.30**  
**RECYCLING SERVICE FEE**

**Sections:**

**2.30.010 Short Title.**

**2.30.020 Findings and Purpose.**

**2.30.030 Authority.**

**2.30.040 Responsibility.**

~~**2.30.050 Severability.**~~

~~**2.30.050 Severability.**~~

~~If any section, subsection, sentence or clause of this chapter is, for any reason, held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter. The City Council declares that it would have passed the ordinance codified in this chapter and all provisions not declared invalid or unconstitutional without regard to such declaration.~~

## Chapter 2.32

### TRAFFIC DIVISION AND ENGINEER

#### 2.32.020 Duties of City Traffic Engineer.

It shall be the general duty of the City Traffic Engineer ~~or his or her designee~~ to determine and approve the planning, design, installation and proper timing and maintenance of traffic control devices and signals, to conduct engineering analysis of traffic accidents and to devise remedial measures, to conduct engineering investigation of traffic conditions and to cooperate with other City officials in the development of ways and means to improve traffic conditions.

## Chapter 2.36

### PEACE OFFICER'S TRAINING

#### Sections:

**2.36.010 State Aid for Training—Adherence to Standards.**

~~2.36.020 State Aid—Article 3—Adherence to Standards.~~

**2.36.010 State Aid for Training—Adherence to Standards.**

The City Council ~~of the City of Newport Beach~~ declares that it desires the City to qualify to receive aid from the State of California under the provisions of ~~Chapter 1 of Title 4, Part 4 of the California~~ Penal Code ~~Sections 13500-13553~~.

Pursuant to Cal. Pen Code Sections 13510 and 13522 ~~of Chapter 1~~, the City ~~of Newport Beach~~, while receiving aid from the State ~~of California pursuant to said Chapter 1~~, will adhere to the standards for recruitment and training established by the Commission on Peace Officer Standards and Training.

Pursuant to Cal. Pen Code Section 13512 ~~of Chapter 1~~, the Commission and its representatives may make such inquiries as deemed appropriate by the Commission to ascertain that the City's peace officer and public safety dispatch personnel adhere to the standards for selection and training established by the Commission on Peace Officer Standards and Training.

~~2.36.020 State Aid—Article 3—Adherence to Standards.~~

~~While receiving any State Aid pursuant to Article 3, commencing with Section 6040 of the California Penal Code, the City of Newport Beach will adhere to the standards for selection and training established by the Board of Corrections.~~

**Title 3**  
**REVENUE AND FINANCE**

**Chapters:**

**3.04 Sales and Use Tax**

**3.08 Property Tax**

**3.12 Property Development Tax**

**3.16 Uniform Transient Occupancy Tax**

**3.20 Gasoline Tax**

**3.22 Real Property Transfer Tax**

~~**3.26 Health Care and Recreation Facilities Revenue Bond Ordinance**~~

**3.27 Municipal Facilities Revenue Bond Code**

**3.28 Visitor's Service Fee**

**3.30 Air Quality Improvement Trust Fund**

**3.32 Special Improvement District Financing Code**

**3.33 Assessment District Alternative Procedures**

**3.34 Marine Charter Passenger Tax**

**3.36 Cost Recovery For User Services**

**Chapter 3.04**  
**SALES AND USE TAX**

**Sections:**

**3.04.010 Short Title.**

**3.04.020 Rate.**

**3.04.030 Purpose.**

~~**3.04.040 Operative Date.**~~

**3.04.050 Sales Tax.**

**3.04.060 Place of Sale.**

**3.04.070 Use Tax.**

**3.04.080 Adoption of Provisions of State Law.**

**3.04.090 Limitations on Adoption of State Law.**

**3.04.100 Permit Not Required.**

**3.04.110 Exclusions and Exemptions—Measure of Tax.**

**3.04.140 Amendments.**

**3.04.150 Enjoining Collection Forbidden.**

~~**3.04.160 Penalties.**~~

**3.04.170 Severability.**

~~**3.04.180 Repeals.**~~

**3.04.030 Purpose.**

To adopt a sales and use tax ordinance which imposes a tax and provides a measure therefor that can be administered and collected by the California Department of Tax and Fee Administration~~State Board of Equalization~~ in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from the existing statutory and administrative procedures followed by the California Department of Tax and Fee Administration~~State Board of Equalization~~ in administering and collecting the California State Sales and Use Taxes;

~~**3.04.040 Operative Date.**~~

~~Ordinance 1514, codified in this chapter, shall become operative on January 1, 1974, and prior thereto this City shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this sales and use tax ordinance; provided, that if this City shall not have contracted with the State Board of Equalization prior to the operative date, it shall nevertheless so contract~~

~~and in such a case the operative date shall be the first day of the calendar quarter following the execution of such a contract by the City and by the State.~~

#### **3.04.050 Sales Tax.**

For the privilege of selling tangible personal property at retail a tax is hereby imposed upon all retailers in the City at the rate of one (1) percent of the gross receipts of the retailer from the sale of all tangible personal property sold at retail in this City on and after ~~the operative date~~January 1, 1974.

#### **3.04.060 Place of Sale.**

For the purposes of this chapter, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-State destination or to a common carrier for delivery to an out-of-State destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the State sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations ~~to be~~ prescribed and adopted by the California Department of Tax and Fee Administration~~State Board of Equalization.~~

#### **3.04.080 Adoption of Provisions of State Law.**

Except as otherwise provided in this chapter and except insofar as they are inconsistent with the provisions ~~of Part 1.5 of Division 2 of the Cal. Revenue Rev. & Tax. and Taxation Code, Division 2, Part 1.5,~~ all of the provisions ~~of Part 1 of Division 2 of the Revenue Cal. Rev. & Tax. and Taxation Code, Division 2, Part 1,~~ are hereby adopted and made a part of this chapter as though fully set forth herein.

#### **3.04.090 Limitations on Adoption of State Law.**

In adopting the provisions of Cal. Rev. Tax. Code Division 2, Part 1~~of Division 2 of the Revenue and Taxation Code,~~ wherever the State ~~of California~~ is named or referred to as the taxing agency, the City ~~of Newport Beach~~ shall be substituted therefor. The substitution, however, shall not be made when the word "State" is used as part of the title of the State Controller, the State Treasurer, the State Board of Control, the California Department of Tax and Fee Administration~~State Board of Equalization,~~ the State Treasury, or the Constitution of the State of California; the substitution shall not be made when the result of that substitution would require action to be taken by or against the City, or any agency thereof rather than by or against the ~~State Board of Equalization~~California Department of Tax and Fee Administration, in performing the functions incident to the administration or operation of this chapter; the substitution shall not be made in those sections, including, but not necessarily limited to, sections referring to the exterior boundaries of the State ~~of California,~~ where the result of the substitution would be to provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the State under the provisions of Cal. Rev. Tax. Code Division 2, Part 1~~of Division 2 of the Revenue and Taxation Code,~~ or to impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the State under the said provisions of that cCode; the substitution shall not be made in Cal. Rev. Tax. Code Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828~~of the Revenue and Taxation Code;~~ and the substitution shall not be made for the word "State" in the phrase "retailer

engaged in business in this State” in Cal. Rev. Tax. Code Section 6203 or in the definition of that phrase in Cal. Rev. Tax. Code Section 6203.

#### **3.04.100 Permit Not Required.**

If a seller’s permit has been issued to a retailer under Cal Rev. & Tax. Code Section 6067 ~~of the Revenue and Taxation Code~~, an additional seller’s permit shall not be required by this chapter.

#### **3.04.110 Exclusions and Exemptions - Measure of Tax.**

B. The storage, use, or other consumption of tangible personal property, the gross receipts from the sale of which have been subject to tax under a sales and use tax ordinance enacted in accordance with Cal. Rev. & Tax Code Division 2, Part 1.5, ~~of Division 2 of the Revenue and Taxation Code~~ by any City and County, County or City, in this State shall be exempt from the tax due under the ordinance codified in this chapter.

#### **3.04.140 Amendments.**

All subsequent amendments of the Cal. Revenue & Taxation Code which relate to the sales and use tax and which are not inconsistent with Cal Rev. & Tax. Code, Division 2, Part 1.5, ~~of Division 2 of the Revenue and Taxation Code~~ shall automatically become a part of this chapter.

#### **3.04.150 Enjoining Collection Forbidden.**

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or this City, or against any officer of the State or this City, to prevent or enjoin the collection under this chapter or Cal. Rev. & Tax. Code, Division 2, Part 1.5 ~~of Division 2 of the Revenue and Taxation Code~~, of any tax or any amount of tax required to be collected.

#### **~~3.04.160 Penalties.~~**

~~Any person violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable as provided in Section 1.04.010 of this Code.~~

#### **~~3.04.180 Repeals.~~**

~~Ordinance No. 772 is hereby repealed; provided, however, that said ordinance shall remain applicable for the purposes of the administration of said ordinance and the imposition of and the collection of tax with respect to the sales of, and the storage, use, or other consumption of tangible personal property prior to January 1, 1974, the making of refunds, effecting credits, the disposition of moneys collected, and for the commencement or continuance of any action or proceeding under said ordinance.~~

**Chapter 3.08**

**PROPERTY TAX**

**Sections:**

~~**3.08.010 Amount of Tax Levy.**~~

~~**3.08.020 Library Fund.**~~

**3.08.01030 Property Tax Duties Transferred to County.**

~~**3.08.010 Amount of Tax Levy.**~~

~~Prior to September 1, annually, the City Council shall by resolution fix the rate of City and district taxes, designating the number of dollars and cents levied for each fund on each one hundred dollars (\$100.00) of property valuation and shall levy the City taxes on the taxable property in the City.~~

~~In designating the rate levied for each fund and the City tax rate, computations shall be carried to the hundredth of a cent; fractions of a hundredth of a cent equal to a half or greater shall be considered as a hundredth of a cent and fractions of less than a half shall be disregarded.~~

~~**3.08.020 Library Fund.**~~

~~Pursuant to the assent of the majority of qualified electors of the City, voting at an election held on the twelfth day of April, 1938, a tax of five cents (\$.05) shall be levied in each fiscal year upon each one hundred dollars (\$100.00) of the assessed valuation of all taxable property within the City, for library purposes. Such tax shall be in addition to all other taxes which the City is authorized to levy. Such tax shall be collected in the same manner and at the same time as other municipal taxes are collected, and the proceeds therefrom shall be paid into the treasury of the City to the credit of the "library fund" and the money therefrom shall be expended for public library purposes in providing for and maintaining the public library for the City.~~

**3.08.01030 Property Tax Duties Transferred to County.**

Pursuant to the provisions of Cal. Gov. Code, Title 5, Division 1, Part 2, Chapter Article 2, Chapter 2, Division 1, Title 5, of the Government Code of the State of California, the City of Newport Beach hereby elects that the following duties be performed by the appropriate officers of Orange County:

- A. The assessment of City property for City taxes.
- B. The equalization and correction of the assessment of City taxes.
- C. The collection, payment, and enforcement of the City taxes, including delinquent taxes.
- D. The redemption of property from sale or other penalty for nonpayment of City taxes.

## Chapter 3.16

### UNIFORM TRANSIENT OCCUPANCY TAX

#### 3.16.020 Definitions.

~~City. The term "City" shall mean the City of Newport Beach.~~

~~City Collector/Finance Director. The term "City Collector/Finance Director" shall mean the Finance Director of the City of Newport Beach or his/her designated representative.~~

~~Person. The term "person" shall mean any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.~~

Time-Share Interest. The term "time-share interest" shall mean either a time-share estate or a time-share use (as those terms are defined in Cal Bus. & Prof. Code Section ~~11003.511212~~ ~~of the Business and Professions Code~~) and any similar form of ownership involving a right in perpetuity, for life, or for a term of years, to occupy any room, space or area in a time-share project.

Transient. The term "transient" shall mean any individual who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of thirty (30) consecutive ~~calendar~~ days or less, counting portions of ~~calendar~~ days as full days. Any individual occupying space in a hotel shall be deemed to be a transient until the period of thirty (30) days has expired, and the tax imposed by this chapter shall be due upon all rent collected or accruing prior to the thirty-first consecutive day of occupancy unless occupancy extends to the thirty-first day or thereafter. The term "transient" shall not include any person who occupies any room, space or area in a time-share project pursuant to a time-share interest and without paying rent including: (A) a time-share owner; (B) a member of the family or guest of the time-share owner; (C) any person who is entitled to occupancy pursuant to any time-share exchange program, or any similar program; and (D) any person entitled to occupancy pursuant to any exchange or incentive program involving or sponsored by the operator of the time-share project.

#### 3.16.050 Operator's Collection Duties.

E. If an operator fails to comply with subsection (A) of this section and also fails to obtain approval of a special package rate pursuant to subsection (C) of this section, the tax ("imputed rate") shall be the lesser of (1) the amount collected for the total special package or (2) an amount equal to the median average double occupancy room rate for the accommodations as posted in the room pursuant to the requirements of Cal. Civ. Code Section 1863 ~~of the Civil Code (or any successor section)~~.

#### 3.16.060 Registration of Hotel.

Within thirty (30) days after commencing business each operator of any hotel renting occupancy to transients shall register the hotel with the Finance Director and obtain a "transient occupancy registration certificate" to be at all times posted in a conspicuous place on the premises. The certificate shall, among other things, state the following:

A. The name of the operator;

- B. The address of the hotel;
- C. The date upon which the certificate was issued; and
- D. The following statement:

Transient occupancy registration certificate signifies that the person named on the certificate has fulfilled the requirements of the Uniform Transient Occupancy Tax Ordinance (Chapter 3.16 of ~~this Newport Beach Municipal~~ Code) by registering with the Finance Director for the purpose of collecting the tax from transients and remitting the tax to the Finance Director. This certificate does not authorize any person to conduct any unlawful business, to conduct any lawful business in an unlawful manner or to operate a hotel without strictly complying with all local laws, including those requiring a permit from any board, commission, department or office of the City. This certificate does not constitute a permit.

### **3.16.080 Penalties and Interest.**

- A. Initial Penalty. Any operator who fails to collect and remit any tax imposed by this chapter within the time required shall pay a penalty of ten (10) percent of the amount of the tax in addition to the amount of the tax (initial penalty). The initial penalty may not be waived.
- B. Second Penalty. Any operator who fails to collect and remit the tax and initial penalty on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten (10) percent on both the amount of the tax and the initial penalty (second penalty). The second penalty may not be waived.
- C. Interest. In addition to the penalties imposed, any operator who fails to collect and remit any tax imposed by this chapter shall pay interest on the amount of tax that is due and owing at the rate of one and one-half ~~of one percent~~ (1 <sup>1</sup>/<sub>2</sub>%) per month for each month or portion of a month that the tax remains unpaid exclusive of penalties.
- D. Penalties Merged with Tax. For purposes of collection, every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax required to be paid, provided, however, that penalties and interest due from an operator under this section are not merged with tax due from a transient.
- E. In addition to the penalties and interest provided in this section, the operator shall reimburse City for City's costs in performance of an audit if, as a result of the audit, it is determined there was any intentional misrepresentation by the operator with respect to the amount of transient occupancy tax due to the City or there is a five (5) percent ~~(5%)~~ or greater discrepancy between the amount of annual transient occupancy tax due to the City and the amount collected and remitted to the City ~~paid~~ by the operator. Such reimbursement shall be paid by operator within thirty (30) days of the date City notifies operator in writing of the amount of City's costs.

### **3.16.090 Enforcement Proceedings—Appeal.**

- B. If the operator fails to timely appeal a determination by the Finance Director the determination shall be final and conclusive and the tax, interest and penalties shall become immediately due and payable by the operator and/or the violation shall be deemed established.

C. If the operator files a timely appeal of the determination, the Finance Director shall appoint a hearing officer and give the operator not less than fifteen (15) days' written notice of the hearing on the appeal. The operator shall have the right to present evidence relevant to the determination and the hearing shall be conducted in accordance with the general rules applicable to any administrative hearing. The hearing officer shall submit to the City Manager a transcript of the hearing together with recommended findings of fact and conclusions of law. The City Manager shall consider the material submitted by the hearing officer and render a decision within fifteen (15) days after submission. The decision of the City Manager shall be final as to the City but subject to judicial review pursuant to Cal. Code Civ. Proc. Section 1094.5.

### **3.16.110 Records.**

It shall be the duty of every operator liable for the collection and ~~remittance payment~~ to the City of any tax imposed by this chapter to keep and preserve, for a period of not less than four (4) years, all records necessary to determine the amount of tax the operator was required to collect and ~~remit pay~~ to the City. All retained records shall be subject to audit as provided in Section 3.16.070. The Finance Director shall have the right to inspect and/or audit these records at any time during normal business hours on twenty-four (24) hours' written notice. The records shall be maintained at the operator's premises or at a location convenient to the Finance Director. The records shall include at least the following:

- A. Daily summaries of room occupancies;
- B. A record of each occupancy charge for which exemption is claimed, the City provided form of exemption, if applicable, including the name of the individual occupying the room, dates of occupancy and reasons for exemption;
- C. All qualifying rental agreements.

### **3.16.120 Refunds.**

A. Claim Required. Whenever the amount of any tax, interest or penalty has been overpaid, paid more than once or has been erroneously or illegally collected or received by the City, the tax may be refunded as provided in subsections (B) and (C) of this section; provided, that a written claim for refund is filed with the Finance Director. The claim for refund must be filed within ~~one (1) three~~ years of the date of payment, be made on forms furnished by the Finance Director and be signed by the operator under penalty of perjury.

### **3.16.130 Tax Declared a Debt—Action to Collect.**

Any tax required to be paid by any transient pursuant to this chapter shall be deemed a debt owed by the transient to the City. Any such tax collected by an operator that has not been paid to the City, tax an operator has failed to collect, or penalty or interest due from an operator shall be deemed a debt owed by the operator to the City. Any person owing money to the City pursuant to this chapter shall be liable to an action brought in the name of the City for the recovery of such amount.

### 3.16.140 Penalty for Violations.

~~No~~Any operator or other person ~~shall~~~~who~~ willfully: (A) ~~fails~~ or ~~refuses~~ to register as required by this chapter; (B) ~~fails~~ to make any return required by this chapter; (C) ~~fails~~ or ~~refuses~~ to furnish a supplemental return or other data required by the Finance Director; or (D) ~~makes~~ a false or fraudulent return or claim; ~~is guilty of a misdemeanor and is punishable as provided in Section 1.04.010.~~

## Chapter 3.20

### GASOLINE TAX

#### 3.22.010 Fund Established.

There is created in the City Treasury a special fund to be known as the “Special Gas Tax Street Improvement Fund,” for the purposes specified in Cal. Sts. & Hy. Code Division 1, Chapter 1, Article 5, ~~Chapter 1 of Division 1, of the Streets and Highways Code of the State of California~~, and all funds required by such law to be deposited in the special fund shall be deposited therein in compliance with the provisions of this Code, and the disbursements and withdrawals from the fund shall be made only for the purposes and in the manner prescribed in this Code.

## Chapter 3.22

### REAL PROPERTY TRANSFER TAX

#### Sections:

**3.22.010 Short Title—Adoption Authority.**

**3.22.020 Tax Imposed.**

**3.22.030 Persons Liable for Tax.**

**3.22.040 Exemption—Security Instruments.**

**3.22.050 Exemption—Governmental Agencies.**

**3.22.060 Exemption—Insolvency or Bankruptcy.**

**3.22.070 Exemption—Orders of Securities and Exchange Commission.**

**3.22.080 Exemption—Certain Partnership Transfers.**

**3.22.085 Exemptions.**

**3.22.090 Administration.**

**3.22.100 Refunds.**

~~**3.22.110 Operative Date.**~~

**3.22.010 Short Title—Adoption Authority.**

This chapter shall be known as the “real property transfer tax ordinance of the City of Newport Beach.” It is adopted pursuant to the authority contained in Cal. Rev. & Tax. Code Division 2, Part 6.7 (commencing with Section 11901) ~~of Division 2 of the Revenue and Taxation Code of the State of California.~~

**3.22.060 Exemption—Insolvency or Bankruptcy.**

The tax imposed by this chapter shall not apply to the making, delivering or filing of conveyances to make effective any plan of reorganization or adjustment:

- A. Confirmed under the Federal Bankruptcy Act, ~~as amended;~~
- B. Approved in an equity receivership proceeding in a court involving a railroad corporation, as defined in subdivision 11 U.S.C. (m) of Section 101205 of Title 11 of the United States Code, as amended;
- C. Approved in an equity receivership proceeding in a court involving a corporation, as defined in subdivision 11 U.S.C. Section 101(3) of Section 506 of Title 11 of the United States Code, as amended; or
- D. Whereby a mere change in identity, form or place of organization is ~~effected~~affected.

Subsections (A) to (D), inclusive, of this section shall only apply if the making, delivery or filing of instruments of transfer or conveyances occurs within five (5) years from the date of such confirmation, approval, or change.

### **3.22.085 Exemptions.**

A. Beneficiary or mortgagee taken in lieu of foreclosure. The tax imposed by this chapter shall not apply with respect to any deed, instrument, or writing to a beneficiary or mortgagee, which is taken from the mortgagor or trustor as a result of or in lieu of foreclosure; provided, that such tax shall apply to the extent that the consideration exceeds the unpaid debt, including accrued interest and cost of foreclosure. Consideration, unpaid debt amount and identification of grantee as beneficiary or mortgagee shall be noted on the deed, instrument or writing or stated in an affidavit or declaration under penalty of perjury for tax purposes.

B. The transfer, division or allocation of property assets between spouses under judgment or dissolution of marriage, separation or agreement in contemplation or judgment or order.

1. The tax imposed by this chapter shall not apply with respect to any deed, instrument, or other writing which purports to transfer, divide, or allocate community, quasi-community, or quasi-marital property assets between spouses for the purpose of effecting a division of community, quasi-community, or quasi-marital property which is required by a judgment decreeing a dissolution of the marriage or legal separation, by a judgment of nullity, or by any other judgment or order rendered pursuant to the ~~California Family~~Cal. Fam. Code, or by a written agreement between the spouses, executed in contemplation of any such judgment or order whether or not the written agreement is incorporated as part of any of those judgments or orders.

2. In order to qualify for the exemption provided in subdivision (1), the deed, instrument, or other writing shall include a written recital, signed by either spouse, stating that the deed, instrument, or other writing is entitled to the exemption.

### **3.22.090 Administration.**

The County Recorder shall administer this chapter in conformity with the provisions of Cal. Rev. Tax. Code Division 2, Part 6.7, of Division 2 of the Revenue and Taxation Code being the Documentary Transfer Tax Act, and the provisions of any County ordinance adopted pursuant thereto.

### **~~3.22.110 Operative Date.~~**

~~This chapter shall not become operative unless the County of Orange has adopted an ordinance imposing a tax on transfers of real property pursuant to the provisions of Part 6.7 of Division 2 of the Revenue and Taxation Code of the State of California. If the County of Orange has adopted such an ordinance which has become operative at 12:01 a.m. on January 1, 1968, or on any later date, then this chapter shall become operative simultaneously with the operative date of said County ordinance.~~

## Chapter 3.26

### HEALTH CARE AND RECREATION FACILITIES REVENUE BOND ORDINANCE

#### Sections:

~~3.26.010 Short Title.~~

~~3.26.020 Purpose.~~

~~3.26.030 Definitions.~~

~~3.26.040 Powers.~~

~~3.26.050 Bonds.~~

~~3.26.060 Independent Validity of Bonds.~~

~~3.26.070 Liberal Construction.~~

~~3.26.080 Effect of Omission or Defect.~~

~~3.26.090 Authority.~~

~~3.26.100 Provisions of this Ordinance are Complete, Alternative.~~

~~3.26.110 Inconsistency with Other Statutes.~~

~~3.26.120 Partial Invalidity.~~

~~3.26.010 Short Title.~~

This chapter shall be known as the “Health Care and Recreation Facilities Revenue Bond Ordinance” of the City of Newport Beach.

~~3.26.020 Purpose.~~

The City Council finds that the ordinance codified in this chapter is intended to establish a procedure whereby the City provides assistance in the financing of improvements to nonprofit health care and recreation facilities located within the City of Newport Beach. By providing such assistance, and in reducing the cost of financing improvements, the City will enable nonprofit health care, recreational facilities to lower costs of those services, to provide better and more efficient service than would otherwise be available, and will enable nonprofit recreation facilities to provide sports or recreational opportunities that would otherwise be unavailable to residents of the City.

The City Council also declares that the significant public benefit that derives from the exercise of powers described in this ordinance will not result in any adverse financial impact on the City of Newport Beach, nor will the City take any action which would create any debt or liability on the part of the City, or any obligation to levy or impose taxes or assessments or otherwise affect the finances or credit of the City of Newport Beach.

~~The City Council also declares that, in order to ensure that the participation of the City in financing is for a public purpose, the City may impose fees, charges or financial commitments on the part of the participating institutions, as may be necessary or appropriate to recover administrative costs and expenses incurred in the exercise of the powers and duties conferred by this ordinance or to defray certain costs annually incurred by the City in providing emergency health care and recreation facilities and programs.~~

### **~~3.26.030 Definitions.~~**

~~Unless the context otherwise requires, the terms defined in this ordinance shall have the following meanings:~~

~~A. "Bonds" means any bonds, notes, certificates, debentures or other obligations issued or entered into by the City pursuant to this ordinance and payable exclusively from revenues as in this ordinance defined and from any other funds specified in this ordinance upon which such obligations may be made a charge and from which they are made payable.~~

~~B. "City" means the City of Newport Beach.~~

~~C. "Cost" means the total of all costs incurred by or on behalf of a participating institution necessary or incident to carrying out the purpose, as specified in subsection (A), (B) or (C) of Section 3.26.040, for which a series of bonds is issued, as are approved by the City as reasonable and necessary for carrying out all works and undertakings necessary or incident to such purpose. "Cost," as applied to a project or portion thereof, financed with the proceeds of any series of bonds issued hereunder means and includes, without limitation, all or any part of the cost of construction and acquisition of all lands, structures, real or personal property, rights, rights-of-way, franchises, easements and interests acquired or used for such project, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved, the cost of all machinery and equipment, financing charges, reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations and improvements, the cost of engineering, reasonable financial and legal services, plans, specifications, studies, surveys, estimates, administrative expenses and other expenses necessary or incident to determining the feasibility or constructing any such project or incident to determining the feasibility of constructing any such project or incident to the construction or acquisition or financing thereof. "Cost" also may include reimbursement of any such costs incurred by a participating institution prior to or after the enactment of this ordinance or prior to or after the enactment of a resolution of the Council with respect to the issuance of such series of bonds.~~

~~D. "Council" means the City Council of the City of Newport Beach.~~

~~E. "Health facility" means any facility, place or building which is maintained and operated for the diagnosis, care, prevention or treatment of human illness, physical or mental, including convalescence, rehabilitation or care during and after pregnancy, or for any one or more of these services, and which provides to residents of the City health care services designated as such in an agreement between the City and the participating health institution providing or operating such facility, place or building.~~

~~"Health facility" includes a portion of the above types of facilities and includes facilities operated in conjunction with one of the above types of facilities and required or useful, as determined by resolution of the Council, for the operation of a health facility, including but not limited to: a laboratory, a laundry, a nurses' or interns' residence, a housing facility for patients, staff or employees and the families of any of~~

~~them, an administration building or buildings to house offices of the participating health institution, a research, maintenance, storage, utility or parking facility and all structures or facilities related to any of the foregoing.~~

~~“Health facility” shall not include any building used or to be used primarily for sectarian instruction or study or as a place for devotional activities or religious worship.~~

~~F.—“Recreation facility” means any facility, place or building which is maintained and operated by a nonprofit corporation for the purpose of providing facilities for sports and recreational activities, as well as equipment and comprehensive programs to improve physical fitness, and which provides to all residents of the City such facilities and programs as designated in an agreement between the City and the participating recreation institution providing or operating such facility, place or building.~~

~~“Recreation facility” includes a portion of a recreation facility and includes facilities operated in conjunction with a recreation facility and required or useful, as determined by resolution of the Council, for the operation of a recreation facility, including but not limited to: an administration building or buildings to house offices of the participating recreation institution, a maintenance, storage, utility or parking facility and all structures or facilities related to any of the foregoing.~~

~~“Recreation facility” shall not include any building used or to be used primarily for sectarian instruction or study or as a place for devotional activities or religious worship.~~

~~G.—“Improvement of a health facility” shall include, without limitation, the additions to or replacement of a health facility or the acquisition of equipment in connection with the operation of such health facility.~~

~~H.—“Improvement of recreation facility” shall include, without limitation, the additions to or replacement of a recreation facility, or the acquisition of equipment in connection with the operation of such a facility.~~

~~I.—“Participating health institution” means a private nonprofit corporation or association authorized by the laws of the State of California to provide or operate a health facility as defined in this ordinance and which, pursuant to the provisions of this ordinance, undertakes the financing of the acquisition, construction or improvement of a health facility or undertakes the refunding or refinancing of obligations incurred to finance the acquisition, construction or improvement of a health facility, or any corporation which is a nonprofit corporation in California or a sister State of the United States of America which is the sole member of such a corporation or association.~~

~~J.—“Participating recreation institution” means a private nonprofit corporation or association authorized by the laws of the State of California to provide or operate a recreation facility as defined in this ordinance and which, pursuant to the provisions of this ordinance, undertakes the financing of the acquisition, construction or improvement of a recreation facility or undertakes the refunding or refinancing of obligations incurred to finance the acquisition, construction or improvement of a recreation facility, or any corporation which is a nonprofit corporation in California or a sister State of the United States of America which is the sole member of such a corporation or association.~~

~~K.—“Participating institution” means a participating health institution or a participating recreation institution.~~

~~L.—“Revenue” means amounts received by the City as repayment of principal, interest, and all other charges with respect to a loan under this ordinance, any proceeds received by the City from mortgage,~~

~~hazard or other insurance on or with respect to such a loan, all other rents, charges, fees, income and receipts derived by the City from the financing or refinancing of a health or recreation facility under this ordinance, any amounts received by the City as investment earnings on moneys deposited in a reserve fund or any similar fund securing bonds, and such other moneys as the Council may, in its discretion, lawfully designate as revenues.~~

### **3.26.040 Powers.**

~~The City Council shall, within the context of this ordinance, have the following powers:~~

~~A.— Loan For Health or Recreation Facility. The City may make, purchase, or otherwise contract for the making of a secured or unsecured loan upon such terms and conditions as the City shall deem proper, to any participating institution for the cost of acquiring, constructing, rehabilitating or improving a health or recreation facility or financing thereof or of working capital therefor, including reimbursement to such participating institution of costs already expended for such purpose.~~

~~B.— Loan to Refund or Refinance Health or Recreation Facility. The City may make, purchase, or otherwise contract for the making of a secured or unsecured loan, upon such terms and conditions as the City shall deem proper, to any participating institution or exchange its bonds in order to refund or refinance outstanding obligations of such participating institution incurred to finance the cost of acquiring, constructing, rehabilitating or improving a health or recreation facility or financing of working capital for such facility, whether such obligations were incurred prior to or after the enactment of this ordinance, if the City finds that such refunding or refinancing is in the public interest and either alleviates a financial or operating hardship of such participating institution, or is in connection with other financing by the City for such participating institution or may be expected to result in lower charges or containment of the rate of increase in hospital rates and savings to third parties, including government, and to others who must pay for care, or any combination thereof.~~

~~C.— Sale or Lease of Health or Recreation Facility by City. The City may acquire, construct, enlarge, remodel, renovate, alter, improve, furnish, equip, own or lease as lessee a health or recreation facility for the purpose of selling or leasing such facility to a participating institution and may designate such participating institution as its agent to undertake to construct, enlarge, remodel, renovate, alter, improve, furnish, and equip such facility.~~

~~The City may sell or lease, upon such terms and conditions as the City shall deem proper, to any such participating institution any health or recreation facility owned by the City under this ordinance, including a facility conveyed to the City in connection with a financing under this ordinance but not being financed or refinanced hereunder.~~

~~D.— Recovery of Costs and Expenses by City. The City may charge participating institutions application, commitment, financing and other fees, to recover all administrative and other costs and expenses incurred in the exercise of the powers and duties conferred by this ordinance, or impose fees, charges or other financial commitments to ensure, that the exercise of such powers is in furtherance of the public health, safety and welfare of the citizens of the City of Newport Beach. The City Council is also specifically authorized to require the payment of such fees as it deems appropriate in order to defray certain costs annually incurred by the City in providing emergency health care and recreation facilities and programs.~~

~~E.—Insurance of Guarantee of Payment. The City may obtain, or aid in obtaining, from any department or agency of the United States or of the State of California or any private company, any insurance or guarantee as to, or of, or for the payment or repayment of, interest or principal, or both, or any part thereof, on any loan, lease or sale obligation or any instrument evidencing or securing the same, made or entered into pursuant to the provisions of this ordinance; and may accept payment in such manner and form as provided therein in the event of a default by a participating institution and may assign any such insurance or guarantee as security for bonds. The City also may provide for the maintenance of letters of credit or other credit enhancement devices, for the guarantee of, or for the payment or repayment of, interest or principal, or both, or any part thereof, of any services of bonds issued pursuant to this ordinance.~~

~~F.—Fixing Rents, Fees, Rates, Etc. The City may fix rents, payments, fees, charges and interest rates for financing under this ordinance and may agree to revise from time to time such rents, payments, fees, charges and interest rates to reflect changes in interest rates on bonds, losses due to defaults or changes in other expenses related to this ordinance, including City administrative expenses.~~

~~G.—Deeds of Trust or Mortgages as Security. The City may hold deeds of trust, mortgages or other security instruments as security for loans under this ordinance and may pledge or assign the same as security for repayment of bonds. Such deeds of trust, mortgages or other security instruments may be assigned to, and held on behalf of the City by, any bank or trust company within any State of the United States of America appointed to act as trustee by the City in any resolution or indenture providing for issuance of bonds under this ordinance.~~

~~H.—Employment of Experts and Consultants. The City may employ such engineering, architectural, financial, accounting, legal or other services as may be necessary in the judgment of the City of the purposes of this ordinance.~~

~~I.—Do All Things Necessary and Convenient. In addition to all other powers specifically described in this ordinance, the City may do all things necessary or convenient to carry out the purposes of this ordinance provided, however, that at no time shall the Council take any action which would:~~

- ~~1.—Constitute a debt of liability of the City;~~
- ~~2.—Constitute a pledge of the faith and/or credit of the City;~~
- ~~3.—Obligate the City, directly, indirectly or contingently, to impose any form of taxation or assessment, or to make any appropriation for the payment of any bonds or indebtedness; or~~
- ~~4.—Obligate the City to pledge or otherwise encumber any of its assets.~~

### **3.26.050 Bonds.**

~~The City may, from time to time, issue bonds for any of the purposes specified in subsections (A), (B) and (C) of Section 3.26.040. Bonds shall be negotiable instruments for all purposes, subject only to the provisions of such bonds for registration.~~

~~1.—Issuance of Limited Obligation Bonds. Every issue of bonds shall be a limited obligation of the City payable solely from all or any specified part of the revenues and the moneys and assets authorized in this ordinance to be pledged or assigned to secure payment of bonds. Such revenues, moneys or assets shall be the sole source of repayment of such issue of bonds. Bonds issued under the provisions of this~~

~~ordinance shall not be deemed to constitute a debt or liability of the City or pledge of the faith and credit of the City but shall be payable solely from specified revenues, moneys and assets. The issuance of bonds shall not directly, indirectly, or contingently obligate the City to levy or pledge any form of taxation or to make any appropriation for their payment. All bonds shall contain on the face thereof a statement to the following effect:~~

~~Neither the faith and credit nor the taxing power of the City of Newport Beach, the State of California, any political subdivision thereof is pledged to the payment of the principal of or premium or interest on this bond.~~

~~2.—Amount of bonds. In determining the amount of bonds to be issued, the City may include all costs of the issuance of such bonds, reserves for debt service and for repairs, replacement, additions and improvements, and interest on the bonds during the construction period and for such period thereafter as the City may determine.~~

~~3.—Type, Form and Sale of Bonds. Bonds may be issued as serial bonds, term bonds, installments bonds or passthrough certificates or any combination thereof. Bonds shall be authorized by resolution of the Council and shall bear such date or dates, mature at such time or times, bear interest at such fixed or variable rate or rates, be payable at such time or times, be in such denomination, be in such form, carry such registration privileges, be executed in such manner, be payable in lawful money of the United States of America at such place or places, be subject to such terms of redemption and have such other terms and conditions as such resolution or any indenture authorized by such resolution to be entered into by the City may provide. Bonds may be sold at either a public or private sale and for such prices as the City may determine. Pending preparation of definitive bonds, the City may issue temporary bonds, which shall be exchanged for such definitive bonds when prepared.~~

~~4.—Terms and Conditions of Bonds. Any resolution authorizing any bonds or any issue of bonds, or any indenture authorized by such resolution to be entered into by the City, may contain provisions respecting any of the following terms and conditions, which shall be a part of the contract with the holders of such bonds:~~

~~a.—The terms, conditions and form of such bonds and the interest and principal to be paid thereon;~~

~~b.—Limitations on the uses and purposes to which the proceeds of sale of such bonds may be applied, and the pledge or assignment of such proceeds to secure the payment of such bonds;~~

~~c.—Limitations on the issuance of additional parity bonds, the terms upon which additional parity bonds may be issued and secured, and the refunding of outstanding bonds;~~

~~d.—The setting aside of reserves, sinking funds, and such other funds as are necessary and the regulation and disposition thereof;~~

~~e.—The pledge or assignment of all or any part of the revenues and the use and disposition thereof, subject to such agreements with the holders of bonds as may then be outstanding;~~

~~f.—Limitation on the use of revenues for expenditures for operating, administration or other expenses of the City;~~

~~g.—Specification of the acts or omissions to act which shall constitute a default in the duties of the City or a participating instruction to holders of such bonds, and providing the rights and remedies of such holders in the event of default, including any limitations on the right of action by individual bondholders;~~

~~h.—The appointment of a corporate trustee to act on behalf of the City and the holders of its bonds, the pledge or assignment of loans, deeds of trust, mortgages and any contracts or agreements to such trustee, and the rights of such trustee;~~

~~i.—The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of such bonds the holders of which must consent thereto, and the manner in which such consent may be given; and~~

~~j.—Any other provisions which the Council may deem reasonable and proper for the purposes of this ordinance and the security of the bondholders.~~

~~5.—Pledge of Revenues. Any pledge of revenues, other moneys or assets, or any centralized pool of said revenues, shall be valid and binding from the time such pledge is made. Revenues, moneys and assets so pledged and thereafter received by the City shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the City, irrespective of whether such parties have notice thereof. Neither the resolution nor any indenture by which a pledge is created need be filed or recorded except in the records of the City.~~

~~6.—Liability of Council and Officers. Neither the members of the Council, the officers or employees of the City, nor any person executing any bonds shall be liable personally on the bonds or be subject to any personal liability or accountability by reason of the issuance thereof.~~

~~7.—Purchase of Bonds by City. The City shall have the power out of any funds available therefor to purchase its bonds. The City may hold, pledge, cancel, or resell such bonds, subject to and in accordance with agreements with the bondholders.~~

~~8.—Compelling Performance. Any holder of bonds issued under the provisions of this ordinance, and any trustee appointed pursuant to any resolution authorizing the issuance of bonds, except to the extent the rights thereof may be restricted by such resolution or any indenture authorized thereby to be entered into by the City may, either at law or in equity, by suit, action, mandamus, or other proceedings, protect or enforce any and all rights specified in law or in such resolution or indenture, and may enforce and compel the performance of all duties required by this ordinance or by such resolution or indenture to be performed by the City or by any officer, employee or agent thereof, including the fixing, charging, and collecting of rates, fees, interest, and charges authorized and required by the provisions of such resolution or indenture to be fixed, charged, and collected.~~

~~9.—Refunding Bonds—Use of Proceeds. The City may issue bonds for the purpose of refunding any bonds then outstanding, including the payment of any redemption premiums thereof and any interest accrued or to accrue to the earliest or any subsequent date or dates of redemption, purchase or maturity of such bonds.~~

~~a.—The proceeds of bonds issued for the purpose of refunding any outstanding bonds may, in the discretion of the City, be applied to the purchase or retirement at maturity or redemption of such~~

~~outstanding bonds, either at their earliest or any subsequent redemption date or dates or upon the purchase or retirement at the maturity thereof and may, pending such application, be placed in escrow, to be applied to such purchase or retirement at maturity or redemption on such date or dates as may be determined by the City.~~

~~b.—Pending use for purchase, retirement at maturity or redemption of outstanding bonds, any proceeds held in escrow pursuant to subdivision (b) may be invested and reinvested as provided in the resolution or indenture. Any interest or other increment earned or realized on any such investment may be applied to the payment of the outstanding bonds to be refunded or to the payment of interest on the refunding bonds. After the terms of the escrow have been fully satisfied and carried out, any balance of such proceeds and any interest or increment earned or realized on any such investment thereof may be returned to the City to be used by it for any lawful purpose.~~

~~c.—All bonds issued pursuant to this section shall be subject to the provisions of this ordinance in the same manner and to the same extent as other bonds issued pursuant to this ordinance.~~

### **~~3.26.060 Independent Validity of Bonds.~~**

~~The validity of the authorization and issuance of any bonds is not dependent on and shall not be affected in any way by the proceedings taken by the City for the making of any loan or the entering into of any agreement, or by failure to make any loan or enter into any agreement, for which bonds are authorized to be issued under this ordinance.~~

### **~~3.26.070 Liberal Construction.~~**

~~This ordinance, being necessary for the welfare of the City and its inhabitants, shall be liberally constructed to effect its purposes. (Ord. 85-23 § 1 (part), 1985; Ord. 84-4 § 2 (part), 1984)~~

### **~~3.26.080 Effect of Omission or Defect.~~**

~~If the jurisdiction of the Council to order the proposed act is not affected, any omission or any other defect in the proceedings shall not invalidate such proceedings or the bonds issued pursuant to this ordinance.~~

### **~~3.26.090 Authority.~~**

~~This chapter is full authority for the issuance of bonds by the City for the purposes specified herein.~~

### **~~3.26.100 Provisions of this Ordinance are Complete, Alternative.~~**

~~This ordinance shall be deemed to provide a complete, additional and alternative method for doing the things authorized thereby, and shall be regarded as supplemental and additional to the power conferred by other laws. The issuance of bonds under the provisions of this ordinance need not comply with the requirements of any other law applicable to the issuance of bonds. The purposes authorized hereby may be effectuated and the bonds may be issued for any such purposes under this ordinance notwithstanding that any other law may provide for such purposes or for the issuance of bonds for like purposes and without regard to the requirements, restrictions, limitations or other provisions contained in any other law.~~

### **~~3.26.110 Inconsistency with Other Statutes.~~**

~~To the extent that the provisions of this ordinance are inconsistent with the provisions of any general statute, a special act or parts thereof, including the Newport Beach Municipal Code provisions for revenue bonds, the provisions of this ordinance shall be deemed controlling.~~

**~~3.26.120 Partial Invalidity.~~**

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

## Chapter 3.27

### MUNICIPAL FACILITIES REVENUE BOND CODE

#### 3.27.30 Definitions.

~~“City” means the City of Newport Beach, California, a chartered City in the State existing under and exercising powers pursuant to the Charter and the Constitution of the State.~~

~~“City Council” means the City Council of the City.~~

~~“State” means the State of California.~~

#### 3.27.110 Repayment of Bonds.

Revenues, or any portion thereof, as designated in the resolution, trust agreement or indenture authorizing the issuance of the bonds, shall be the sole source of funds pledged by the City for repayment of bonds issued hereunder shall not be deemed to constitute a debt or liability of the City or a pledge of the faith and credit of the City but shall be payable solely from revenues.

All bonds shall contain on the face thereof a statement to the following effect:

Neither the faith and credit nor the taxing power of the City of Newport Beach are pledged to the payment of the principal of or interest on this bond.

The issuance of bonds shall not directly, indirectly or contingently obligate the City Council to levy or pledge any form of taxation or to make any appropriation for their payment.

#### 3.27.170 Provisions of this Chapter are Complete, Additional and Alternative.

This chapter shall be deemed to provide a complete, additional and alternative method for doing the things authorized hereby, and shall be regarded as supplemental and additional to the powers conferred by other laws. The issuance of bonds under the provisions of this chapter need not comply with the requirements of any other law applicable to the issuance of bonds for an enterprise. The purposes authorized hereby may be effectuated and bonds are authorized to be issued for any such purposes under this chapter notwithstanding that any other law may provide for such purposes or for the issuance of bonds for like purposes and without regard to the requirements, restrictions, limitations or other provisions contained in any other law.

#### 3.27.180 Judicial Validation Proceedings.

An action may be brought pursuant to Chapter 9 (commencing with Cal. Civ. Proc. Title 10, Part 2, Section 860 ~~of Title 10 of Part 2 of the Code of Civil Procedure~~) to determine the validity of bonds and the legality and validity of all proceedings previously taken and proposed to be taken for the authorization, issuance, sale, and delivery of the bonds and for the payment of the principal thereof and interest thereon.

#### 3.27.190 Amendment of Chapter.

This chapter shall not be amended so as to have a material, adverse eaffect upon the rights of the owners of any outstanding bonds theretofore issued hereunder, without the written consent of such bond owners; provided, however, that this chapter may be amended at any time (a) To make such provisions for the

purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provisions herein contained, as the City may deem necessary or desirable; or (b) If such amendment does not materially impair or adversely affect the interests of any such bond owner in the opinion of the City Council; or (c) If such amendments apply solely to bonds not theretofore issued.

## Chapter 3.28

### VISITOR'S SERVICE FEE

#### 3.28.010 Definitions.

~~City collector~~~~Finance Director~~. The term "~~City collector~~~~Finance Director~~" shall mean the Finance Director of the City ~~of Newport Beach~~ or his or her designated representative.

Guest. The term "guest" shall mean any individual who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of thirty (30) consecutive ~~calendar~~ days or less, counting portions of ~~calendar~~ days as full days. Any individual occupying space in a hotel shall be deemed to be a guest until the period of thirty (30) days has expired, unless there is a qualifying rental agreement between the operator and the guest providing for a longer period of occupancy.

Time-Share Interest. The term "time-share interest" shall mean either a time-share estate or a time-share use (as those terms are defined in Cal. Bus. & Prof. Code Section ~~1121211003.5 of the Business and Professions Code~~) and any similar form of ownership involving a right in perpetuity, for life, or for a term of years, to occupy any room, space or area in a time-share project.

#### 3.28.005 Findings and Purpose.

E. Businesses that provide lodging for visitors will play a key role in dispensing information to visitors, and the guests of hotels, motels and inns will be the principal beneficiaryies of the program;

#### 3.28.040 Reporting and Remitting, Collection.

The operator shall be required to collect, report and remit all fees paid pursuant to this chapter in the same manner as required by Section 3.16.070.

#### 3.28.045 Penalties and Interest.

Any operator who fails to collect and remit any fee imposed by this chapter within the time required shall be required to pay penalties and interest in the same manner and amounts as provided in Section 3.16.080.

#### 3.28.057 Payment Required.

No injunction, writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the City or an officer thereof, to prevent or enjoin the collection of fees sought to be collected pursuant to this chapter. Payment of all fees, interest and penalties is a required condition precedent to seeking judicial review of any fee-liability under this chapter.

#### 3.28.060 Duty of Successor of Operator.

A. If an operator who is liable for any fee or penalties under this chapter sells or otherwise disposes of the hotel operation, his/her successor shall notify the Finance Director of the date of sale at least thirty (30) days before the date of sale, or if the decision to sell was made less than thirty (30) days prior to the actual sale, then immediately and shall upon withhold a sufficient portion of the purchase price to equal the amount of any unpaid fees or penalty until the selling operator produces a receipt from the Finance

Director showing that the fees or penalties have been paid or a clearance certificate from the Finance Director stating that no fee or penalty is due. If the seller does not present a receipt or clearance certificate within thirty (30) days after such successor commences to conduct business, the successor shall deposit the withheld amount with the Finance Director pending settlement of the account of the seller.

### **3.28.070 Refunds.**

A. Claim Required. Whenever the amount of any fee, interest or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the City under this chapter, it may be refunded as provided in subsections (B) and (C) of this section; provided, that a claim in writing therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Finance Director within one (1) three years of the date of payment. The claim shall be on forms furnished by the Finance Director.

### **3.28.075 Notice.**

Any notice required to be given pursuant to this chapter, shall be deemed given if personally served on the operator or the operator's representative, ~~or if deposited in the United States mail, first class postage prepaid, in the manner provided in Section 1.08.080~~ and addressed to the operator at the address shown on the transient occupancy registration certificate.

### **3.28.080 Fee Declared a Debt—Action to Collect.**

Any fee collected by an operator pursuant to this chapter that has not been paid to the City, fee an operator has failed to collect, or penalty or interest due from an operator shall be deemed a debt owed by the operator to the City and the operator shall be liable in an action brought in the name of the City of Newport Beach for the recovery such amount of the unremitted fees.

### **3.28.085 Penalty for Violations.**

~~No~~Any operator or other person ~~shall~~who willfully: (A) ~~fails~~ or refuses to register as required by this chapter; (B) ~~fails~~ to make any return required by this chapter; (C) ~~fails~~ or refuses to furnish a supplemental return or other data required by the Finance Director; or (D) ~~makes~~ a false or fraudulent return or claim, ~~is guilty of a misdemeanor and is punishable as provided in Section 1.04.010.~~

## Chapter 3.30

### AIR QUALITY IMPROVEMENT TRUST FUND

#### 3.30.010 Findings.

D. Cities and counties have the opportunity to implement programs and projects that reduce air polluting emissions from mobile sources in order that the SCAB attain State and Federal ambient air quality standards as required by the California Clean Air Act of 1988, Cal. Health & Safety Code section 39000 et seq.

G. For cCities and cCounties located within the jurisdiction of the SCAQMD that comply with Section 44243 of the Cal. Health & Safety Code, forty cents (\$.40) of every dollar collected under Cal. Health & Safety Code Section 44223 ~~of the Health and Safety Code~~ shall be distributed to the cCities and cCounties on the basis of the jurisdiction's prorated share of population as defined by the State Department of Finance.

H. Cities and cCounties that fail to adopt an ordinance pursuant to Cal. Health & Safety Code Section 44243(b) ~~of the California Health and Safety Code~~ shall have the fee revenues which would be distributed to that City or County distributed to the other cCities and cCounties within the jurisdiction of the SCAQMD which have adopted an ordinance pursuant to Section 44243(b) based on their prorated share of registered motor vehicles.

#### 3.30.020 Intent.

The intent of this chapter is to establish a special fund to receive revenue distributed by the SCAQMD, to support the SCAQMD's imposition of the additional vehicle registration fee and to bring the City into compliance with the requirements set forth in Cal. Health & Safety Code Section 44243 ~~of the Health and Safety Code~~ in order to receive fee revenues for the purpose of implementing mobile source air pollution reduction programs.

#### 3.30.030 Definitions.

~~A. "City" shall mean the City of Newport Beach.~~

~~BA. "Mobile source air pollution reduction programs" shall mean any program or project implemented by the City to reduce air pollution from motor vehicles pursuant to the California Clean Air Act of 1988 or the plan proposed pursuant to Cal. Health & Safety Code Article 5 Division 26, Part 3, Chapter 5.5, Article 5, (commencing with Section 40460 et seq.) of Chapter 5.5 of Part 3 of the California Health and Safety Code.~~

~~BC. "Fee Administrator" shall mean the Finance Director of the City ~~or the Finance Director's designee.~~~~

#### 3.30.040 Administration.

E. Audits. The City consents to providing the findings of its annual independent audit for mobile source air pollution reduction programs and projects financed by the additional motor vehicle registration fee. The audit of those programs and projects shall be conducted in accordance with the procedure established to fulfill the audit requirement under Cal. Health & Safety Code Section 44244.1. ~~of the Health and Safety Code.~~

F. Appeals. The City shall have the right to appeal the findings and determinations made as a result of the SCAQMD audit procedure through the public hearing process described in Cal. Health & Saf. Code Section 44244.1(c1) ~~of the Health and Safety Code.~~

## Chapter 3.32

### SPECIAL IMPROVEMENT DISTRICT FINANCING CODE

#### Sections:

#### Article I. Definitions

3.32.010 Definitions.

#### Article II. General Provisions

3.32.020 Short Title.

3.32.030 Municipal and State Affairs—Authority Conferred by Code—Applicability of Laws.

~~3.32.040 Conflicting Provisions—Severability.~~

3.32.050 Actions or Determinations by Local Agency.

3.32.060 Establishment of Special Improvement District to Finance Certain Additional Services.

3.32.070 Additional Financing Powers of District—Purchase, Construction, Expansion, Improvement, Rehabilitation, or Planning and Design Work of Real or Tangible Property.

~~3.32.080 Adjustments in Ad Valorem Property Taxes—Findings.~~

~~3.32.090 Increase in Total Annual Amount of Ad Valorem Property Tax Revenue Due From Parcels Within Proposed District.~~

3.32.100 Additional District Financing Powers.

3.32.110 Transfer of Funds—Use of Money—Interest.

3.32.120 Advances of Funds or Work In-kind—Acceptance by City Council—Use—Repayment—Agreement—Conditions.

3.32.130 Liberal Construction of Code—Error, Irregularity, Neglect or Omission.

3.32.140 Failure to Receive Notice, Resolution, Order, or Other Matter Not Affecting Proceedings.

3.32.150 Application of Code—Authority to Create Special Improvement Districts.

3.32.160 Special Tax—Property Acquired by Public Entity Through Negotiated Transaction or by Gift or Device.

3.32.170 Special Tax—Special Assessment on Property Acquired by Public Entity Through Eminent Domain.

#### Article III. Proceedings to Create a Special Improvement District

3.32.180 Institution of Proceeding—Request—Petition—Fee.

3.32.190 Prohibition of LAFCO ~~f~~From Review, Approval or Disapproval of Creation of or Annexation or Detachment of Territory ~~f~~From a District.

- 3.32.200 Petition—Contents—Findings as to Requisite Number of Signers.
- 3.32.210 Resolution of Intention to Establish District—Time for Adoption.
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- 3.32.230 Reports and Estimate of Costs by Responsible Officers—Remedial Action Plan for Cleanup of Hazardous Substance—Inclusion in Record of Hearing.
- 3.32.240 Notice of Hearing.
- 3.32.250 Notice of Hearing by Mail to Registered Voters and Landowners Within Proposed District.
- 3.32.260 Protests—Interested Persons or Taxpayer.
- 3.32.270 Written Protest—Further Proceedings to Create District—Elimination of Special Tax or Types of Facilities or Services From Resolution of Formation.
- 3.32.280 Hearing—Continuances—Time Limitation—Exception—Modification of Resolution of Intention—Determination to Abandon or Proceed With Establishment of District.
- 3.32.290 Adoption of Resolution of Formation Establishing District—Contents—Finding Concerning Validity and Conformity of Prior Proceedings.
- 3.32.300 Special Tax—Basis for Apportionment.
- 3.32.310 Noncontiguous Areas—Alteration of Boundaries.
- 3.32.320 Establishment or Changing Appropriations Limit—Election on Proposition—Adjustment.
- 3.32.330 Special Tax Levy—Election—Voter Qualifications—Ballots.
- 3.32.340 Election Laws Governing—Ballot Materials.
- 3.32.350 Election by Mail Ballot.
- 3.32.360 Special Tax Levy.
- 3.32.370 Recordation and Notice of Special Tax Lien—Site of Record.
- 3.32.380 Application of California ~~and~~ Streets and Highway Code With Respect to Special Taxes—Filings.
- 3.32.390 Special Tax Levy—Effect of Failure to Receive Approval by Two-thirds of Voters.
- 3.32.400 Owners Not Required to Present Sealed Proposals or Bids—Election Not to Perform Work—Contract With Original Bidder.

**Article IV. Extension of Authorized Facilities and Services and Changes in Special Taxes**

- 3.32.410 Types of Facilities and Services Financed.
- 3.32.420 Buyers of Certain Residential Property—Induced Waiver of Right to Petition or Take Other Action Prohibited.

- 3.32.430 Special Tax—Levy and Apportionment—Cessation of Tax and Lien.
- 3.32.440 Types of Facilities and Services Provided.
- 3.32.450 Resolution of Consideration—Change in Types of Facilities and Services Financed.
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- 3.32.470 Petition to Make Specified Changes to Types of Public Facilities—Separate Instruments—Signatures.
- 3.32.480 Resolution of Consideration—Form.
- 3.32.490 Resolution of Intention to Make Changes in Facilities, Services or Special Taxes—Notice of Hearing.
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- 3.32.510 Written Protests Against Changes—Elimination From Resolution.
- 3.32.520 Hearing—Time—Abandonment of Proceeding or Submission of Question to Qualified Electors—Determination of Legal Effect of Proposed Levy or of Changes in Facilities and Services—Notice of Changes.
- 3.32.530 Dissolution of Special Improvement District—Findings—Dissolution of Liens.

#### Article V. Annexation of Territory

- 3.32.540 Authorization.
- 3.32.550 Adoption of Resolution of Intention.
- 3.32.560 Resolution of Intention—Contents.
- 3.32.570 Notice of Hearing.
- 3.32.580 Protests.
- 3.32.590 Abandonment of Proposal—Required Number of Written Protests.
- 3.32.600 Continuance and Duration of Hearing—Abandonment of Proceedings—Submission of Special Tax Question to Electors—Annexation of Territory—Effectiveness of Ballots Contingent on Passage of Other Ballot Measures.
- 3.32.610 Addition of Territory With Full Legal Effect—Special Tax Levy.
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#### Article VI. Procedures for Levying

- 3.32.630 Ordinance—Tax Rate and Apportionment—Exemption of Governmental Properties and Entities From Special Tax—Use of Tax Proceeds—Tax Collection, Penalties, etc.—Lien to Secure Levy of Special Taxes.

**3.32.640 Preparation of Current Roll of Special Tax Levy Obligations—Designation of Responsible Office—Estimation of Future Special Tax Levies—Liability for Inaccurate Estimates—Notice of Special Tax—Form.**

**3.32.650 Actions or Proceedings to Attack, Review, Set Aside, Void, or Annul Levy of Special Tax or Increase in Special Tax—Time for Commencement—Time for Perfection of Appeal From Final Judgment.**

**3.32.660 Sale or Lease of Lot, Parcel or Unit of Subdivision—Notice of Special Tax—Form—Termination of Agreement—Violations and Penalties.**

**3.32.670 Manner of Fixing and Collecting Charges.**

**3.32.680 Use of Charges for Authorized Facilities and Services.**

**3.32.690 Prepayment and Satisfaction of Special Tax Lien—Notice of Cancellation of Lien.**

#### **Article VII. Bonds**

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**3.32.760 Resolution—Bonded Indebtedness.**

**3.32.770 Resolution to Incur Bonded Indebtedness—Notice of Election—Publication.**

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**3.32.800 Revenue Anticipation Bonds—Votes Required for Issuance.**

**3.32.810 Resolution Relating to Form, Execution and Issuance of Bonds.**

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- 3.32.940 Force, Value and Use of Bonds—Exemption From State Taxation.**
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- 3.32.980 Refunding Bonds—Issuance Without Repetition of Procedures Required for Approval of Original Bond Issue.**
- 3.32.990 Refunding Bonds—Resolution for Issuance.**
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- 3.32.1010 Amount of Proceeds and Investments in Funding Fund.**
- 3.32.1020 Refunding Bonds—Use of Savings—Reduction of Tax Levy.**
- 3.32.1030 Callable Bonds.**
- 3.32.1040 Borrowing Money in Anticipation of Sale of Bonds—Issuance of Negotiable Bond Anticipation Notes—Renewal of Notes.**

### **3.32.010 Definitions.**

Unless the context otherwise requires, the definitions contained in this ~~article-section~~ shall govern the construction of this ~~Codechapter~~.

~~A. “City” means the City of Newport Beach, California.~~

~~B. “Clerk” means the City Clerk of the City.~~

**CA.** “Cost” means the expense of constructing or purchasing the public facility and of related land, right-of-way, easements, including incidental expenses, and the cost of providing authorized services, including incidental expenses.

**BD.** “Debt” means any binding obligation to pay or repay a sum of money, including obligations in the form of bonds, certificates of participation, long-term leases, loans from government agencies, or loans from banks, other financial institutions, private businesses, or individuals, or long-term contracts.

**CE.** “Incidental expense” includes all of the following:

1. The cost of planning and designing public facilities to be financed pursuant to this Code, including the cost of environmental evaluations of those facilities.
2. The costs associated with the creation of the special improvement district, issuance of bonds, determination of the amount of taxes, collection of taxes, payment of taxes, or costs otherwise incurred in order to carry out the authorized purposes of the special improvement district.
3. Any other expenses incidental to the construction, completion, and inspection of the authorized work.

**DF.** “Landowner” or “owner of land” means any person shown as the owner of land on the last equalized assessment roll or otherwise known to be the owner of the land by the City. The City Council has no obligation to obtain other information as to the ownership of the land, and its determination of ownership shall be final and conclusive for the purposes of this Code. A public agency is not a landowner or owner of land for purposes of this Code.

**EG.** “Legislative body” means the legislative body or governing board of any local agency.

**FH.** “Local agency” means any ~~c~~City or ~~c~~County, whether general law or chartered, special district, school district, joint powers entity created pursuant to [Cal. Gov. Code, Title 1, Division 7, Chapter 5](#) ~~(commencing with Section 6500 et seq.) of Division 7 of Title 1 of the California Government Code~~, or any other municipal corporation, district, or political subdivision of the State.

**GI.** “Rate” means a single rate of tax or a schedule of rates.

**HJ.** “Services” means the provision of police and fire protection services, recreation programs, library services, operation and maintenance of museums and cultural facilities, the operation and maintenance of parks and parkways, and the provision of flood and storm protection services, including, but not limited to, the operation and maintenance of storm drainage systems. “Services” includes the performance by employees of functions, operations, maintenance, and repair activities.

**IK.** “Special improvement district” means a legally constituted governmental entity established pursuant to this Code for the sole purpose of financing facilities and services.

### **3.32.030 Municipal and State Affairs—Authority Conferred by Code—Applicability of Laws.**

This Code is adopted pursuant to ~~Section 200 of the City Charter~~ [Section 200 of the City of Newport Beach](#). In proceedings had pursuant to this Code which are a municipal affair, any general laws referred to in this Code are deemed a part of this Code.

In the event that any proceeding had pursuant to this Code shall be adjudged a [matter of statewide concern](#) ~~State affair~~, it is declared to be the intention that the proceedings were had pursuant to any applicable general law or laws.

This Code provides an alternative method of financing certain public capital facilities and services. The provisions of this Code shall not affect or limit any other provisions of law authorizing or providing for the furnishing of governmental facilities or services or the raising of revenue for these purposes. The City may use the provisions of this Code instead of any other method of financing part or all of the cost of providing the authorized kinds of capital facilities and services.

**~~3.32.040 Conflicting Provisions—Severability.~~**

~~Any provision in this Code which conflicts with any general law or act shall prevail over the other such provision in connection with any proceedings taken pursuant to this Code.~~

~~In the event any portion of this Code shall be declared illegal, unenforceable or unconstitutional, such provision shall be deemed severable from the rest of the provisions of this Code.~~

**3.32.060 Establishment of Special Improvement District to Finance Certain Additional Services.**

F. Services with respect to removal or remedial action for the cleanup of any hazardous substance released or threatened to be released into the environment. As used in this subdivision, the terms “remedial action” and “removal” shall have the meanings set forth in Cal. Health & Saf. Code Sections 25322 and 25323, respectively, ~~of the California Health and Safety Code~~, and the term “hazardous substance” shall have the meaning set forth in Cal. Health & Safety Code Section 25281 ~~of the California Health and Safety Code~~. Special improvement districts shall provide the State Department of Health Services and local health and building departments with notification of any cleanup activity pursuant to this subdivision at least thirty (30) days prior to commencement of the activity.

**3.32.070 Additional Financing Powers of District—Purchase, Construction, Expansion, Improvement, Rehabilitation, or Planning and Design Work of Real or Tangible Property.**

D. The district may also finance the construction or undergrounding of water transmission and distribution facilities, natural gas pipeline facilities, telephone lines, facilities for the transmission or distribution of electrical energy, and cable television lines. The district may enter into an agreement with a public utility to utilize those facilities to provide a particular service and for the conveyance of those facilities to the public utility. “Public utility” shall include all utilities, whether public and regulated by the Public Utilities Commission, or municipal. If the facilities are conveyed to the public utility, the agreement shall provide that the cost or a portion of the cost of the facilities that are the responsibility of the utility shall be refunded by the public utility to the district or improvement area thereof, to the extent that refunds are applicable pursuant to: (1) the Cal. Public Utilities Code or rules of the Public Utilities Commission, as to utilities regulated by the commission; or (2) other laws regulating public utilities. Any reimbursement made to the district shall be utilized to reduce or minimize the special tax levied within the district or improvement area, or to construct or acquire additional facilities within the district or improvement area, as specified in the resolution of formation.

H. 1. A district may also pay for the following:

- a. Work deemed necessary to bring buildings or real property, including privately owned buildings or real property, into compliance with seismic safety standards or regulations. No project involving the dismantling of an existing building and its replacement by a new building, nor the construction of a new or substantially new building may be financed

pursuant to subsection (H)(1)(a) of this section. Work on qualified historical buildings or structures shall be done in accordance with the State Historical Building Code (Cal. Health & Saf. Code Division 13, Part 2.7, ~~(commencing with Section 18950 et seq.) of Division 13 of the California Health and Safety Code.~~)

b. In addition, within any County or area designated by the President of the United States or by the Governor as a disaster area or for which the Governor has proclaimed the existence of a state of emergency because of earthquake damage, a district may also pay for any work deemed necessary to repair any damage to real property directly or indirectly caused by the occurrence of an earthquake cited in the President's or the Governor's designation or proclamation, or by aftershocks associated with that earthquake, including work to reconstruct, repair, shore up, or replace any building damaged or destroyed by the earthquake. Work may be financed pursuant to this subsection (H)(1)(b) ~~of this section~~ only on property or buildings identified in a resolution of intention to establish a special improvement district adopted within seven (7) years of the date on which the County or area is designated as a disaster area by the President or by the Governor or on which the Governor proclaims for the area the existence of a state of emergency.

2. Work on privately owned property, including reconstruction or replacement of privately owned buildings pursuant to subsection (H)(1)(b) of this ~~s~~Section, may be financed by a tax levy only if all of the votes cast on the question of levying the tax, ~~vote in favor of~~ levying the tax, or with the prior written consent to the tax of the owners of all property which may be subject to the tax, in which case the prior written consent shall be deemed to constitute a vote in favor of the tax and any associated bond issue. Any district created to finance seismic safety work on privately owned buildings, including repair, reconstruction or replacement of privately owned buildings pursuant to this subsection (H) ~~of this section~~, shall consist only of lots or parcels ~~on which that~~ the City Council finds were the sites of buildings damaged or destroyed by an earthquake cited in the President's or the Governor's designation or proclamation that the buildings to be worked on, repaired, reconstructed, or replaced, pursuant to this subdivision, are located or were located before being damaged or destroyed by the earthquake cited pursuant to subsection (H)(1)(b) or by the aftershocks of that earthquake.

a. A district may also pay for the following:

i. Work deemed necessary to repair and abate damage caused to privately owned buildings and structures by soil deterioration. "Soil deterioration" means a chemical reaction by soils that causes structural damage or defects in construction materials including concrete, steel, and ductile or cast iron. No project involving the dismantling of an existing building or structure and its replacement by a new building or structure, nor the construction of a new or substantially new building or structure may be financed pursuant to this subsection (a)(i) ~~of this section~~.

ii. Work on privately owned buildings and structures pursuant to this subsection (a) ~~of this section~~, including reconstruction, repair, and abatement of damage caused by soil deterioration, may only be financed by a tax levy if all of the votes

cast on the question of levying the tax ~~vote in favor of~~ levying the tax. Any district created to finance the work on privately owned buildings or structures, including reconstruction, repair, and abatement of damage caused by soil deterioration, shall consist only of lots or parcels ~~on which~~ that the City Council finds ~~that the buildings or structures to be worked on pursuant to this section~~ suffer from soil deterioration.

### ~~3.32.080 Adjustments in Ad Valorem Property Taxes—Findings.~~

~~The City Council may provide for adjustments in ad valorem property taxes pursuant to Section 3.32.090 within a special improvement district only after making both of the following findings at the conclusion of the public hearing held pursuant to Article III of this chapter:~~

~~A.—That an ad valorem property tax is levied on property within a proposed special improvement district for the exclusive purpose of making lease payments or paying principal or interest on bonds or other indebtedness incurred to finance construction of capital facilities.~~

~~B.—That capital facilities to be financed by the special improvement district will provide the same services to the territory of the special improvement district as were provided by the capital facilities mentioned in subsection (A) of this section.~~

### ~~3.32.090 Increase in Total Annual Amount of Ad Valorem Property Tax Revenue Due From Parcels Within Proposed District.~~

~~A.—Upon making the findings pursuant to Section 3.32.080, the City Council may, with the concurrence of the legislative body which levied the property tax described in subsection (A) of Section 3.32.080, by ordinance, determine that the total annual amount of ad valorem property tax revenue due from parcels within the proposed special improvement district, for purposes of paying principal and interest on the debt identified in Section 3.32.080, shall not be increased after the date on which the resolution of formation for the special improvement district is adopted, or after a later date determined by the City Council with the concurrence of the legislative body which levied the property tax in question.~~

~~B.—The City Council may, by ordinance, with the concurrence of the legislative body that levied the property tax described in subsection (A) of Section 3.32.080, determine to cease and eliminate the freeze on property tax revenue established pursuant to subsection (A) of this section, upon determining that the special improvement district's special tax or portion thereof levied on the parcels in question to pay for the capital facilities specified in subsection (B) of Section 3.32.080 shall cease to be levied and collected.~~

### **3.32.100 Additional District Financing Powers.**

Pursuant to Section 3.32.070, a special improvement district may also finance the acquisition,<sup>2</sup> improvement, rehabilitation, or maintenance of any real or other tangible property, whether privately or publicly owned, for the purposes described in ~~subsection (F) of~~ Section 3.32.060 (F).

### **3.32.120 Advances of Funds or Work In-kind—Acceptance by City Council—Use—Repayment—Agreement—Conditions.**

A. At any time either before or after the formation of the district, the City Council may accept advances of funds or work in-kind from any source, including, but not limited to, private persons or private entities

and may provide by resolution<sup>7</sup> for the use of those funds or that work in-kind for any authorized purpose, including, but not limited to, paying any cost incurred by the City in creating ~~thea~~ special improvement district. The City Council may enter into an agreement, by resolution, with the person or entity advancing the funds or work in-kind, to repay all or a portion of the funds advanced, or to reimburse the person or entity for the value, or cost, whichever is less, of the work in-kind, as determined by the City Council, with or without interest, under all of the following conditions:

1. The proposal to repay the funds or the value or cost of the work in-kind, whichever is less, is included in the resolution of intention to establish ~~thea~~ district or in the resolution of formation to establish the district, or in the resolution of consideration to alter the types of public facilities and services provided within an established district.
2. Any proposed special tax or change in a special tax is approved by the qualified electors of the district ~~pursuant to this Code~~. Any agreement shall specify that if the qualified electors of the district do not approve the proposed special tax or change in a special tax, the local agency shall return any funds which have not been committed for any authorized purpose by the time of the election to the person or entity advancing the funds.
3. Any work in-kind accepted pursuant to this section shall have been performed or constructed as if the work had been performed or constructed under the direction and supervision, or under the authority of, the local agency.

### **3.32.170 Special Tax—Special Assessment on Property Acquired by Public Entity Through Eminent Domain.**

If property subject to a special tax levied pursuant to this Code is acquired by a public entity through eminent domain proceedings, the obligation to pay the special tax shall be treated, pursuant to Cal. Civ. Proc. Code Section 1265.250 ~~of the California Code of Civil Procedure~~, as if it were a special annual assessment. For this purpose, the present value of the obligation to pay a special tax to pay the principal and interest on any indebtedness incurred by the district prior to the date of apportionment determined pursuant to Cal. Civ. Proc. Code Section 5082 ~~of the California Revenue and Taxation Code~~ shall be treated the same as a fixed lien special assessment.

### **3.32.190 Prohibition of LAFCO From Review, Approval or Disapproval of Creation of or Annexation or Detachment of Territory ~~f~~From a District.**

Notwithstanding any provision of Cal. Gov. Code, Title 5, Division 3, Part 1, ~~(commencing with~~ Section 56000 ~~et seq.) of Division 3 of the California Government Code~~, a local agency formation commission shall have no power or duty to review and approve or disapprove a proposal to create a special improvement district or a proposal to annex territory to, or detach territory from, such district, pursuant to this Code.

### **3.32.220 Resolution of Intention to Establish Special Improvement District—Contents.**

Proceedings for the establishment of a special improvement district shall be instituted by the adoption of a resolution of intention to establish the district<sup>2</sup>, which shall do all of the following:

- A. State that a special improvement district is proposed to be established under the terms of this Code and describe the boundaries of the territory proposed for inclusion in the district, which may be accomplished by reference to a map on file in the office of the Clerk, showing the proposed special

improvement district. The boundaries of the territory proposed for inclusion in the district shall include the entirety of any parcel subject to taxation by the proposed district.

B. State the name proposed for the district in substantially the following form: "City of Newport Beach Special Improvement District No. \_\_\_\_\_."

C. Describe the public facilities and services proposed to be financed by the district pursuant to this Code. The description may be general and may include alternatives and options, but it shall be sufficiently informative to allow a taxpayer within the district to understand what the funds of the district may be used to finance. If the purchase of completed public facilities or the incurring of incidental expenses is proposed, the resolution shall identify those facilities or expenses. If facilities are proposed to be financed through any financing plan, including, but not limited to, any lease, lease-purchase, or installment-purchase arrangement, the resolution shall briefly describe the proposed arrangement.

D. State that, except where funds are otherwise available, a special tax sufficient to pay for all facilities and services, secured by recordation of a continuing lien against all nonexempt real property in the district, will be annually levied within the district area. The resolution shall specify the rate, method of apportionment, and manner of collection of the special tax in sufficient detail to allow each landowner or resident within the proposed district to estimate the maximum amount that he or she will have to pay. The City Council may specify conditions under which the obligation to pay the specified special tax may be prepaid and permanently satisfied.

In the case of any special tax to pay for public facilities and to be levied against any parcel used for private residential purposes, (1) the maximum special tax shall be specified as a dollar amount which shall be calculated and thereby established not later than the date on which the parcel is first subject to the tax because of its use for private residential purposes, which amount shall not be increased ~~over time except that it may be increased by an amount not to exceed by more than~~ two (2) percent per year, (2) the resolution shall specify a tax year after which no further special tax subject to this sentence shall be levied or collected, and the resolution shall specify that under no circumstances will the special tax levied against any parcel subject to this sentence be increased ~~by more than ten (10) percent-~~ as a consequence of delinquency or default by the owner of any other parcel or parcels within the district ~~by more than ten percent~~. For purposes of this subsection (D) ~~of this section~~, a parcel shall be considered "used for private residential purposes" not later than the date on which an occupancy permit for private residential use is issued. Nothing in this subsection is intended to prohibit the City Council from establishing different tax rates for different categories of residential property, or from changing the dollar amount of the special tax for ~~at~~ the parcel if the size of the residence is increased or if the size or use of the parcel is changed.

E. Fix a time and place for a public hearing on the establishment of the district which shall not be less than thirty (30) or more than sixty (60) days after the adoption of the resolution.

~~F. Describe any adjustment in property taxation to pay prior indebtedness pursuant to Sections 3.32.080 and 3.32.090.~~

~~FG.~~ Describe the proposed voting procedure.

### **3.32.230 Reports and Estimate of Costs by Responsible Officers—Remedial Action Plan for Cleanup of Hazardous Substance—Inclusion in Record of Hearing.**

At the time of the adoption of the resolution of intention to establish a special improvement district, the City Council shall direct each of its officers who is or will be responsible for providing one or more of the proposed types of public facilities or services to be financed by the district, if it is established, to study the proposed district and, at or before the time of the hearing, file a report with the City Council containing a brief description of the public facilities and services by type which will in his or her opinion be required to adequately meet the needs of the district and his or her estimate of the cost of providing those public facilities and services. If the purchase of completed public facilities or the payment of incidental expenses is proposed, the City Council shall direct its appropriate officer to estimate the fair and reasonable cost of those facilities or incidental expenses. If removal or remedial action for the cleanup of any hazardous substance is proposed, the City Council shall (1) direct its responsible officer to prepare or cause to be prepared, a remedial action plan based upon factors comparable to those described in Cal. Health & Saf. Code Section 25356.1 subdivision (d) ~~of Section 25356.1 of the California Health and Safety Code~~ or (2) determine, on the basis of the particular facts and circumstances, which shall be comparable to those described in Cal. Health & Saf. Code Section 25356.1 subdivision (h) ~~(3) of Section 25356.1 of the California Health and Safety Code~~, that the remedial action is not required. All of those reports shall be made a part of the record of the hearing on the resolution of intention to establish the district.

### **3.32.240 Notice of Hearing.**

A. The Clerk shall publish a notice of the hearing pursuant to Cal. Gov. Code Sections 6060 and 6061 ~~of the California Government Code~~ in a newspaper of general circulation published in the area of the proposed district. Publication shall be complete at least seven (7) days prior to the date of the hearing.

### **3.32.270 Written Protest—Further Proceedings to Create District—Elimination of Special Tax or Types of Facilities or Services From Resolution of Formation.**

If fifty (50) percent or more of the registered voters, or six (6) registered voters, whichever is more, residing within the territory proposed to be included in the district, or the owners of one-half or more of the area of the land in the territory proposed to be included in the district and not exempt from the special tax, file written protests against the establishment of the district, and protests are not withdrawn so as to reduce the value of the protests to less than a majority, no further proceedings to create the specified special improvement district or to levy the specified special tax shall be taken for a period of one year from the date of the decision of the City Council.

If the majority protests of the registered voters or of the landowners are only against the furnishing of a specified type or types of facilities or services within the district, or against levying a specified special tax, those types of facilities or services or the specified special tax shall be eliminated from the resolution of formation, but the formation may otherwise proceed.

### **3.32.290 Adoption of Resolution of Formation Establishing District—Contents—Finding Concerning Validity and Conformity of Prior Proceedings.**

A. If the City Council determines to establish the district, it shall adopt a resolution of formation establishing the district.

The resolution of formation shall contain all of the information required to be included in the resolution of intention to establish the district specified in Section 3.32.220. If a special tax is proposed to be levied in the district to pay for any facilities or services and the special tax has not been eliminated by majority protest pursuant to Section 3.32.270, the resolution shall:

1. State that the proposed special tax to be levied within the district has not been precluded by majority protest pursuant to Section 3.32.270.
2. Identify any facilities or services proposed to be funded with the special tax.
3. Set forth the name, address, and telephone number of the office, department, or bureau which will be responsible for preparing annually a current roll of special tax levy obligations by assessor's parcel number and which will be responsible for estimating future special tax levies pursuant to Section 3.32.640.
4. State that upon recordation of a notice of special tax lien pursuant to Cal. Sts. & Hy. Code Section 3114.5 ~~of the California Streets and Highways Code~~, a continuing lien to secure each levy of the special tax shall attach to all nonexempt real property in the district and this lien shall continue in force and effect until the special tax obligation is prepaid and permanently satisfied and the lien canceled in accordance with law or until collection of the tax by the City ceases.
5. Set forth the County of Recordation and the book and page in the Book of Maps of Assessments and Community Facilities Districts in the County Recorder's office where the boundary map of the proposed special improvement district has been recorded pursuant to Cal. Sts. & Hy. Code Sections 3111 and 3113 ~~of the California Streets and Highways Code~~.

### **3.32.320 Establishment or Changing Appropriations Limit—Election on ~~P~~roposition—Adjustment.**

The City Council may submit a proposition to establish or change the appropriations limit, as defined by subdivision (h) of Section 8 of Article XIII B of the California Constitution, of a special improvement district to the qualified electors of a proposed or established district. The proposition establishing or changing the appropriations limit shall become effective if approved by the qualified electors voting on the proposition and shall be adjusted for changes in the cost of living and changes in populations, as defined by Cal. Gov. Code Section 7901 subdivisions (b) and (c) ~~of Section 7901 of the California Revenue and Taxation Code~~, except that the change in population may be estimated by the City Council in the absence of an estimate by the Department of Finance, and in accordance with Section 1 of Article XIII B of the California Constitution. For purposes of adjusting for changes in population, the population of the district shall be deemed to be at least one person during each calendar year.

### **3.32.330 Special Tax Levy—Election—Voter Qualifications—Ballots.**

A. The City Council shall then submit the levy of any special taxes to the qualified electors of the proposed special improvement district subject to the levy or to the qualified electors of the territory to be annexed by the special improvement district subject to the levy in the next general election or in a special election to be held, notwithstanding any other requirement, including any requirement that elections be held on specified dates, contained in the California-Cal. Elections Code, at least ninety (90) days, but not more than one hundred eighty (180) days, following the adoption of the resolution of formation. The City Council shall provide the resolution of formation, a certified map of sufficient scale and clarity to show the

boundaries of the district, and a sufficient description to allow the election official to determine the boundaries of the district to the official conducting the election within three (3) business days after the adoption of the resolution of formation. Assessor's parcel numbers for the land within the district shall be included if it is a landowner election or the district does not conform to an existing district's boundaries and if requested by the official conducting the election. If the election is to be held less than one hundred twenty-five (125) days following the adoption of the resolution of formation, the concurrence of the election official conducting the election shall be required. However, any time limit specified by this section or requirement pertaining to the conduct of the election, including any time limit or requirement applicable to any election conducted pursuant to Article VI of this chapter, may be waived with the unanimous consent of the qualified electors of the proposed district and the concurrence of the election official conducting the election.

### **3.32.340 Election Laws Governing—Ballot Materials.**

A. Except as otherwise provided in this Code, the provisions of law regulating elections of the City, insofar as they may be applicable, shall govern all elections conducted pursuant to this Code. Except as provided in subsection (B) of this section, there shall be prepared and included in the ballot material provided to each voter, an impartial analysis pursuant to [Cal. Elec. Code Section 9280-5011 of the California Elections Code](#), and arguments and rebuttals, if any, pursuant to [Cal. Elec. Code Sections 92815012 to 92875016, inclusive, and 5025 of the California Elections Code](#).

B. If the vote is to be by the landowners of the proposed district, analysis and arguments may be waived with the unanimous consent of all the landowners and shall be so stated in the order for the election.

### **3.32.370 Recordation and Notice of Special Tax Lien—Site of Record.**

Upon a determination by the City Council that the requisite two-thirds of votes cast in an election held pursuant to Section 3.32.330 are in favor of levying the special tax, the Clerk shall record the notice of special tax lien provided for in [Cal. Sts. & Hy. Code Section 3114.5 of the California Streets and Highways Code](#), whereupon the lien of the special tax shall attach as provided in [Cal. Sts. & Hy. Code Section 3115.5 of the California Streets and Highways Code](#). The notice of special tax lien shall be recorded in the office of the County Recorder in each County in which any portion of the district is located.

### **3.32.380 Application of California Streets and Highway Code With Respect to Special Taxes—Filings.**

~~Division 4.5 (commencing with Section 3100) of the California Streets and Highways~~[Cal. Sts. & Hy. Code section 3100 et seq.](#) applies with respect to any proceedings undertaken pursuant to this Code. This Code is a "principal act" as that term is defined in [Cal. Sts. & Hy. Code Section 3100 of the California Streets and Highways Code](#).

### **3.32.520 Hearing—Time—Abandonment of Proceeding or Submission of Question to Qualified Electors—Determination of Legal Effect of Proposed Levy or of Changes in Facilities and Services—Notice of Changes.**

C. Upon adoption of a resolution of change, the Clerk shall record notice of the changes pursuant to [Cal. Sts. & Hy. Code Section 3117.5 of the California Streets and Highways Code](#).

### **3.32.530 Dissolution of Special Improvement District—Findings—Dissolution of Liens.**

B. That the district has no authorization to levy any special tax. Upon dissolving a district, the City Council shall cause an addendum to be recorded to the notice of special tax lien recorded pursuant to Cal Sts & Hy. Code Section 3114.5 ~~of the California Streets and Highways Code~~ which shall state that the special improvement district and all associated liens, if any, have been dissolved.

### **3.32.550 Adoption of Resolution of Intention.**

If the City Council determines that public convenience and necessity require that territory be added to an existing special improvement district, or if the voters residing within certain territory or ~~landowners of~~ land there request the City Council to include territory within the district, the City Council may adopt a resolution of intention to annex the territory or to provide for future annexation of the territory.

### **3.32.600 Continuance and Duration of Hearing—Abandonment of Proceedings—Submission of Special Tax Question to Electors—Annexation of Territory—Effectiveness of Ballots Contingent on Passage of Other Ballot Measures.**

A. The hearing may be continued from time to time, but shall be completed within thirty (30) days, provided that the City Council may extend that time up to six (6) months if it determines that it is in the public interest to do so. At the conclusion of the hearing, the City Council may abandon the proceedings, or may, after passing upon all protests, submit the question of levying a special tax within the area proposed to be annexed to the existing special improvement district to the qualified electors of the area proposed to be annexed as specified in Article III of this chapter, or may provide for the annexation of territory proposed for annexation in the future upon the unanimous approval of the owner or owners of each parcel or parcels at the time that the parcel or parcels are annexed, without additional hearings.

B. Notwithstanding any other provision of law, when the question of levying a special tax within the areas proposed to be annexed into an existing special improvement district appears on the same ballot as the question of annexation of the same territory to a school district, the effectiveness of each ballot measure may be made contingent on the passage of the other ballot measure.

### **3.32.610 Addition of Territory With Full Legal Effect—Special Tax Levy.**

A. After the canvass of returns of any election conducted in accordance with Section 3.32.600, the City Council ~~body~~ shall determine that the area proposed to be annexed is added to and part of the existing special improvement district with full legal effect, and the City Council may levy any special tax within the annexed territory, as specified in the resolution of intention to annex adopted pursuant to Section 3.32.550, if two-thirds of the votes cast on the proposition are in favor of levying the special tax.

B. Upon a determination by the City Council that the area proposed to be annexed is added to the existing special improvement district, the Clerk shall record notice of the annexation pursuant to Cal. Sts. & Hy. Code Section 3117.5 ~~of the California Streets and Highways Code~~.

### **3.32.630 Ordinance—Tax Rate and Apportionment—Exemption of Governmental Properties and Entities From Special Tax—Use of Tax Proceeds—Tax Collection, Penalties, etc.—Lien to Secure Levy of Special Taxes.**

After a special improvement district has been created and authorized to levy specified special taxes pursuant to Article III, Article IV, or Article V of this chapter, the City Council may, by ordinance, levy the special taxes at the rate and apportion them in the manner specified in the resolution adopted pursuant

to Article III, Article IV, or Article V of this chapter. The City Council may provide, by resolution, for the levy of the special tax in the current tax year or future tax years at the same rate or at a lower rate than the rate provided by ordinance, if the resolution is adopted and a certified list of all parcels subject to the special tax levy including the amount of the tax to be levied on each parcel for the applicable tax year, is filed by the Clerk or other official designated by the City Council with the County Auditor on or before the 10th day of August of that tax year. The Clerk or other official designated by the City Council may file the certified list after the 10th of August but not later than the 21st of August if the Clerk or other official obtains prior written consent of the County Auditor. Properties or entities of the State, ~~F~~ederal, or other local governments shall, except as otherwise provided in Section 3.32.160, be exempt from the special tax. No other properties or entities are exempt from the special tax unless the properties or entities are expressly exempted in the resolution of formation to establish a district adopted pursuant to Section 3.32.290 or in a resolution of consideration to levy a new special tax or special taxes or to alter the rate or method of apportionment of an existing special tax as provided in Section 3.32.480. The proceeds of any special tax may only be used to pay, in whole or part, the cost of providing public facilities, services, and incidental expenses pursuant to this Code. The special tax shall be collected in the same manner as ordinary ad valorem property taxes are collected and shall be subject to the same penalties and the same procedures, sale, and lien priority in case of delinquency as is provided for ad valorem taxes, unless another procedure has been authorized in the resolution of formation establishing the district and adopted by the City Council. The tax collector may collect the special tax at intervals as specified in the resolution of formation, including intervals different from the intervals at which the ordinary ad valorem property taxes are collected. The tax collector may deduct the reasonable administrative costs incurred in collecting the special tax.

All special taxes levied by a special improvement district shall be secured by the lien imposed pursuant to Cal. Sts. & Hy. Code Section 3115.5 ~~of the California Streets and Highways Code~~. This lien shall be a continuing lien and shall secure each levy of special taxes. The lien of the special tax shall continue in force and effect until the special tax obligation is prepaid, permanently satisfied, and canceled in accordance with Section 3.32.690 or until the special tax ceases to be levied by the City Council in the manner provided in Section 3.32.430. If any portion of a parcel is encumbered by a lien pursuant to this Code, the entirety of the parcel shall be encumbered by that lien.

**3.32.640 Preparation of Current Roll of Special Tax Levy Obligations—Designation of Responsible Office—Estimation of Future Special Tax Levies—Liability for Inaccurate Estimates—Notice of Special Tax—Form.**

A. The City Council shall designate an office, department, or bureau of the City which shall be responsible for annually preparing the current roll of special tax levy obligations, by assessor's parcel number, on nonexempt property within the district and which will be responsible for estimating future special tax levies.

The designated office, department, or bureau shall establish procedures to promptly respond to inquiries concerning current and future estimated tax liability. Neither the designated office, department, or bureau, nor the City Council, shall be liable if any estimate of future tax liability is inaccurate, nor for any failure of any seller to request a notice of special tax or to provide the notice to a buyer.

B. For purposes of enabling sellers of real property subject to the levy of special taxes to satisfy the notice requirements of Cal. Civ. Code Section 1102.6a, subdivision (b), ~~of Section 1102.6 of the California Civil~~

~~Code~~, the designated office, department, or bureau shall furnish a notice of special tax to any individual requesting the notice or any owner of property subject to a special tax levied by the City within five (5) ~~business~~working days of receiving a request for such notice. The City may charge a reasonable fee for this service not to exceed ten dollars (\$10.00).

C. 1. The notice shall contain the heading "NOTICE OF SPECIAL TAX" in ~~type~~ no smaller than eight-point type, and shall be in substantially the following form. The form may be modified as needed to clearly and accurately consolidate information about the tax structure and other characteristics of two or more districts that levy or are authorized to levy special taxes with respect to the lot, parcel, or unit. The notice shall be completed by the designated office, department, or bureau except for the signatures and date of signing:

NOTICE OF SPECIAL TAX

CITY OF NEWPORT BEACH

SPECIAL IMPROVEMENT DISTRICT NO. \_\_\_\_\_ COUNTY OF ORANGE, CALIFORNIA

TO: THE PROSPECTIVE-PURCHASER OF THE REAL PROPERTY KNOWN AS:

\_\_\_\_\_  
\_\_\_\_\_

THIS IS A NOTIFICATION TO YOU PRIOR TO YOUR PURCHASING THIS PROPERTY.

This property is subject to a special tax, which is in addition to the regular property taxes and any other charges and benefit assessments on the parcel. This special tax may not be imposed on all parcels within the City of Newport Beach. If you fail to pay this tax when due each year, the property may be foreclosed upon and sold. The tax is used to provide public facilities or services that are likely to particularly benefit the property. YOU SHOULD TAKE THIS TAX AND THE BENEFITS FROM THE PUBLIC FACILITIES AND SERVICES FOR WHICH IT PAYS INTO ACCOUNT IN DECIDING WHETHER TO BUY THIS PROPERTY.

2. The maximum special tax which may be levied against this parcel to pay for public facilities is \$\_\_\_\_\_ during the \_\_\_\_\_ - \_\_\_\_\_ tax year. This amount will increase by \_\_\_\_\_ percent per year after that (if applicable). The special tax will be levied each year until all of the authorized facilities are built and all special tax bonds are repaid, but in any case not after the \_\_\_\_\_ tax year.

An additional special tax will be used to pay for ongoing services, if applicable. The maximum amount of this tax is \_\_\_\_\_ dollars (\$\_\_\_\_\_) during the \_\_\_\_\_ - \_\_\_\_\_ tax year. This amount may increase by \_\_\_\_\_ (if applicable), and may be levied until the \_\_\_\_\_ - \_\_\_\_\_ tax year (or forever, as applicable.)

3. The authorized facilities which are being paid for by the special taxes, and by the money received from the sale of bonds which are being repaid by the special taxes, are: [identify the facilities]

These facilities may not yet have all been constructed or acquired and it is possible that some may never be constructed or acquired.

In addition, the special taxes may be used to pay for costs of the following services:

YOU MAY OBTAIN A COPY OF THE RESOLUTION OF FORMATION WHICH AUTHORIZED CREATION OF THE SPECIAL IMPROVEMENT DISTRICT, AND WHICH SPECIFIES MORE PRECISELY HOW THE SPECIAL TAX IS APPORTIONED AND HOW THE PROCEEDS OF THE TAX WILL BE USED, FROM THE CITY OF NEWPORT BEACH BY CALLING \_\_\_\_\_ (telephone number). THERE MAY BE A CHARGE FOR THIS DOCUMENT NOT TO EXCEED THE ESTIMATED REASONABLE COST OF PROVIDING THE DOCUMENT.

I (WE) ACKNOWLEDGE THAT I (WE) HAVE RECEIVED A COPY OF THIS NOTICE. I (WE) UNDERSTAND THAT I (WE) MAY TERMINATE THE CONTRACT TO PURCHASE OR DEPOSIT RECEIPT AFTER RECEIVING THIS NOTICE FROM THE OWNER OR AGENT SELLING THE PROPERTY. THE CONTRACT MAY BE TERMINATED WITHIN THREE DAYS IF THE NOTICE WAS RECEIVED IN PERSON OR WITHIN FIVE DAYS AFTER IT WAS DEPOSITED IN THE MAIL BY GIVING WRITTEN NOTICE OF THAT TERMINATION TO THE OWNER OR AGENT SELLING THE PROPERTY.

DATE: \_\_\_\_\_

**3.32.660 Sale or Lease of Lot, Parcel or Unit of Subdivision—Notice of Special Tax—Form—Termination of Agreement—Violations and Penalties.**

A. If a lot or parcel, or unit of a subdivision is subject to a special tax levied pursuant to this Code, the subdivider, his or her agent, or representative, shall not sell, or lease for a term exceeding five (5) years, or permit a prospective purchaser or lessor to sign a contract of purchase or a deposit receipt or any substantially equivalent document in the event of a lease with respect to the lot, parcel, or unit, or cause it to be sold or leased for a term exceeding five (5) years, until the prospective purchaser or lessee of the lot, parcel, or unit has been furnished with and has signed a written notice as provided in this section. The notice shall contain the heading "NOTICE OF SPECIAL TAX" in ~~type~~ no smaller than 8-point type, and shall be in substantially the following form, although the form may be modified as needed to clearly and accurately consolidate information about the tax structure and other characteristics of two or more districts that levy or are authorized to levy special taxes with respect to the lot, parcel, or unit:

NOTICE OF SPECIAL TAX

CITY OF NEWPORT BEACH

SPECIAL IMPROVEMENT DISTRICT NO. \_\_\_\_\_ COUNTY OF ORANGE, CALIFORNIA

TO: THE PROSPECTIVE PURCHASER OF THE REAL PROPERTY KNOWN AS:

\_\_\_\_\_ [address of parcel number]

THIS IS A NOTIFICATION TO YOU PRIOR TO YOUR ENTERING INTO A CONTRACT TO PURCHASE THIS PROPERTY. THE SELLER IS REQUIRED TO GIVE YOU THIS NOTICE AND TO OBTAIN A COPY SIGNED BY YOU TO INDICATE THAT YOU HAVE RECEIVED AND READ A COPY OF THIS NOTICE.

1. This property is subject to a special tax, which is in addition to the regular property taxes and any other charges, fees, special taxes, and benefit assessments on the parcel. It is imposed on this property because it is a new development, and may not be imposed generally upon property outside of this new development. If you fail to pay this tax when due each year, the property may be foreclosed upon and sold. The tax is used to provide public facilities or services that are likely to particularly benefit the

property. YOU SHOULD TAKE THIS TAX AND THE BENEFITS FROM THE PUBLIC FACILITIES AND SERVICES FOR WHICH IT PAYS INTO ACCOUNT IN DECIDING WHETHER TO BUY THIS PROPERTY.

2. The maximum special tax which may be levied against this parcel to pay for public facilities is \$\_\_\_\_\_ during the \_\_\_\_\_ - \_\_\_\_\_ tax year. This amount will increase by \_\_\_\_\_ percent per year after that (if applicable). The special tax will be levied each year until all of the authorized facilities are built and all special tax bonds are repaid, but in any case not after the \_\_\_\_\_ - \_\_\_\_\_ tax year. An additional special tax will be used to pay for ongoing service costs, if applicable. The maximum amount of this tax is \_\_\_\_\_ dollars (\$\_\_\_\_\_) during the \_\_\_\_\_ - \_\_\_\_\_ tax year. This amount may increase by \_\_\_\_\_, (if applicable), and that part may be levied until the \_\_\_\_\_ - \_\_\_\_\_ tax year (or forever, as applicable.)

3. The authorized facilities which are being paid for by the special taxes, and by the money received from the sale of bonds which are being repaid by the special taxes, are:

These facilities may not yet have all been constructed or acquired and it is possible that some may never be constructed or acquired.

In addition, the special taxes may be used to pay for costs of the following services: [identify facilities]

YOU MAY OBTAIN A COPY OF THE RESOLUTION OF FORMATION WHICH AUTHORIZED CREATION OF THE SPECIAL IMPROVEMENT DISTRICT, AND WHICH SPECIFIES MORE PRECISELY HOW THE SPECIAL TAX IS APPORTIONED AND HOW THE PROCEEDS OF THE TAX WILL BE USED, FROM THE CITY OF NEWPORT BEACH BY CALLING \_\_\_\_\_ (telephone number). THERE MAY BE A CHARGE FOR THIS DOCUMENT NOT TO EXCEED THE REASONABLE COST OF PROVIDING THE DOCUMENT.

I (WE) ACKNOWLEDGE THAT I (WE) HAVE READ THIS NOTICE AND RECEIVED A COPY OF THIS NOTICE PRIOR TO ENTERING INTO A CONTRACT TO PURCHASE, OR DEPOSIT RECEIPT WITH RESPECT TO THE ABOVE-REFERENCED PROPERTY. I (WE) UNDERSTAND THAT I (WE) MAY TERMINATE THE CONTRACT TO PURCHASE OR DEPOSIT RECEIPT WITHIN THREE DAYS AFTER RECEIVING THIS NOTICE IN PERSON OR WITHIN FIVE DAYS AFTER IT WAS DEPOSITED IN THE MAIL BY GIVING WRITTEN NOTICE OF THAT TERMINATION TO THE OWNER, SUBDIVIDER OR AGENT SELLING THE PROPERTY.

DATE: \_\_\_\_\_

B. "Subdivision," as used in subsection (A), means improved or unimproved land that is divided or proposed to be divided for the purpose of sale, lease, or financing, whether immediate or future, into two or more lots, parcels, or units and includes a condominium project, as defined by Cal. Civ. Code Section 1350-6542~~of the California Civil Code~~, a community apartment project, a stock cooperative, and a limited-equity housing cooperative, as defined in Cal. Bus & Prof. Code Sections 11004, 11003.2, and 11003.4, respectively,~~of the California Business and Professions Code~~.

### **3.32.710 Inclusion of Certain Costs and Estimated Costs in Proposed Bonded Indebtedness.**

The amount of the proposed bonded indebtedness may include all costs and estimated costs incidental to, or connected with, the accomplishment of the purpose for which the proposed debt is to be incurred, including, but not limited to, the estimated costs of construction or acquisition of buildings, or both;

acquisition of land, rights-of-way, water, sewer, or other capacity or connection fees; satisfaction of contractual obligations relating to expenses or the advancement of funds for expenses existing at the time the bonds are issued pursuant to this Code, architectural, engineering, inspection, legal, fiscal, and financial consultant fees; bond and other reserve funds; discount fees; interest on any bonds of the district estimated to be due and payable within two (2) years of issuance of the bonds; election costs; and all costs of issuance of the bonds, including, but not limited to, fees for bond counsel, costs of obtaining credit ratings, bond insurance premiums, fees for letters of credit, and other credit enhancements costs, and printing costs.

### **3.32.720 Notice of Hearing on Resolution.**

The Clerk shall publish a notice of the hearing pursuant to Cal. Gov. Code Sections 6060 and 6061 of the California Government Code in a newspaper of general circulation circulated within the district. The notice shall state:

- A. The time and place of the hearing on the proposal to issue debt.
- B. That at the hearing the testimony of all interested persons, including all persons owning property in the area, for or against the proposed debt issuance, will be heard.

### **3.32.870 Price of Property Sold.**

Property sold hereunder may not be sold for less than the amount of the judgment plus postjudgmentpost judgment interest and authorized costs without the consent of the owners of a majority by value of the outstanding bonds.

### **3.32.900 Special Tax or Charge for Outstanding Bonded Debt.**

When the City Council provides for the fixing and levying of special taxes and charges for the special improvement district it shall also provide for the fixing and levying of that amount of special taxes and charges within the special improvement district which is required for the payment of the principal of and and interest on any outstanding bonded debt of the special improvement district, including any necessary replenishment or expenditure of bond reserve funds or accumulation of funds for future bond payments, including any amount required by fFederal Law to be rebated to the United States on that bonded debt. The special tax or charge shall be levied and collected by the same officers and at the same time and in the same manner that all other special taxes and charges are levied and collected for the special improvement district or in any other manner specified by the City Council. The special taxes and charges shall not exceed the authority granted by Article III and Article IV of this chapter. All of the collections for payment of principal of and interest on bonds shall be paid into the special improvement district bond fund and reserve or other fund for the particular special improvement district and shall be used solely for the payment of the principal of and interest on the outstanding bonds of the special improvement district.

### **3.32.910 Action to Determine Validity of Bonds or Special Tax Levy.**

An action to determine the validity of bonds issued pursuant to this Code or the validity of any special taxes levied pursuant to this Code may be brought pursuant to Cal. Code Civ. Proc. Part 2, Title 10, Chapter 9, (commencing with Section 860,) of Title 10 of Part 2 of the California Code of Civil Procedure but shall, notwithstanding the time limits specified in Cal. Code Civ. Proc. Section 860 of the California Code of Civil Procedure, be commenced within thirty (30) days after the voters approve the issuance of the bonds or

the special tax if the action is brought by an interested person pursuant to [Cal. Code Civ. Proc.](#) Section 863 ~~of the California Code of Civil Procedure~~. Any appeal from a judgment in that action or proceeding shall be commenced within thirty (30) days after entry of judgment.

**3.32.930 Variable Interest Rate.**

The City Council may provide that bonds shall bear a variable interest rate, and for the manner and intervals in which the rate shall vary. The variable rate shall not exceed the maximum rate permitted by [Cal. Gov. Code](#) Section 53-531 ~~of the California Government Code~~ or any other applicable provision of law limiting the maximum interest rate on bonds.

## Chapter 3.33

### ASSESSMENT DISTRICT ALTERNATIVE PROCEDURES

#### Sections:

3.33.005 Short Title.

3.33.010 Provisions Not Exclusive—Applicability of Laws—Conflicting Provisions.

3.33.020 Definitions.

3.33.030 Declaration of Policy.

3.33.040 Authority and Procedure.

3.33.050 Assessment of Possessory Interests.

3.33.060 Method of Collection—Alternative Methods.

3.33.070 Form of Bonds—Maturities.

3.33.080 Authority to Covenant to Secure Bonds.

3.33.090 Actions or Proceedings to Attack Assessments—Time for Perfection of Appeal.

~~3.33.100 Severability.~~

#### 3.33.020 Definitions

~~“City” means the City of Newport Beach, California.~~

~~“Clerk” means the City Clerk of the City.~~

“Bond Act” means the Improvement Bond Act of 1915 (the “Bond Act”), ~~as amended (Cal. Sts. & Highways~~ and Highways Code, Division 10, Part 1, Section 8500 and following).

“Engineer” means the City Engineer or any other person designated by the City Council for the purposes of this chapter, including any officer, board, or employee of the City or any private person or firm specially employed by the City as engineer for purposes of this chapter. Notwithstanding the foregoing, the engineer shall be a registered professional engineer as defined in ~~Cal. Gov. Government~~ Code Section 53750(~~lk~~).

“Implementation Act” means the Proposition 218 Omnibus Implementation Act, being Article 4.6 of Chapter 4 of Part 1 of Division 2 of Title 5 of the ~~Cal. Gov. Code~~ Government Code of the State of California ~~{~~Section 53750 and following~~}~~.

“Possessory interest” means a leasehold interest in tax-exempt real property for a term of thirty-five (35) years or more (including renewal options). For purposes of this provision, tax-exempt real property means real property that is owned in fee by the governmental entity including, but not limited to, the federal government, the State, county or City.

### **3.33.060 Method of Collection—Alternative Methods.**

Unless an alternative method of collection of the assessments has been established as authorized by this section, the assessments levied pursuant to this chapter shall be collected at the same time and in the same manner as real property taxes are collected, and all laws providing for the collection and enforcement of real property taxes shall apply to the collection and enforcement of the assessments. The City Council in its discretion may, by resolution, establish an alternative method of collection of the assessments. Notwithstanding the foregoing, assessments levied pursuant to this chapter for which bonds are to be issued may be paid within thirty (30) days from the date of recording the assessment in the Office of the ~~Superintendent of Streets~~Public Works Director.

### **3.33.080 Authority to Covenant to Secure Bonds.**

A. Whenever bonds are to be sold and delivered under this chapter with respect to an assessment district, the City Council may, by resolution adopted prior to the sale and delivery of bonds, take any action the City Council deems appropriate to secure the timely payment of the principal of and interest on the bonds, including any one or more of the following:

1. Covenant for the benefit of bondholders that the City shall not terminate any possessory interest subject to an assessment for which the bonds were sold; or
2. Notwithstanding Section 8769 of the Bond Act, covenant for the benefit of bondholders to pay all or any portion of the principal of and interest on the bonds necessary because of delinquencies in the payment of one or more assessment installments or the inability to collect one or more assessment installments.

B. When any amounts are paid by the City for the payment of the principal of and interest on bonds as a result of delinquent assessments, the delinquent assessments shall remain a charge against the property that was subject to the delinquent assessments.

### ~~**3.33.100 Severability.**~~

~~In the event any portion of this chapter shall be declared illegal, unenforceable or unconstitutional, such provision shall be deemed severable from the rest of the provisions of this chapter.~~

## Chapter 3.34

### MARINE CHARTER PASSENGER TAX

#### Sections:

**3.34.010** Definitions.

**3.34.020** Tax Imposed.

**3.34.025** Exemptions.

**3.34.030** Liability for Tax.

**3.34.040** Registration.

**3.34.050** Collection of Tax by Operator—Receipt to Passenger—Rules for Collection.

**3.34.060** Reporting and Remitting.

**3.34.070** Failure to Collect and Report—Determination by Revenue Manager.

**3.34.080** Penalties and Interest.

**3.34.090** Appeals.

**3.34.100** Tax Deemed a Debt.

**3.34.110** Records.

**3.34.120** Violation by Operator a Misdemeanor.

~~**3.34.130** Severability.~~

#### **3.34.010** Definitions.

For the purposes of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

A. “Charter” or “chartered” shall mean any contract arrangement, agreement or lease pursuant to which consideration is paid to the owner or operator of a vessel for the right to use, or the right of carriage on, any vessel which will operate, at least in part, on the waters of Newport Harbor provided, however, the term “charter” shall not include those activities which are exempt from the permit requirements of Chapter 17.10.

BA. “Charter fee” shall mean, with respect to charter vessels serving the public on a ticketed passenger basis, the total cost, without deductions, required for passage on the vessel. With respect to all other charters, charter fee shall be the total consideration paid to the owner, operator, and all persons providing any supplies, entertainment, dock fees or on-board service in connection with the charter.

~~B. “Vessel” shall mean a passenger vessel or small passenger vessel as defined by Section 2101 of Title 46, U.S. Code, with seven or more passengers on board.~~

~~C. “Charter” or “chartered” shall mean any contract arrangement, agreement or lease pursuant to which consideration is paid to the owner or operator of a vessel for the right to use, or the right of carriage on, any vessel which will operate, at least in part, on the waters of Newport Harbor provided, however, the term “charter” shall not include those activities which are exempt from the permit requirements of Chapter 5.18 or Chapter 17.10C.~~

~~CD. “Chartered vessel” shall mean any passenger vessel or small vessel as defined by U.S. Code Title 46 Section 2101 of Title 46, U.S. Code, with six or more passengers on board and which has been chartered.~~

~~DE. “Commercial harbor activity Marine harbor activitiesy permittee” shall mean any charter business authorized to conduct marine charters pursuant to Chapter 17.10.~~

~~F. “Marine Charter Permittee” shall mean any charter business authorized to conduct marine charters pursuant to Chapter 5.18 of this Code.~~

~~EG. “Operator” shall mean any person who, on behalf of, or pursuant to agreement with the owner, arranges for the charter of any vessel or the issuance of any marine charter activities permit.~~

~~F. H. “Owner” shall mean any person who owns any chartered vessel that is chartered.~~

~~G.I. “Passenger” shall mean every natural person carried on any chartered vessel that has been chartered other than the owner, and any employee, agent, representative, or subcontractor of the owner or operator who has not paid consideration for carriage and who is paid consideration for on-board services.~~

~~J. “Person” shall mean any individual, corporation, partnership, association or other group or combination of individuals acting as an entity.~~

~~K. “Revenue Manager” shall mean the Revenue Manager of the City.~~

~~L. “Ticket Price” shall mean either the product of the charter fee divided by the number of passengers, or the actual ticket price imposed per passenger, whichever is greater.~~

~~M. “Consumer Price Index” (CPI) shall mean the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index, Los Angeles—Anaheim—Riverside (1982-84-100).‡~~

~~H.N. “Out of town vessel” shall mean any vessel which, for property tax purposes, has a situs outside Newport Beach.~~

~~I.O. “Sport fishing vessel” shall mean a documented vessel carrying or transporting seven or more people for hire for commercial passenger fishing purposes which holds a certificate of inspection from the United States Coast Guard and a commercial fishing boat license from the California Department of Fish and Game.~~

~~J.E. “Ticket Price” shall mean either the product of the charter fee divided by the number of passengers, or the actual ticket price imposed per passenger, whichever is greater.~~

~~K. “Vessel” shall mean a passenger vessel or small passenger vessel as defined by U.S. Code Title 46 Section 2101.~~

### 3.34.020 Tax Imposed.

A. There is hereby imposed a tax upon every passenger of each chartered vessel. The tax shall be the obligation of, and paid by, the passenger to the owner or operator, and shall be stated as a separate charge on agreements for charters. The amount of the tax shall be:

1. Fifty cents (\$0.50) for ticket prices between twenty-six dollars (\$26.00) and fifty dollars (\$50.00);
2. One dollar (\$1.00) for ticket prices greater than fifty dollars (\$50.00); and

~~B. For each charter of an out-of-town vessel, an additional surcharge shall be imposed on the owner or operator as follows:~~

- ~~1. Fifty dollars (\$50.00) for vessels with a capacity of less than fifty (50) passengers;~~
- ~~2. One hundred dollars (\$100.00) for vessels with a capacity of fifty (50) or more passengers;~~

~~CB.~~ Starting July 1, 1996, the ticket price on which the tax is imposed along with the tax and surcharge shall be automatically adjusted each July 1, to reflect the percentage, rounded to the nearest quarter, in the cost of doing business, as measured by the C.P.I.;

~~D. Notwithstanding the provisions of subsections (A), (B), and (C) of this section, charter vessel passengers which, on the effective date of the ordinance codified in this chapter have entered into an enforceable contractual arrangement for passage on or before June 30, 1995, shall be exempt from the tax for such charter.~~

~~E. Passengers on a charter subject to rates regulated by the California Public Utilities Commission shall be exempt from the imposition of the tax until approval by the Public Utilities Commission of a rate increase or on January 1, 1995, whichever is earlier.~~

### 3.34.030 Liability for Tax.

In addition to the passenger of a vessel chartered for consideration, the operator or owner shall be liable for the tax imposed pursuant to this chapter in the event of any failure to collect the tax from the passenger ~~or~~ and to remit the tax to the City as provided in this chapter. Liability of the passenger shall not be extinguished until the tax has been paid to the City or the passenger presents the City a receipt from the operator or owner which evidences payment of the tax.

### 3.34.040 Registration.

A. No person shall conduct any ~~marine~~ charter for which a marine activities permit is required pursuant to the provisions of Chapter 17.105-18 of this Code without first applying for, and receiving, a certificate of registration pursuant to the provisions of this chapter.

B. Every owner or operator who applies for a ~~marine charter permit~~ marine activities permit pursuant to Chapter 17.105-18 of this Code shall apply for, and obtain, a certificate of registration from the Revenue Manager. The owner or operator shall apply for the certificate of registration on forms provided by the City. The Revenue Manager shall issue a certificate of registration upon completion, execution and submittal of the form. The owner or operator shall comply with all standard conditions specified on the registration form or certificate of registration;

C. Every commercial ~~harbor-marine~~ activitiesy permittee shall register with the Revenue Manager within fifteen (15) days ~~after of the effective date of the ordinance codified in this chapter commencing operations in the City.~~ The certificate of registration shall be issued upon completion, execution and submittal of the form provided by the City. The ~~marine commercial-harbor~~ activitiesy permittee shall comply with all standard conditions on the certificate of registration.

### **3.34.060 Reporting and Remitting.**

A. Each ~~commercial-marine-harbor~~ activitiesy permittee, owner or operator shall, on or before the last day of the month following the close of the reporting period, as established by the Finance Director, file a return with the Revenue Manager on forms provided by the City, listing the total number of passengers carried during the reporting period and the total tax collected by the permittee. The full amount of the tax collected shall be remitted to the Revenue Manager at the time the return is filed. Returns and tax payments shall be due immediately upon cessation of business for any reason. All taxes collected by permittees shall be held in trust for the account of the City until payment thereof is made to the Revenue Manager.

B. Each owner or operator conducting charters pursuant to Chapter ~~5-1817.10~~ of this Code shall pay the tax upon obtaining the marine ~~charter-activities~~ permit. No marine ~~charter-activities~~ permit required by Chapter ~~5-1817.10~~ of this Code shall be issued until the required marine charter tax has been paid.

### **3.34.070 Failure to Collect and Report—Determination by Revenue Manager.**

A. If any owner or operator shall fail to collect all or a portion of the tax due pursuant to this chapter or shall fail to make, within the time provided in this chapter, any report and remittance of such tax, or any portion thereof, required by the provisions of this chapter, the Revenue Manager shall proceed in such manner as he/she may deem best to obtain the facts and information on which to base his/her estimate of the tax due. As soon as the Revenue Manager shall procure such facts and information as he/she is able to obtain upon which to base the assessment of any such tax imposed by the provisions of this chapter and payable by any owner or operator who has failed or refused to collect the same and to make such report and remittance, the Revenue Manager shall proceed to determine and assess against such owner or operator the tax, interest, and penalties provided for by the provisions of this chapter. The Revenue Manager shall give notice of the amount so assessed by serving it ~~personally or by depositing it in the United States mail, postage prepaid, addressed to the owner or operator at his last known place of address in the manner provided in Section 1.08.080.~~

B. Such owner or operator may, within ten days after the service or mailing of such notice, make an application in writing to the Revenue Manager for a hearing on the amount assessed. If an application by the owner or operator for a hearing is not made within the time prescribed, the tax, interest, and penalties, if any, determined by the Revenue Manager shall become final and conclusive and immediately due and payable. If such a request for hearing is made, the Revenue Manager shall give not less than five (5) days' written notice in the manner prescribed in this section to the owner or operator to show cause at a time and place fixed in such notice why the amount specified herein should not be fixed for such tax, interest, and penalties. At such hearing the owner or operator may appear and offer evidence why the tax, interest, and penalties should not be so fixed. After the hearing the Revenue Manager shall determine the proper tax, interest and penalty due, and shall thereafter give written notice to the owner or operator in the

manner prescribed in this section. The amount determined to be due shall be payable after fifteen (15) days unless an appeal is filed pursuant to Section 3.34.090 of this chapter.

### **3.34.080 Penalties and Interest.**

A. Original Delinquency. Any owner or operator who fails to collect, report and remit any tax imposed by the provisions of this chapter within the time required shall pay a penalty in the amount of ten (10) percent of the tax in addition to the amount of the tax.

B. Continued Delinquency. Any owner or operator who fails to collect and remit any tax and remit any penalty on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay a second penalty in the amount of ten (10) percent of the tax in addition to the amount of the tax and the ten (10) percent penalty first imposed.

C. Interest. In addition to the penalties imposed, any owner or operator who fails to collect and remit any tax imposed by the provisions of this chapter shall pay interest at the rate of one and one-half (1 1/2) percent per month, or fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

D. Penalties and Interest Merged With Tax. Every penalty imposed, and such interest as accrues, pursuant to the provisions of this section shall become a part of the tax required to be paid by the provisions of this chapter except such merger shall not affect the liability of an operator to pay tax it has failed to collect and remit.

### **3.34.090 Appeals.**

Any ~~personowner or operator~~ aggrieved by any decision of the Revenue Manager with respect to the amount of ~~such~~ tax, interest, penalties, ~~assessed against the person, if any,~~ may appeal to the City Manager by filing a notice of appeal within fifteen (15) days after the service or mailing of the determination of the tax, penalties and interest due. The City Manager ~~of the City of Newport Beach~~ may preside over the appeal or, in the alternative, the City Manager may appoint a Hearing Officer to conduct the hearing, receive relevant evidence and submit findings and recommendations to the City Manager ~~findings and recommendations~~. The City Manager shall render a his/her decision within fifteen (15) days of receiving the findings and recommendations of the Hearing Officer. The findings of the City Manager shall be final and conclusive as to the City and shall be served upon the appellant in the manner prescribed in this chapter for the service of a notice of hearing. Any amount found to be due shall be immediately due and payable to the City upon the service of notice. The City Manager's decision is subject to judicial review pursuant to Cal. Code of Civ. Proc. section 1094.5.

### **3.34.100 Tax Deemed a Debt.**

The amount of any tax, ~~or~~ penalty, or interest imposed by this chapter shall be deemed a debt due to the City by the persons required hereby to collect or to pay the same.

**~~3.34.130 Severability.~~**

~~If any section, subsection, sentence, clause or phrase of this chapter shall for any reason be invalid, such holding or holdings shall not affect the validity of the remaining portions of this chapter. The City Council has declared that it would have passed the ordinance codified in this chapter and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases thereof be declared invalid.~~

## Chapter 3.36

### COST RECOVERY FOR USER SERVICES

#### Sections:

**3.36.010 Findings.**

**3.36.020 Definitions.**

**3.36.030 Cost Recovery Percentages.**

**3.36.040 Late Fees and Charges.**

~~**3.36.050 Severability.**~~

**3.36.010 Findings.**

E. The City Council has fully complied with provisions of State and local law in establishing the cost recovery percentages specified in this chapter, including, Cal. Gov. Code Section 66000 et seq. ~~of the Government Code~~, and Articles XIIC and XIIB of the State Constitution.

**3.36.030 Cost Recovery Percentages.**

A. The municipal functions the City Council has determined to be user services and for which the City Council has initially determined the actual costs and the appropriate cost recovery percentage are described in the fee resolution. The cost recovery percentage appropriate for each user service shall be one hundred (100) percent with the exception of the user services listed in Exhibit "A" and those services for which the fee is limited by statute. The City Council may include in the fee resolution a schedule to phase in specific fee increases over a period not to exceed ~~five or~~ (5) years.

~~**3.36.050 Severability.**~~

~~If any section, subsection, sentence, clause or phrase of this chapter 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 chapter. The City Council declares that it would have passed the ordinance codified in this chapter and each section, subsection, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.~~

## **Title 5**

### **BUSINESS LICENSES AND REGULATIONS\***

#### **Chapters:**

- 5.04 General Provisions**
- 5.08 License Fee Categories**
- 5.11 Special Regulations**
- 5.12 Vehicles for Hire**
- 5.14 Ambulance Regulations**
- 5.15 Regulation of Newport Beach Police Official Tow Services**
- 5.17 Taxicabs**
- 5.20 Pawnbrokers, Secondhand Dealers and Junk Dealers**
- 5.25 Operator License for Establishments Offering Alcoholic Beverages for On-Site Consumption in Combination with Late Hours, Entertainment, and/or Dance**
- 5.28 Live Entertainment Establishments**
- 5.32 Cafe Dances**
- 5.36 Hotel Registration**
- 5.42 Solicitation**
- 5.43 State Video Franchises**
- 5.44 Cable Communications Franchises**
- 5.46 Regulation of Commercial Film Production**
- 5.48 ~~Direct Telephonic~~-Alarm Monitoring System**
- 5.49 Burglary—Robbery Alarm Systems**
- 5.50 Massage Establishments**
- 5.60 Paramedic Service User Fees**
- 5.70 Newspaper Racks and Stands**
- 5.80 Retail Sale of Firearms**
- 5.90 Escort Service**
- 5.95 Short Term Lodging Permit**
- 5.96 Adult Oriented Business**
- 5.97 Sidewalk Vending Program**

- \* Enforcement of regulations by Finance Director—See Chapter 2.12.
- Soliciting business in prohibited manner—See Chapter 5.42.
- Sale of electrical appliances which interfere with radio reception—Chapter 10.40.
- Registration of rented or sold bicycles –See Chapter 12.56.

## Chapter 5.04

### BUSINESS LICENSES AND REGULATIONS

#### 5.04.010 Definitions.

~~D. "Finance Director" shall mean the Finance Director of the City of Newport Beach or his or her designee.~~

DE. "Gross receipts" shall mean the total amounts actually received or receivable from sales and the total amounts actually received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act or service is done as a part of or in connection with the sale of materials, goods, wares or merchandise. Included in "gross receipts" shall be all receipts, cash, credits, and property of any kind or nature without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service cost, interest paid or payable, or losses or other expenses whatsoever. Excluded from "gross receipts" shall be the following:

1. Cash discounts allowed or taken on sales.
2. Credit allowed on property accepted as part of the purchase price and which property may later be sold, at which time the sales price shall be included as "gross receipts."
3. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser.
4. Such part of the sale price of property returned by purchasers upon rescission of a contract of sale as is refunded either in cash or by credit.
5. Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded.
6. Amounts collected for others where the business is acting as an agent or trustee to the extent that such amounts are paid to those for whom collected, provided the agent or trustee has furnished the Finance Director with the names and addresses of the others and the amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by the agent or trustee.
7. Cash value of sales, trades or transactions between departments or units of the same business.
8. Transactions between a partnership and its partners.
9. Receipts from services or sales in transactions between affiliated corporations. An affiliated corporation is a corporation:
  - a. Devoting a nonvoting stock of which is owned at least eighty (80) percent by such other corporation with which such transaction is had; or
  - b. Which owns at least eighty (80) percent of the voting and nonvoting stock of such other corporation; or

c. At least eighty (80) percent of the voting and nonvoting stock of which is owned by a common parent corporation which also has such ownership of the corporation with which transaction is had.

10. Receipts from investments where the holder of the investment receives only interest and/or dividends.

11. Receipts derived from the occasional sale of used, obsolete or surplus trade fixtures, machinery or other equipment used by the licensee in the regular course of the licensee's business.

~~FE.~~ "Operate" shall mean and include manage, control or carry on.

~~G.~~ "Person" shall mean and include all domestic and foreign corporations, associations, syndicates, joint stock corporations, partnerships of every kind, clubs, Massachusetts Trust, business or common law trusts, societies, and individuals transacting and carrying on any business in the City other than as an employee.

~~HF.~~ "Rental unit" shall mean and include all residential units except one which is the part-time or full-time residence of the owner, and no part thereof is offered or available for rent at any time during the license year.

~~GL.~~ "Sale" shall include the transfer, in any manner or by any means whatsoever, of title to property for a consideration; the serving, supplying or furnishing for a consideration of any property; and a transaction whereby the possession of property is transferred and the seller retains the title as security for the payment of the price shall likewise be deemed a sale. The foregoing definition shall not be deemed to exclude any transaction which is or which, in effect, results in a sale within the contemplation of law.

~~HJ.~~ "Sworn statement" shall mean an affidavit sworn to before a person authorized to take oaths, or a declaration or certification made under penalty of perjury.

#### **5.04.060 Exemptions—Exempt by Federal or State Law.**

Nothing in this chapter shall be deemed or construed to apply to any person transacting and carrying on any business exempt by virtue of the Constitution or applicable statutes of the United States or of the State of California from the payment of such taxes as are herein prescribed.

Any person claiming an exemption pursuant to this section shall file a sworn statement with the Finance Director stating the facts upon which exemptions are claimed, and in the absence of such statement substantiating the claim, such person shall be liable for the payment of the taxes imposed by this title.

The Finance Director shall, upon a proper showing contained in the sworn statement, issue a license to such person claiming exemption under this section without payment to the City of the license tax required by this title.

The Finance Director, after giving notice and a reasonable opportunity for hearing to a licensee, may revoke any license granted pursuant to the provisions of this section upon information that the licensee is not entitled to the exemption as provided herein. The Finance Director's determination shall be final as to the City but subject to judicial review pursuant to Cal. Code of Civ. Proc. Section 1094.5.

#### **5.04.090 Minor's Exemptions.**

Any person ~~defined as a minor pursuant to Internal Revenue Service regulations~~ under eighteen years of age, whose annual gross receipts from any business done within the City are within the earned income threshold pursuant to Internal Revenue Service regulations, shall be exempt from the requirements of this chapter.

Within thirty (30) days of a request by the Finance Director, any person claiming an exemption pursuant to this section shall submit to the Finance Director documents requested by the Finance Director that show the person is a minor and that the annual gross receipts from any business done within the City are within the earned income threshold set forth in the Internal Revenue Service regulations. If the Finance Director determines additional evidence is necessary, the Finance Director shall notify the person seeking the exemption of the date and time of a hearing regarding the exemption. After the hearing, the Finance Director shall make a determination as to whether the exemption applies, and that determination shall be final as to the City but subject to judicial review pursuant to Cal. Code of Civ. Proc. Section 1094.5.

#### **5.04.100 Exemption for Artists and Art Exhibits.**

A business license shall not be required of individual artists for the exhibition or display of paintings, sculpture, photographs, handmade jewelry or other fine arts. Any artist shall be exempt from the requirements of this title if the sales of his or her artwork within the City do not result in annual gross receipts in excess of ~~three-four~~ thousand ~~nineeight~~ hundred dollars (\$~~43,9800.00~~), automatically adjusted annually to reflect the percentage change in the cost of doing business as measured by the Consumer Price Index and rounded to the nearest dollar.

Within thirty (30) days of a request by the Finance Director, any person claiming an exemption pursuant to this section shall submit to the Finance Director documents requested by the Finance Director that show the person's annual gross receipts from any business done within the City are less than the amount to qualify for the exemption. If the Finance Director determines additional evidence is necessary, the Finance Director shall notify the person seeking the exemption of the date and time of a hearing regarding the exemption. After the hearing, the Finance Director shall make a determination as to whether the exemption applies, and that determination shall be final as to the City but subject to judicial review pursuant to Cal. Code of Civ. Proc. Section 1094.5.

#### **5.04.190 Error in Terms Voids License.**

The payment of any license tax required by this title, its acceptance by the City, and the issuance of such license to any person shall not entitle the holder to carry on any business called for by the license unless the person has complied with all requirements of this Code, or to carry on any business at any location that is illegal under State or federal law or contrary to the City's zoning regulations.

#### **5.04.290 Enforcement—Right of Entry.**

B. Right of Entry. The Finance Director ~~and each and all of his designees~~ and any police officer or City employee whose job includes the inspection of the business license shall have the power and authority to enter, free of charge, and during regular business hours, any place of business required to be licensed and demand an exhibition of its license certificate. No Any person having such license certificate ~~therefore~~

issued in his possession or under his control ~~shall, who~~ willfully fails to exhibit the same on demand, ~~shall be subject to administrative citation as provided for by Chapter 1.05.~~

#### **5.04.330 Appeal.**

Any person aggrieved by any decision of the Finance Director with respect to the issuance or refusal to issue such license may appeal to the City Manager by filing a notice of appeal with the City Clerk. The City Manager shall thereupon fix a time and place for hearing such appeal. The City Clerk shall give notice to such person of the time and place ~~of the~~ hearing by serving the notice in the manner provided in Section 1.08.080. it personally or by depositing it in the United States mail at Newport Beach, California, postage prepaid, addressed to such person at his or her last known address. The City Manager shall have authority to determine all questions raised on such appeal. No such determination shall conflict with any substantive provision of this chapter.

## Chapter 5.08

### LICENSE FEE CATEGORIES

#### 5.08.005 Business Tax Definitions.

~~E. The term "consumer price index" shall mean the United States Department of Labor Bureau of Labor Statistics consumer price index, Los Angeles-Anaheim-Riverside (1982-84 100).~~

#### 5.08.010 Business Tax—Out of Town Based Businesses.

Every out of town based business as defined by this chapter shall pay an annual business license tax as established by resolution of the City Council. The business license tax shall automatically be adjusted each year in July to reflect the percentage change, rounded to the nearest dollar, in the cost of doing business as measured by the ~~C~~onsumer ~~P~~rice ~~I~~ndex.

#### 5.08.020 Business Tax—Residentially Based Businesses.

Every residentially based business as defined by this chapter shall pay an annual business tax as established by resolution of the City Council. The business license tax shall automatically be adjusted each year in July to reflect the percentage change, rounded to the nearest dollar, in the cost of doing business as measured by the ~~C~~onsumer ~~P~~rice ~~I~~ndex.

#### 5.08.022 Business Tax—Commercially Based Businesses.

Every commercially based business as defined by this chapter shall pay an annual business tax as established by resolution of the City Council. The business license tax shall automatically be adjusted each year in July to reflect the percentage change, rounded to the nearest dollar, in the cost of doing business as measured by the ~~C~~onsumer ~~P~~rice ~~I~~ndex.

## Chapter 5.11

### SPECIAL REGULATIONS

#### Sections:

5.11.010 Signs on Watercraft.

~~5.11.020 Portable Food Stand or Street Kitchen.~~

5.11.030 Selling Food Products on the Streets Prohibited.

5.11.040 Sale of Food Products on Public Beaches Prohibited.

~~5.11.050 Temporary Emergency Electrical Generators.~~

~~5.11.060 Delivery of Alcoholic Beverages in a Safety Enhancement Zone.~~

5.11.070 Exception.

#### ~~5.11.020 Portable Food Stand or Street Kitchen.~~

~~No person shall conduct the business of a portable food stand or street kitchen within the City except on privately owned commercial or industrial property with the consent of the owner or lessee of the property, for the purpose of selling food or refreshments to the employees of the business located thereon. The terms "portable food stand" or "street kitchen" mean a place which is constructed so that it may be moved from place to place for the purpose of selling food for immediate consumption.~~

#### ~~5.11.050 Temporary Emergency Electrical Generators.~~

~~In the event of critical energy shortages, the Community Development Director may authorize the temporary use of, and placement of, an emergency electrical generator for any existing commercial or industrial use for a period of time not to exceed two years. In approving an emergency electrical generator license, the Community Development Director may impose whatever reasonable conditions are deemed necessary to assure that the generator remains compatible with adjoining uses and does not result in significant negative impacts to the health, safety, peace, comfort and the welfare of persons residing or working in the general vicinity. In addition to any site-specific conditions that the Community Development Director may require, the following standard provisions shall apply:~~

~~1. The application shall include a written request signed by the business owner and the property owner. In addition, a site plan shall be submitted showing the location of the proposed generator in relation to property lines and parking areas. There shall be no Community Development Department fee for an emergency electrical generator license.~~

~~2. The Community Development Director shall establish a specific point in time when said permit is to be terminated and the site restored.~~

~~3. The approved license shall be for the exclusive use of the business and business owner named as the license holder. Any new tenant shall obtain a new license subject to the procedures specified above regardless of the time allowed for the original license.~~

~~4.— If the business owner desires permanent status of the generator, then the applicant shall obtain a conditional use permit as specified in Chapter 20.52 (Permit Review Procedures) of this Code.~~

~~5.— Installation of the generator shall comply with the requirements of the City's Building Regulations and Fire Codes.~~

~~6.— The Community Development Director may revoke a license for an emergency electrical generator if the generator is deemed noncompliant with any provisions of this section or the conditions imposed during the licensing process.~~

~~7.— The use of the generator shall be limited to no more than two hundred (200) hours per year and shall be operated only during a power outage.~~

~~8.— Any generator exceeding fifty (50) horsepower shall obtain a South Coast Air Quality Management District Permit.~~

~~9.— If the Community Development Director determines that the generator exceeds acceptable levels for noise (as established in Title 10 of this Code) and/or creates excessive negative impacts to air quality, the license may be automatically revoked.~~

~~10.— The Community Development Director may require screening of the generator as part of license approval.~~

~~**5.11.060 Delivery of Alcoholic Beverages in a Safety Enhancement Zone.**~~

~~No person shall deliver alcoholic beverages to any "alcohol sales, off-sale" or "alcohol sales, off-sale, accessory only (land use)" as those terms are defined in Title 20 of this Code within any area and during the times designated by the City Council as a Safety Enhancement Zone.~~

Chapter 5.12  
VEHICLES FOR HIRE\*

Sections:

5.12.010 Definitions.

~~5.12.015 Pedicab.~~

5.12.020 Certificate Required.

~~5.12.025 Pedicab Permit—Trial Period.~~

5.12.030 Application for Certificate.

5.12.040 Investigation.

5.12.050 Issuance of Certificates.

5.12.060 Grounds for Denial of Application.

5.12.070 ~~Liability~~ Insurance.

5.12.080 ~~Grounds for~~ Revocation, Denial and Appeal.

~~5.12.090 Changes of Operation.~~

~~5.12.100 Rates or Charges.~~

~~5.12.110 Annual Vehicle Fee.~~

~~5.12.120 Refusal to Pay Fare.~~

~~5.12.130 Cruising Prohibited.~~

~~5.12.170 Registered Fare—Request for Receipt.~~

~~5.12.180 Standing Vehicle on Public Rights of way.~~

~~5.12.190 Right of Exclusive Vehicle Use by Passenger.~~

~~5.12.210 Advance Vehicle License for Fee Payment Required.~~

~~5.12.220 Solicitation of Passengers.~~

~~5.12.230 Driver's Permit.~~

~~5.12.240 Permit and Certificate Nontransferable.~~

### 5.12.010 Definitions.

For the purpose of this chapter, the words and phrases herein defined shall be construed in accordance with the following definitions, unless it is apparent from the context that a different meaning is intended.

Certificate. The term “certificate” means a certificate of public convenience and necessity issued pursuant to this chapter.

Pedicab. The term “pedicab” ~~shall have the same meaning as Cal. Veh. Code Section 467.5. means a device upon which a person may ride, or propelled exclusively by human power through a belt, chain or gears, and having two or more wheels, designed to carry one or more passengers for a fare.~~

~~The term “pedicab” includes a motor-driven cycle or motorized bicycle designed to carry one or more passengers for a fare.~~

Public Transportation Vehicle. The term “public transportation vehicle” means a motor-propelled vehicle, not otherwise defined in this section, used in the business of transporting passengers over the streets of the City for hire, ~~whether or not the operations extend beyond~~ which operates exclusively within the boundaries of the City.

Sight-Seeing Automobile. The term “sight-seeing automobile” means a motor-propelled vehicle used for the purpose of transporting passengers over the streets for sight-seeing, showing points of interest or exhibiting lands, houses, property for other things or objects when a fee is charged or compensation is obtained from passengers or elsewhere.

Vehicle for Hire. The term “vehicle for hire” means a public transportation vehicle or sight-seeing automobile.

### 5.12.015 Pedicab.

No person shall operate or engage in the business of operating a pedicab within the City. This section shall not apply to pedicabs authorized to operate in conjunction with a special event for which a special event permit has been issued pursuant to Chapter 11.03.

### 5.12.020 Certificate Required.

No person shall solicit or pick up passengers in the City, or engage in the business of operating any vehicle ~~for hire defined in Section 5.12.010~~ within the City, without having first obtained a separate certificate of public convenience and necessity for each such business, ~~as required by this chapter; provided, however, that~~ No such certificate issued by the City shall be required for any operations for which a certificate of public convenience and necessity is needed and has been granted by the Public Utilities Commission of the State of California.

### ~~5.12.025 Pedicab Permit – Trial Period.~~

~~A.— No person shall operate or engage in the business of operating a pedicab, as defined in Section 5.12.010, within the City. This section shall not apply to pedicabs authorized to operate in conjunction with a special event for which a special event permit has been issued pursuant to Chapter 11.03.~~

~~B.— The provisions of this chapter concerning the certificate of public convenience and necessity shall apply to the operation of a pedicab business within the City; provided, however, prior to the issuance of a~~

~~certificate and upon application by a proposed pedicab operator the City Council may establish a trial period of operation during which a pedicab business may operate with a temporary permit to do so, issued after public hearing by the City Council. During such trial period of operation, the City Council may designate those streets, sidewalks and other rights of way which may be used for the operation of pedicabs and, likewise, designate certain streets, sidewalks, and other rights of way upon which pedicabs may not be operated, and further may set the permitted hours of operation of such business within the City. The City Council further shall have the authority, upon the adoption of a resolution, to delegate, during such trial period of operation, to the City Manager or his designee the authority to determine which streets, sidewalks and rights of way are appropriate for use and prohibition of use during the trial period for operation of pedicabs. The determination of the City Manager or his designee regarding the use of or prohibition of use of streets, sidewalks or other rights of way may supersede a contrary determination of the City Council regarding the use of any such street, sidewalk or other rights of way.~~

~~The trial period shall be for a period not to exceed four months and, upon conclusion of such trial period of operation, the City Council may determine whether or not a certificate of public convenience and necessity will be issued pursuant to the terms of this chapter.~~

~~C. As a condition of any certificate under this chapter for the operation of a pedicab business, the City Council may designate those streets, sidewalks and other rights of way where the operation of pedicabs can be permitted, as well as the permitted hours of operation.~~

#### **5.12.030 Application for Certificate.**

An application for a certificate shall be filed with the Director of Finance upon forms provided by the City. The application must be signed by the applicant and be accompanied by a fee as established by resolution of the City Council, and shall contain or be accompanied by the following information:

- A. The name and address of the applicant, and, if the same be a corporation, the names of its principal officers, or, if the same be a partnership, association or fictitious company, the names of the partners or persons comprising the association or company, with the address of each.
- B. A complete schedule of the rates proposed to be charged for each type of vehicle.
- C. A description of every vehicle which the applicant proposes to use, including trade name, motor or serial number, State license number and body style.
- D. The location of the business and the place where the applicant proposes to keep such vehicles described in this chapter while not actually engaged.
- E. The distinct color scheme, name, monogram and insignia which shall be used on each vehicle.
- F. The name of the legal and registered owner of each such vehicle.
- G. The experience of the applicant in the business or businesses for which the person~~he~~ is seeking a certificate or certificates.
- H. Any facts which the applicant believes would tend to prove the public convenience and necessity requiring the granting of a certificate.
- I. Such further information as the Director of Finance may require.

#### **5.12.040 Investigation.**

Upon receipt of a completed application for a certificate, the City Manager shall, upon determining the application to be in order, refer the matter to the Chief of Police for investigation. In the course of the investigation, the Chief of Police shall inspect the vehicles and equipment ~~and may require the applicant or any person named in the application to be photographed and fingerprinted.~~ The Chief of Police shall complete his investigation within thirty (30) days, unless prevented from doing so by lack of cooperation of the applicant or other person named in the application, and shall report his findings to the City Manager regarding the qualifications of the applicant and other persons named in the application and the adequacy and safety of the vehicles with respect to cleanliness, equipment, safety devices, brakes and light.

#### **5.12.060 Grounds for Denial of Application.**

If the City Manager finds any of the following conditions ~~to exist, he or she~~ the City Manager shall deny the application:

- A. That the application is not in the form and does not contain the information required to be contained therein by this chapter.
- B. That the equipment, safety devices or vehicles proposed to be used are inadequate or unsafe for the purposes for which they are to be used.
- C. That the color scheme, name, monogram or insignia to be used upon such vehicles or in the business resembles the color scheme, name, monogram or insignia used by another person, firm or corporation in the same business in the City and therefore may tend to deceive or defraud the public.
- D. That the applicant has within the past two (2) years had an application for such a certificate denied for cause.
- E. That there is a sufficient number of vehicles of the type described in the application operating in the City to fully serve the public, that the granting of more certificates would unduly congest the traffic and interfere with the free use of public rights-of-way by the public, or that the best interests of the public do not demand and necessity does not require the issuance of such permit.

**5.12.070 ~~Liability~~ Insurance.**

~~Every person subject to this chapter shall procure and maintain insurance, which types and amounts shall be determined by the Risk Manager. Subject to all other applicable regulations and conditions under which it is issued, the certificate shall authorize the conduct of the business only during the time the certificate holder has on file with the City Clerk a document issued by an insurance company evidencing that the certificate holder is insured under a liability insurance policy providing minimum coverage in the following amounts: one million dollars (\$1,000,000.00) death or injury of one or more persons, one hundred thousand dollars (\$100,000.00); and such document evidencing insurance shall provide that the City shall be named as additional insured and shall be given thirty (30) days' prior written notice of any cancellation, termination or change in the amount of such insurance coverage.~~

**5.12.080 ~~Grounds for Revocation, Denial and Appeal.~~**

~~A. Grounds for Revocation. Any certificate ~~or permit~~ granted under the provisions of this chapter may be revoked by the City Manager, ~~either as a whole or as to any person or vehicle described therein or as to the right to use any distinctive color, monogram or insignia,~~ for any of the following reasons:~~

- ~~1A.~~ That the document required by Section 5.12.070 has not been filed or has been withdrawn or lapsed or is not in force for any reason.
- ~~2B.~~ For the nonpayment of any City business license ~~or other fees provided by this title.~~
- ~~3C.~~ For the breach of any rules, regulations or conditions set out in this Code or the certificate.
- ~~4D.~~ For the violation of any of the laws of the State of California or the City with respect to the operation of the business by any certificate holder, or repeated violations by operators or drivers of any vehicle covered by such certificate.
- ~~5E.~~ For failure to maintain satisfactory service to the public, or for failure to keep any such vehicle in a safe and sanitary condition and good repair, or for failure to use the distinctive coloring, monogram or insignia described in the application, or for deviation from the schedule or rates and fares set forth in the application.

~~F. For any cause which the City Council finds makes it contrary to the public health, interest, convenience, necessity or general welfare for the certificate or permit to be continued.~~

~~In any such case, the certificate or permit holder shall have the right to appeal to the City Council or a member of the City Council may call an item for review in a time and manner set forth in this section.~~

~~B. Notice. When the City Manager concludes that the grounds for revocation of a certificate ~~or permit~~ exists, the City Manager shall serve the certificate holder, or permit holder, either personally or by certified mail addressed to the business address of the certificate or permit holder in the manner provided in Section 1.08.080, with a notice of revocation of the certificate ~~or permit~~. The notice shall state the reasons for the revocation, the effective date of revocation if no appeal is filed by the certificate ~~or permit~~ holder, and the right of the certificate ~~or permit~~ holder to appeal to the City Council ~~and~~ the decision to revoke the certificate ~~or permit~~.~~

~~C. Appeal and Call for Review. If an applicant certificate holder is aggrieved by any action of the City Manager in revoking any certificate ~~or permit under this chapter~~, such certificate holder applicant may~~

appeal to the City Council by filing with the City Clerk a statement addressed to the City Council setting forth the facts and circumstances regarding the action of the City Manager. A member of the City Council, in their official capacity, may call for review any action of the City Manager under this chapter for the purpose of bringing the matter in front of the entire body for review. A call for review shall be filed with the City Clerk on a form provided by the City Clerk. The City Clerk shall notify the applicant in writing of the time and place set for the hearing ~~of the on his or her~~ appeal or a call for review.

The right to appeal to the City Council or file a call for review from the revocation ~~of any certificate or permit required by this chapter~~ shall terminate upon the expiration of fifteen (15) days ~~following the deposit of a certified letter in the United States Post Office advising the applicant of service of the notice of revocation of the certificate as provided in subsection (B) of the action of the City Manager and of his or her right to appeal such action to the City Council.~~

The City Council ~~of the City of Newport Beach~~ may preside over the revocation hearing or, in the alternative, appoint a hearing officer to conduct the hearing, receive relevant evidence and to submit to the City Council findings and recommendations to be considered by the City Council ~~of the City of Newport Beach~~. The City Council shall preside over call for review hearings. The City Council ~~of the City of Newport Beach~~ shall render its decision within forty-five (45) days from the date of the hearing or, in the event that a hearing officer has been appointed, within forty-five (45) days on which the City Council receives the findings and recommendations of the hearing officer. The decision of the City Council shall be final as to the City but subject to judicial review pursuant to Cal. Code of Civ. Proc. Section 1094.5.

#### **~~5.12.090 Changes of Operation.~~**

~~In the event any certificate holder desires to change the color scheme or any monogram or insignia used on a vehicle, or to substitute any vehicle for a vehicle described in the application, or to increase or decrease the number of vehicles used, application to the City Manager shall be made for permission to do so, and the City Manager shall grant such permission if the City Manager deems the public interest, convenience and necessity will be served by the change, and if the certificate holder has complied with all the provisions of this chapter.~~

~~If application is made to increase the number of vehicles, payment of the annual vehicle fee for each additional vehicle requested shall be made at the time of application. Fees tendered for additional vehicles which the City Manager does not permit shall be refunded. No refund of the annual vehicle fees paid shall be made when the City Manager grants permission to reduce the number of vehicles.~~

#### **~~5.12.100 Rates or Charges.~~**

~~Each person holding a certificate of public convenience and necessity for the operation of vehicles other than taxicabs shall file a proposed schedule of rates with the City Clerk. The schedule of rates shall be submitted to the City Council for approval and no change shall be made in any rates approved by the City Council without prior approval by the City Council. No person shall charge rates other than those so approved. No hearing is necessary for the approval of these rates or changes therein.~~

**~~5.12.110 Annual Vehicle Fee.~~**

~~Each holder of a certificate issued hereunder shall pay, for each vehicle operated, an annual fee as established by resolution of the City Council.~~

**~~5.12.120 Refusal to Pay Fare.~~**

~~No person shall refuse to pay the legal fare for the hire of any vehicle described in this chapter, after having hired the same. No person shall hire any vehicle described in this chapter with the intent to defraud the person from whom it is hired of the charges or fare.~~

**~~5.12.130 Cruising Prohibited.~~**

~~No driver of a vehicle defined in Section 5.12.010, shall cruise in search of passengers.~~

**~~5.12.170 Registered Fare—Request for Receipt.~~**

~~No driver shall charge any fare or fee other than approved or fail or refuse to give a receipt for the amount charged upon the request of the person paying the fare.~~

**~~5.12.180 Standing Vehicle on Public Rights-of-way.~~**

~~No person shall cause or permit a vehicle described in this chapter to remain standing upon any portion of any public right-of-way within the City, except for loading and unloading passengers, and then not for a period of more than five minutes, excepting at such stands as may be designated by the City Council. This section shall not apply to any vehicle described in this chapter while the same is engaged by and being paid for by a passenger.~~

**~~5.12.190 Right of Exclusive Vehicle Use by Passenger.~~**

~~No operator or owner of any vehicle described in this chapter shall solicit or carry any additional passenger after such vehicle has been engaged, or while in use by a passenger, without the consent of the passenger first engaging the same having first been obtained. A passenger or passengers engaging such vehicle shall have the exclusive right to full and unimpaired use of the passenger compartment and the whole thereof, if he desires the same.~~

**~~5.12.210 Advance Vehicle License for Fee Payment Required.~~**

~~No person shall operate any vehicle described in this chapter without prepaying any license fee required by the City for the transaction of any such business.~~

**~~5.12.220 Solicitation of Passengers.~~**

~~No driver of a vehicle described in this chapter shall leave the side of his vehicle to solicit passengers or solicit passengers in a louder tone of voice than that used in ordinary conversation.~~

**~~5.12.230 Driver's Permit.~~**

~~A.—Application. No person shall drive or operate any vehicle described in this chapter in the city without first obtaining a permit in writing so to do from the Chief of Police. Any person desiring to obtain such driver's permit shall make a written application therefor to the Chief of Police accompanied by a fee as established by the City Council. No permit shall be issued to any person under the age of eighteen (18)~~

years, who does not have a validly issued, active license to drive from the California Department of Motor Vehicles. No permit shall be issued to any person who has been convicted of a felony, or within two years immediately preceding such application has been convicted of reckless driving or driving a vehicle upon a highway while under the influence of intoxicating liquors or drugs, or who has been convicted of violating any provisions of the Alcoholic Beverage Control Act of the State of California, unless such person shows to the satisfaction of the Chief of Police that issuing a driver's permit to him would not in any way be contrary to the public interest, welfare or safety. Persons operating emergency or public safety vehicles must be able to speak the English language. Any falsification on the application for such permit will be grounds for refusal of the permit.

B.—Personal Appearance. Before a permit is granted to any applicant, the applicant shall be photographed or furnish an acceptable photograph, and be fingerprinted, and such photographs and fingerprints shall be filed with the permanent records of the Police Department.

C.—Temporary Permit. Pending the completion of the investigation of an applicant, the Chief of Police may grant a temporary permit to a person who has made application for a driver's permit and appears to be qualified for such permit.

The temporary permit shall automatically expire sixty (60) days from the date it was issued or upon issuance of a regular driver's permit. The Chief of Police shall summarily revoke any temporary permit when he determines not to issue a driver's permit to the applicant.

D.—Identification Card. Upon obtaining the regular permit, the driver or operator shall at all times keep posted in full view in the vehicle operated by him an identification card furnished by the Chief of Police, which shall have plainly printed thereon the name of the driver or operator, his business address and telephone number, his permit number and his photograph.

E.—Term—Renewal. A driver's permit shall expire on the last day of the twelfth month following its issuance. Applications for renewal shall be made with the Revenue Division of the Finance Department on or before the first day of the month in which the permit expires. The fee for renewal made within the prescribed period shall be as established by resolution of the City Council.

F.—Revocation. The Chief of Police may revoke or suspend any such driver's permits so issued for any violation of the provisions of this chapter by the holder of such permit or for the existence of any statement of facts which would have been a good reason for denying such permit when applied for, whether such statement of facts existed at the time application was made for such permit or came into existence thereafter.

G.—Appeal. In the event of a refusal, revocation or suspension of any driver's permit by the Chief of Police, the applicant or permittee may appeal from the decision to the City Council, which may in its discretion affirm, reverse or modify the decision made by the Chief of Police.

#### **5.12.240 Permit and Certificate Nontransferable.**

No certificate or permit issued under the terms of this chapter shall be transferable either by contract or operation of law without the permission of the City Council having been first obtained.

## Chapter 5.14

### AMBULANCE REGULATIONS

#### Sections:

~~5.14.010 Intent and Purpose.~~

5.14.0120 Definitions.

~~5.14.0230 Emergency Ambulance Transportation Services License Required.~~

~~5.14.040 Emergency Ambulance Transportation Service Providers.~~

~~5.14.050 Emergency Ambulance Transportation Service Agreement Specifications.~~

~~5.14.060 Agreements.~~

~~5.14.070 Termination or Suspension of Agreement.~~

~~5.14.080 Business License Required.~~

~~5.14.090 Advanced Life Support Ambulance Transportation Service Providers.~~

5.14.030100 Nonemergency Ambulance Transportation Services Providers.

~~5.14.110 Permit for Drivers and Attendants.~~

~~5.14.120 File Report with Police.~~

~~5.14.130 Public Liability Insurance.~~

~~5.14.140 Violations.~~

~~5.14.010 Intent and Purpose.~~

~~It is the intent of this chapter to establish general operating procedures and standards for emergency ambulance services operating within the City of Newport Beach. The City Council, in enacting the ordinance codified in this chapter intends to provide a fair and impartial means of allowing responsible, private ambulance service operators to provide emergency and nonemergency services within the limits of the City of Newport Beach and to ensure that such service is prompt, efficient and reasonably priced, and in the best interest of the public.~~

5.14.0120 Definitions.

“Advanced life support” as defined in the California Health & Safety Code, Section 1797.52, ~~as now in existence or hereafter amended or changed,~~ means special services designed to provide definitive prehospital emergency medical care, including, but not limited to, cardiopulmonary resuscitation, cardiac monitoring, cardiac defibrillation, advanced airway management, intravenous therapy, administration of specified drugs and other medical preparations, and other specified techniques and procedures administered by authorized personnel under the direct supervision of a base hospital as part of a local EMS system at the scene of an emergency, during transport to an acute care hospital, during interfacility

transfer, and while in the emergency department of an acute care hospital until responsibility is assumed by the emergency or other medical staff of that hospital.

~~“Basic life support” as defined in the California Health & Safety Code, Section 1797.60, as now in existence or hereafter amended or changed, means emergency first aid and cardiopulmonary resuscitation procedures which, as a minimum, include recognizing respiratory and cardiac arrest and starting the proper application of cardiopulmonary resuscitation to maintain life without invasive techniques until the victim may be transported or until advanced life support is available.~~

~~“Ambulance” means any motor vehicle that is specifically designed, constructed, modified, equipped, or arranged and operated for the purpose of transporting patients requiring basic or advanced life support ~~immediate or ongoing~~ medical services.~~

~~“Ambulance attendant” means a trained, qualified individual who, regardless of whether he or she also serves as a driver, is responsible to care for sick, injured or disabled persons while they are being transported in an ambulance.~~

~~“Ambulance driver” means a person whose primary duty is to drive an ambulance.~~

~~“Ambulance service operator” means any privately operated person, firm, partnership, corporation or other organization which furnishes or offers to furnish emergency ambulance transportation services within the City.~~

“Agreement” means the agreement between the City of Newport Beach and an ambulance service operator to provide emergency ambulance transportation services as provided in this chapter.

~~“City” means the City of Newport Beach.~~

~~“County” means the County of Orange.~~

“Emergency ambulance transportation service” means transportation by an ambulance of one or more patients in response to an emergency or from the scene of an emergency and giving rise to the need for basic or advanced life support services. This transportation may require “cCode 3” response (red lights and siren). All ambulance transportation services within the City that are requested in response to a 911 call, by the City’s Fire Department or other public agency, or from the Metro Cities Fire Authority Communications Center shall be deemed “an emergency ambulance transport service.”

~~“Fire Chief” means the Fire Chief of the Fire Department for the City.~~

~~“Licensee” means an ambulance service operator which has been granted and maintains the appropriate license by the County for the services to be provided.~~

“Nonemergency ambulance transportation service” means transportation by ambulance of a patient who is medically stable but may need basic life support and requires transportation from one location to another. This transportation does not normally require “cCode 3” response. Nonemergency ambulance transportation service shall not include any response to an emergency, any response that may require advanced life support, transportation from the scene of an emergency, or any emergency ambulance transportation service. The term nonemergency ambulance transportation service shall be construed narrowly.

~~“Person” means any individual, firm, corporation, partnership, association or other group or combination of individuals acting as a unit.~~

**~~5.14.0230 License Required~~Emergency Ambulance Transportation Services.**

A. ~~It is unlawful for any person to be an~~ ambulance service operator ~~to provide emergency ambulance transportation service or respond to an emergency within the City,~~ or to act in such a capacity either directly or indirectly, without: ~~(1) entering into an agreement with the City; and (2) procuring and maintaining possession of~~ a license issued pursuant to ordinances, rules, and regulations of the County of Orange and any other licenses or permits as may be required.

B. ~~Any person or ambulance service operator receiving a request for emergency ambulance transportation service within the City, from someone other than a public safety agency, shall immediately, by telephone, notify the City’s Fire Department’s communication center.~~

~~CB. Subsection (-A) The provisions~~ of this chapter shall not apply to:

1. ~~Emergency ambulance response and transportation services operated by the City’s Fire Department;~~
2. ~~Ambulances operated at the request of a public safety agency during any “state of war emergency,” “state of emergency,” or “local emergency” as defined in Cal.the Gov.ernment Code Section 8558;~~
3. ~~Ambulance service transporting a patient from a location outside of the City limits regardless of destination;~~
4. ~~In the event of a mass casualty situation, as determined by the Fire Chief or Police ChiefCity;~~
5. ~~Emergency ambulance response and transportation services expressly requestedoperated by the City’s of Newport Beach Fire Department;~~
6. ~~An ambulance service operator who has a contractual agreement with a hospital or medical facility, within the City, to transport patients to/from the hospital or medical facility to/from another hospital or medical facility; or~~
7. ~~Nonemergency ambulance transportation services provided in compliance with Section 5.14.030.~~

**~~5.14.040 Emergency Ambulance Transportation Service Providers.~~**

A. ~~The Fire Department may, upon resolution of the City Council, provide emergency ambulance transportation services as part of its paramedic services program.~~

B. ~~No ambulance service operator shall provide emergency ambulance transportation services in response to, or as a result of an emergency, unless that person has been selected to provide such services pursuant to this chapter.~~

~~Any ambulance service operator receiving a request for emergency ambulance transportation service from other than a public safety agency shall immediately, by telephone, notify a designated fire department communication center.~~

~~C. The City may contract with an ambulance service operator or another public agency to provide backup emergency ambulance transportation service within the City limits. A backup emergency ambulance service operator shall be selected and designated to provide emergency ambulance transportation service at the request of the Fire Chief throughout the City of Newport Beach. The contracts shall be made on a competitive basis as provided in this chapter. In awarding the contract, the City shall consider the comparative value of competing proposals.~~

~~D. The Fire Chief shall administer the contract for emergency ambulance transportation services awarded by the City Council pursuant to this chapter.~~

~~E. In the event no proposal acceptable to the City under the provisions of this section is received for the provision of emergency ambulance transportation services, the City Council shall designate one or more qualified licensees to provide emergency services on a month-to-month basis until such time an emergency ambulance transportation service agreement is signed.~~

#### **5.14.050 Emergency Ambulance Transportation Service Agreement Specifications.**

~~A. Notice. The City Clerk shall be authorized to advertise for bids to contract for emergency ambulance transportation services. Notice inviting bids shall be published at least once in the official newspaper at least ten days before the time for opening bids. Notice shall list the date, time, and location for receiving sealed bids and the time at which the bids will be opened. Bids shall be submitted in response to the request for proposal prepared by the Fire Department and shall contain information indicating adequacy of equipment, rate schedule and such other information required to evaluate the ability to perform emergency ambulance transportation services.~~

~~B. Hearing. After the bids are opened, the City Clerk shall set a hearing before a panel of representatives designated by the Fire Chief. The panel shall consist of three to five persons representing the City Council, the Fire Department, the medical community, and the City of Newport Beach. The City Clerk shall give notice of the time to be set at least five days before the date of the hearing to all persons submitting bids.~~

~~C. Selection. At the time set for the hearing, the designated panel may examine the bidders, all relevant evidence, and submit to the City Council findings and recommendations of those found to be the most responsible bidders. The City Council shall consider the findings and recommendations in awarding the contract. The City Council reserves the right to reject all proposals if it is believed to be in the public interest.~~

#### **5.14.060 Agreements.**

~~Ambulance service operators who provide emergency ambulance transportation services selected pursuant to this chapter (contractor), shall enter into an agreement with the City, which agreement shall contain eligibility requirements, operating rules and regulations, equipment standards, insurance requirements and rate schedules as adopted by the City Council and shall have a three-year term, with an option for the City Council to extend an additional two-year term.~~

~~After approval of the agreement by the City Council, the rates shall not be changed or modified in any manner without the prior mutual approval of the City Council and the emergency ambulance transportation service provider. No ambulance service operator shall charge rates other than those so approved. Prior to changing any schedule of rates previously approved for an existing operator, the City Council shall hold a public hearing after giving ten days prior written notice to all operators and/or applicants, and publication of said proposed rate changes in the official newspaper of the City at least once, not less than ten days prior to the date of said hearing.~~

**~~5.14.070 Termination or Suspension of Agreement.~~**

~~A. The City Manager may terminate or suspend the agreement on one or more of the following grounds:~~

- ~~1. The certificate holder has not filed adequate evidence of insurance coverage with the City Clerk, or has allowed its insurance coverage to lapse or be canceled; or~~
- ~~2. The violation of any rule, regulation or condition set forth in or authorized by this chapter, or made a condition of the agreement; or~~
- ~~3. The violation of any laws of the State of California, County of Orange, or City with respect to the operation of the business by the contractor, or repeated violations by employees of the contractor; or~~
- ~~4. Failure to maintain satisfactory service to the public, or for failure to keep any ambulance in a safe and sanitary and fully operational condition, or for deviation from the schedule of rates approved by the City Council; or~~
- ~~5. The lapse or loss of any license, permit or other approval necessary to the services provided pursuant to the agreement; or~~
- ~~6. Unethical conduct or malpractice by contractor or its employees as determined either by a court of competent jurisdiction or by such review processes as are, or may be established by this chapter; or~~
- ~~7. The breach by contractor of any provision of the agreement.~~

~~In any such case, the certificate holder shall have the right to appeal to the City Council or a member of the City Council may call an item for review in the time and manner set forth in this section.~~

~~B. When the City Manager concludes that grounds for termination or suspension exist, the City Manager shall serve the contractor, either personally, or by certified mail addressed to the business address of the contractor, with a notice of intent to terminate or suspend the agreement. This notice shall state the reasons for the proposed termination or suspension, the right to appeal and effective date of the termination or suspension, if no appeal is filed by contractor. A member of the City Council, in their official capacity, may call for review any action of the City Manager under this chapter for the purpose of bringing the matter in front of the entire body for review. A call for review shall be filed with the City Clerk on a form provided by the Clerk. The right to appeal to the City Council or call an item for review shall terminate upon the expiration of fifteen (15) days following the personal service or deposit of the notice of intent to terminate or suspend the agreement in the United States mail, whichever shall occur first.~~

~~The City Council may preside over the hearing on appeal, or, in the alternative, appoint a hearing officer to conduct the hearing, receive relevant evidence and to submit to the City Council findings and recommendations to be considered by the City Council. The City Council shall preside over a call for review hearing. The City Council shall render its decision within forty five (45) days from the hearing or the date on which the City Council receives the findings and recommendations of the hearing officer. The decision of the City Council shall be final.~~

~~**5.14.080 Business License Required.**~~

~~All ambulance service operators who provide emergency ambulance transportation services, advanced life support transportation services and nonemergency ambulance transportation services must secure a City business license in compliance with Title 5 of this Code prior to operation within City limits.~~

~~**5.14.090 Advanced Life Support Ambulance Transportation Service Providers.**~~

~~No ambulance service operator shall provide advanced life support ambulance transportation service on the streets of the City without first obtaining a City business license and providing the Finance Director with evidence of County approval and licensing for the personnel, equipment and operation of an advanced life support ambulance transportation service within Orange County.~~

~~The City Council shall by resolution establish a schedule of rates applicable to all ambulance service operators who provide advanced life support ambulance transportation service and may, upon its own motion or upon application of any person holding a business license for the operation of an advanced life support ambulance transportation service, modify or amend such a schedule. Prior to establishing, modifying or amending any schedule or rates for advanced life support ambulance transportation service, the City Council shall hold a public hearing after giving ten days prior written notice to all providers and/or applicants and publication of said proposed rate changes in the official newspaper of the City at least once, not less than ten days prior to the date of said hearing.~~

**5.14.030100 Nonemergency Ambulance Transportation Service Providers.**

A. It is unlawful for any person or ambulance service operator to provide nonemergency ambulance transportation service or respond to a nonemergency within the City, or to act in such a capacity either directly or indirectly, without acquiring and maintaining a license issued pursuant to ordinances, rules, and regulations of the County of Orange and any other licenses or permits as may be required.

B. No ambulance service operator shall provide nonemergency ambulance transportation service on the streets of the City without first obtaining a City business license and providing the ~~Finance-Fire Director~~ Chief with evidence of County approval and licensing for the personnel, equipment, and operation of nonemergency ambulance transportation service in Orange County.

C. The City Council shall by resolution establish a schedule of rates applicable to all nonemergency ambulance transportation service and may, upon its own motion or upon application of any person holding a business license for the operation of nonemergency transportation service, modify or amend such a schedule. Prior to establishing, modifying, or amending any schedule or rates of nonemergency ambulance transportation service, the City Council shall hold a public hearing after giving ten (10) days' prior written notice to all providers and/or applicants, and publication of said proposed rate changes in the official newspaper of the City at least once, not less than ten (10) days prior to the date of said hearing.

#### **~~5.14.110 Permit for Drivers and Attendants.~~**

~~A.— No person shall drive, or serve as an attendant for, an ambulance service operator subject to the requirements of this chapter without first submitting proof of appropriate license from the County to act in such capacity.~~

~~B.— No person shall drive an ambulance unless he or she shall hold a valid driver's license and an ambulance driver's certificate as required by the State of California.~~

#### **~~5.14.120 File Report with Police.~~**

~~The Chief of Police, in his discretion, may establish a policy requiring that any ambulance service operator, his agent or employee, shall, after transporting any injured, sick or dead person, or person who dies enroute, notify the Police Department after removal of any such injured, sick, or dead person, and file a written report giving the required information and any other relevant information which the Police Department may require. The Police Department shall provide forms upon which the information required under this section shall be written.~~

#### **~~5.14.130 Public Liability Insurance.~~**

~~The contractor shall obtain and keep in force during the term of the agreement, comprehensive automobile liability insurance, comprehensive general liability insurance, and professional liability insurance issued by a company authorized to do business in the State of California, acceptable to the Finance Director, insuring the contractor against loss by reason of personal or bodily injury, sickness or death, or damage or destruction of property that may result from operations of the contractor. Comprehensive general liability insurance shall be in the sum of not less than one million dollars (\$1,000,000.00) combined single limit, bodily injury and property damage. Professional liability insurance shall be in the sum not less than one million dollars (\$1,000,000.00) per person and two million dollars (\$2,000,000.00) combined single limit, bodily injury and property damage. Workers' compensation insurance shall be carried covering all employees of the license holder. All policies shall contain a provision requiring a thirty (30) day written notice to be given to the City prior to cancellation, modification, or reduction in limits.~~

#### **~~5.14.140 Violations.~~**

~~No person shall violate any provision or fail to comply with any of the requirements of this chapter. In addition to the provisions of this chapter providing for suspension or termination of the agreement issued pursuant to this chapter, any person found guilty of violating any provision of this chapter shall be deemed guilty of a misdemeanor and shall be subject to a fine of not more than five hundred dollars (\$500.00), or by imprisonment in the County jail for not more than six months, or by both such fine and imprisonment. Each such person shall be guilty of separate offense for each and every day during any portion of which any violation of such provision of this chapter is committed, continued or permitted by such person.~~

## Chapter 5.15

### REGULATION OF NEWPORT BEACH POLICE OFFICIAL TOW SERVICES\*

#### 5.15.020 Definitions.

~~“Finance Director” means the position appointed by the City Manager and has charge of the administration of the financial affairs of the City.~~

~~“Revenue Division” means the Newport Beach City Revenue Division of the Finance Department.~~

#### 5.15.080 Service Agreements.

Tow truck operators selected by the City Council to provide official police tow services shall enter into an agreement with the City that shall contain eligibility requirements, operating regulations, and a fee schedule as adopted by the City Council. Every official police tow service operator shall post in a conspicuous place in the interior of each tow truck an approved rate schedule in a form and location approved by the Chief of Police. The rate schedule will automatically be adjusted on its anniversary date based on the percentage change in the cost of doing business as measured by the change in the United States Department of Labor, Bureau of Labor Statistics, Not Seasonally Adjusted, Consumer Price Index for All Urban Consumers for the Los Angeles-Riverside-Orange County, CA, All Items, (1982-1984 = 100) for the preceding twelve (12) months.

#### 5.15.110 Standard Rules of Operation.

E. Each towing company shall comply with the ~~Cal. ifornia~~ Vehicle Code, Division 12, Chapter 5, Article 8, Section 27900 et seq., regarding signs on tow trucks. Only tow trucks bearing the name of the company shall be dispatched to the scene of need without approval of Police Communications.

K. Upon request, official police towing services shall submit a report to the Chief of Police and the Finance Director, which may include any of the following:

1. Total police impounds;
2. Number of times dispatched by ~~Newport Beach~~the Police Department;
3. Number of these calls resulting in impounds;
4. Number of vehicles sold on lien sale under authority of the ~~Civ. vil~~ Code, and reporting such lien sales as per authority of the Cal. Veh. icle Code;
5. Number of vehicles sold under authority of Cal. Civ. Code Section 3073, ~~Civil Code~~;
6. Names and addresses of buyers and description of vehicles when sold;
7. Number of calls answered which took more than one hour to handle.

P. When disposing of unclaimed vehicles, official police tow service operators shall abide by all Cal. Civ. Civil Code sections pertaining thereto.

R. A towing company may charge a lien sale fee and may begin lien sale proceedings as provided in the ~~Cal. ifornia~~ Vehicle and ~~Civ. vil~~ Codes.

#### **5.15.140 Grounds for Revocation.**

The official police tow truck service agreement shall be subject to cancellation or revocation by the City Council either as a whole or as to any person or vehicle described therein. The contract holder shall be given five (5) days' notice to appear before the City Council to show cause why the contract should not be revoked or cancelled for any of the following reasons:

1. Nonpayment of any City business license fees or other fees provided in the contract or by this ~~Newport Beach Municipal Code~~;
2. Breach of any rules, regulations, or conditions set forth in the contract or this ~~Newport Beach Municipal Code~~;

## Chapter 5.17

### TAXICABS

#### Sections:

5.17.010 Purpose and Intent.

5.17.020 Definitions.

5.17.030 ~~City~~ Authorization Required.

~~5.17.040 Driver's Permit Required.~~

~~5.17.050 Taxicab Vehicle Permit Required.~~

~~5.17.060 Taxicab Business Permit Required.~~

5.17.0470 Administrative Taxicab Regulations.

5.17.050 -Application for Permits and Fees.

~~5.17.080 Testing for Controlled Substances and Alcohol.~~

~~5.17.090 Insurance Required.~~

~~5.17.100 Nontransferability.~~

~~5.17.110 Equipment.~~

~~5.17.120 Mechanical Condition.~~

~~5.17.130 Operational Requirements.~~

~~5.17.140 Rates and Charges.~~

5.17.04650 Separate from Business Licensing.

5.17.070 Agency.

#### 5.17.020 Definitions.

For the purposes of this chapter, the words and phrases herein defined shall be construed in accordance with the following definitions:

~~"City" means the City of Newport Beach.~~

~~"City authorization" means City authorization to operate a taxicab business in the City.~~

"Driver" means a person who drives or controls the movements of a taxicab.

~~"Driver's permit" means a valid permit issued by OCTAP authorizing a person to drive or control the movements of a taxicab.~~

~~“OCTAP” means the Orange County Taxi Administration Program administered by the Orange County Transportation Authority.~~

~~“Operate a taxicab” means to drive a taxicab and either solicit or pick up passengers for hire in the City.~~

~~“Owner” means a person who is registered with the California Department of Motor Vehicles as the owner of a vehicle used as a taxicab, or who has a legal right to possession or control of such vehicle pursuant to a lease or other agreement. The act of any driver of a vehicle used as a taxicab shall be deemed an act of the owner means the registered owner or lessor of a taxicab.~~

~~“Person” includes natural person, firm, association, organization, partnership, business, trust, corporation or public entity.~~

~~“Prearranged trip” means a trip using an online enabled application, dispatch, or internet website.~~

~~“Regulatory authority” means the County or any city within County where a taxicab business is substantially located.~~

~~“Substantially located” means either of the following: the city or county where a taxicab business is primary located; or, or the city or county where the total number of prearranged and non-prearranged trips that originate account for the largest share of the taxicab businesses’ total number of trips over the previous calendar year as determined annually.~~

~~“Taxicab” means a vehicle operated within the jurisdiction of the City, capable of carrying not more than eight (8) persons, excluding the driver, and used to carry passengers for hire. The term shall exclude a vehicle operating as a charter party carrier licensed as such by any State agency, including the California Public Utilities Commission, a rideshare as defined in Cal. Veh. Code Section 522, or any other vehicle having a certificate of public convenience and necessity issued by any State agency, including the Public Utilities Commission.~~

~~“Taxicab business” means any enterprise, whether carried on for profit or otherwise, that operates taxicabs.~~

~~“Taxicab business permit” means a valid permit issued by the CityOCTAP authorizing a person to operate a taxicab business.~~

~~“Taxicab Driver’s permit” means a valid permit issued by the City authorizing a person to drive or control the movements of a taxicab.~~

~~“Taxicab vehicle permit” means a valid permit issued by the CityOCTAP authorizing a particular vehicle to be operated as a taxicab.~~

#### **5.17.030 City Authorization Required.**

~~A. \_\_\_\_\_ No person shall operate a taxicab or taxicab business in the City without a taxicab business permit, taxicab drivers permit, and taxicab vehicle permit compliance with this chapter.~~

~~B. \_\_\_\_\_ Notwithstanding Subsection (A), a taxicab business and its driver may perform prearranged trips within the City if the taxicab business, taxicab driver, and taxicab vehicle are permitted by a regulatory authority where the taxicab business is substantially located.~~

**5.17.040 Taxicab Administrative Regulations.**

A. The City Council shall adopt by resolution regulations of taxicab businesses substantially located in the City including, but not limited to, the establishment of a maximum rate for fares, and the permitting of taxicab drivers, taxicab businesses, and taxicab vehicles, which shall be published on the City's website and available to the public in the Office of the City Clerk.

B. No person shall operate a taxicab vehicle or taxicab business substantially located in the City unless in compliance with the administrative regulations adopted by the City Council pursuant to this section.

**5.17.040 Driver's Permit Required.**

~~No person shall operate a taxicab in the City unless that person possesses a driver's permit. Owners shall only allow drivers with driver's permits to operate a taxicab owned by the owner.~~

**5.17.050 Taxicab Vehicle Permit Required.**

~~No person shall operate a taxicab in the City unless the vehicle has a taxicab vehicle permit. No owner shall allow a taxicab owned by the owner to be operated in the City without a taxicab vehicle permit.~~

**5.17.060 Taxicab Business Permit Required.**

~~No person shall operate a taxicab business in the City unless the person possesses a taxicab business permit.~~

**5.17.05070 Application for Permits and Fees.**

A. Application for a taxicab business permit, taxicab driver's permit, or taxicab vehicle permit ~~or taxicab business permit~~ shall be made to the City~~OCTAP~~, upon ~~a form~~s provided by ~~OCTAP~~the City, and shall be accompanied by an application fee sufficient to cover the administrative costs of processing such application as established by ~~the Orange County Transportation Authority~~resolution of the City Council.

B. Requirements for issuance and maintenance of a City taxicab business permit, taxicab drivers permit, and taxicab vehicle permit shall be set forth in the regulations established by the City Council.

**5.17.080 Testing for Controlled Substances and Alcohol.**

~~A driver shall test negative for controlled substances and alcohol as required by applicable State statutes.~~

**5.17.090 Insurance Required.**

~~A driver operating a taxicab in the City shall carry with him/her at all times proof of insurance covering that vehicle, with such policy limits and coverage as established by OCTAP and adopted by separate resolution of the City Council. Proof of insurance must clearly identify the vehicle covered.~~

**5.17.100 Nontransferability.**

~~No permit issued under this chapter shall be assigned to, or used by, any person or vehicle other than the person or vehicle named in such permit.~~

**~~5.17.110 Equipment.~~**

~~A taxicab operated under the authority of this chapter shall be equipped according to the standards established by OCTAP and adopted by resolution of the City Council.~~

**~~5.17.120 Mechanical Condition.~~**

~~A taxicab operated under the authority of this chapter shall be maintained according to the standards established by OCTAP and adopted by resolution of the City Council.~~

**~~5.17.130 Operational Requirements.~~**

~~A. — A driver shall only carry a passenger to his/her destination by the most direct and accessible route.~~

~~B. — A taxicab shall have all permits issued by OCTAP conspicuously displayed according to the standards established by OCTAP and adopted by resolution of the City Council.~~

~~C. — A taxicab shall have the following information continuously posted in a prominent location in the taxicab passenger's compartment according to the standards established by OCTAP and adopted by separate resolution of the City Council:~~

- ~~1. — A schedule of rates and charges for the hire of such taxicab;~~
- ~~2. — The driver's name and address;~~
- ~~3. — The owner's name, address, and telephone number;~~
- ~~4. — The taxicab identification number;~~
- ~~5. — The driver's permit issued pursuant to this chapter;~~
- ~~6. — The taxicab vehicle permit issued pursuant to this chapter; and~~
- ~~7. — Any other information required by the City.~~

~~D. — A driver shall give a receipt for the amount charged upon the request of the person paying the fare.~~

~~E. — A taxicab shall only be operated if the passenger compartment is kept in a clean and sanitary condition.~~

~~F. — A driver shall not leave his taxicab to solicit passengers.~~

~~G. — The name or trade name of the owner and the number by which the taxicab is designated shall be printed, stamped or stenciled conspicuously on the outside of each taxicab according to the standards established by OCTAP and adopted by resolution of the City Council.~~

**~~5.17.140 Rates and Charges.~~**

~~No driver shall charge rates and charges other than those established by OCTAP and adopted by resolution of the City Council.~~

**5.17.01650 Separate from Business Licensing.**

A. \_\_\_\_\_ The requirements of this chapter are separate and independent from the business licensing and any other provisions under this Code. ~~Compliance with the provisions of this chapter may be secured under the provisions of Chapter 1.04 of this code. Each day a violation exists constitutes a separate offense.~~

B. \_\_\_\_\_ A taxicab business that is not substantially located within the City shall not be required to obtain a City business license.

**5.17.070 Agency.**

The owner of taxicab business and/or taxicab vehicle and the taxicab driver shall each be jointly and severally responsible and liable for all acts and omissions of the taxicab driver while the driver operates a taxicab in the City.

## Chapter 5.20

### PAWNBROKERS, SECONDHAND DEALS AND JUNK DEALERS

#### 5.20.010 Pawnbroker Defined.

The term “pawnbroker” shall have the same meaning as that term is defined in Cal. Fin. California Financial Code Section 21000 ~~or any successor statute thereto~~.

#### 5.20.030 Secondhand Dealer Defined.

The term “secondhand dealer” shall have the same meaning as that term is defined and limited in Cal. California Business\_ & -and\_ Prof\_essions\_ Code Sections 21626 and 21626.5 ~~or any successor statutes thereto~~. Any person or entity exempt from being considered a “secondhand dealer” pursuant to Section 21625 et seq. of the Cal\_ifornia Bus\_iness & -and\_ Prof\_essions\_ Code Section 21625 et seq. ~~or successor statutes thereto~~ shall also be exempt from being considered a “secondhand dealer” by this chapter.

#### 5.20.040 Junk Dealer Defined.

The term “junk dealer” shall have the same meaning as that term is defined in Cal\_ifornia Bus\_iness & -and\_ Prof\_essions\_ Code Section 21601 ~~or any successor statute thereto~~.

#### 5.20.050 Permits

C. Investigation. The Chief of Police ~~or his or her designee~~ shall cause to be made such investigation of the applicant’s application for compliance with this chapter and any applicable State regulation.

D. Report of Investigation. The Chief of Police ~~or his or her designee~~ shall complete his or her investigation herein provided for and shall make a written report within ninety (90) days that certifies whether or not the requirements of this chapter have been satisfied.

F. Revocation or Refusal. A permit applied for hereunder may be refused by the Chief of Police ~~or his or her designee~~ if the Chief of Police ~~or designee~~ determines that the applicant has been convicted of an attempt to receive stolen property or any other offense involving stolen property or that the permit holder engaged in any act which the permit holder knows to be in violation of this chapter and such violation demonstrates a pattern of conduct. For the purposes of this section, “convicted” means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

A permit issued hereunder may be revoked by the Chief of Police or an application for renewal of such permit may be refused by the Chief of Police and the permit holder’s activities pursuant to the permit may be prohibited if the Chief of Police determines after notice and hearing:

1. That the business was not carried on only at the location designated on the permit. The permit will designate all locations where property belonging to the business is stored. Property of the business may be stored at locations not designated on the permit only with the written consent of the City; or
2. That the permit or a copy thereof, issued by the ~~Newport Beach~~ Police Department, was not displayed on the premises in plain view of the public; or

3. That the permit holder engaged in any act which the permit holder knows to be in violation of this chapter and such violation demonstrates a pattern of conduct; or

4. That the applicant has been convicted of an attempt to receive stolen property or any other offense involving stolen property. For the purposes of this section, "convicted" means a plea or verdict of guilty or a conviction following a plea of nolo contendere. The Chief of Police may revoke or refuse renewal of such permit when the time for appeal of the conviction has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Cal. Pen Code Section 1203.4 ~~of the California Penal Code or any successor statute thereto~~; or

5. That the permit holder has not fully and truthfully filed a renewal application and paid the permit renewal fee specified by the City.

G. Appeal. Any person aggrieved by the action of the Chief of Police in the denial of an application for permit or renewal of permit as provided heretofore shall have the right of appeal to the City Manager ~~or his or her designee~~. Such appeal shall be taken by filing with the City Manager within fourteen (14) days of the postmark date of the Chief of Police ~~or designee's~~ notice of denial sent to the person's last known address a written statement setting forth fully the grounds for appeal. The appeal shall set forth the particular condition and the reasons that the applicant believes the findings or decision is in error. The City Manager ~~or designee~~ shall set a time and place for a hearing of such appeal and notice of such hearing shall be ~~given to the appellant served in the manner provided in Section 1.08.080 in the same manner as provided in subsection (H) of this section for notice of hearing on revocation~~. The decision of the City Manager on such appeal shall be final as to the City but subject to judicial review pursuant to Cal. Code Civ. Proc. Section 1094.5 ~~and conclusive~~.

H. Notice of Hearing. Notice of the hearing provided for shall be given in writing to the applicant or permit holder, as the case may be. Such notice shall be served in the manner provided in Section 1.08.080 ~~mailed, postage prepaid, to the applicant or permit holder, as the case may be, at his or her last known address~~ at least five (5) days prior to the date set for hearing. The applicant or permit holder, as the case may be, shall have the right to be represented at such hearing by counsel.

#### **5.20.070 Reporting of Transactions.**

A. Reporting Requirement for Pawnbrokers and Secondhand Dealers. Every pawnbroker and secondhand dealer shall make out and submit a full, true and complete report of pawnbroker and secondhand dealer transactions, the form and contents of which shall comply with the provisions of Cal. ~~ifornia~~ Business and Professions Code Sections 21628, 21628.2, 21630, and 21631, ~~and 21633 and any successor statutes thereto~~.

C. Reporting Requirement for Junk Dealers. Every junk dealer shall make out and deliver to the Police Department a full, true and complete report, the form and contents of which shall comply with Cal. ~~ifornia~~ Business and Professions Code Section 21606 ~~or any successor statute thereto~~ on the form prescribed by the Department of Justice, including Form BCIA 127, "Record of Junk Sale or Purchase," ~~or any successor form thereto~~.

#### **5.20.080 Records Required to Be Kept.**

Unless ~~f~~Federal or State law requires a shorter time period, every pawnbroker and secondhand dealer shall keep, for a period of three (3) years, a complete record in the English language of all goods, wares, merchandise or things pledged to or purchased or received by him, which record shall contain all of the matters required to be shown in the reports referred to and described in Section 5.20.070 or this chapter. Every such record and all goods, wares, merchandise and things pledged to or purchased or received by any such secondhand dealer shall be open at all times during business hours to the inspection of the Chief of Police or any police officer of the City of Newport Beach. Every junk dealer shall comply with the records preservation requirements of Cal.~~i~~ifornia Bus.~~i~~ness ~~&~~ Prof.~~i~~essions Code Section 21607 ~~or any successor statute thereto.~~

## Chapter 5.25

### OPERATOR LICENSE FOR ESTABLISHMENTS OFFERING ALCOHOLIC BEVERAGES FOR ON-SITE CONSUMPTION IN COMBINATION WITH LATE HOURS, ENTERTAINMENT, AND/OR DANCE

#### Sections:

- 5.25.010 License Required.
- 5.25.020 Applicability to Existing Businesses and Enterprises.
- 5.25.030 Application for an Operator License.
- 5.25.040 Application Requirements.
- 5.25.050 Issuance of License—Criteria and Findings.
- 5.25.060 Notice of Determination.
- 5.25.070 Operator License Nontransferable.
- 5.25.080 Revocation, Suspension or Modification of License for Cause.
- 5.25.090 Licenses and Fees Not Exclusive.

#### ~~5.25.100—Penalty.~~

#### 5.25.010 License Required.

No person ~~or entity~~ shall operate, or engage in, any of the following, until that person has first obtained an operator license pursuant to this chapter:

A. ~~a~~Any business or commercial enterprise defined as “bar, lounge, and nightclub;” in Chapter 20.70 of this Code;

B. ~~A business or commercial enterprise~~ ~~or~~ which does or intends to offer alcoholic beverages for on-site consumption in combination with “food service, ~~with~~ late hours,” as defined at Chapter 20.70 of this ~~C~~code ~~or as same may be amended from time to time~~, or

C. ~~Any~~ business or commercial enterprise that does or intends to offer alcoholic beverages for on-site consumption in combination with “entertainment” as defined at Chapter 5.28 of ~~this~~ ~~C~~code, or “cafe dance” as defined at Chapter 5.32 of this ~~C~~code, ~~until that person or entity has first obtained an operator license pursuant to this chapter.~~

#### 5.25.020 Applicability to Existing Businesses and Enterprises.

The provisions of this chapter shall apply prospectively and shall not operate to revoke any valid permit or other approval in effect as of ~~February 24, 2011 the date of the ordinance codified in this chapter~~. The foregoing notwithstanding, the provisions of this chapter shall be deemed to require an operator license in any of the following instances:

- A. The approval or amendment of a use permit, as required by Title 20 of this ~~C~~code.

- B. The issuance of a building permit for modifications comprising a change in the type of occupancy or an increase in the maximum occupant capacity of an establishment, as defined by the Uniform Building Code.
- C. As a result of a negotiated restitution or agreement to resolve or settle any administrative, civil, or criminal matter relating to any violation of this Code.
- D. As required by an order of judgment in a civil or criminal case brought by the City of Newport Beach.
- E. Transfer of a business operating pursuant to an issued operator license, as required by Section 5.25.070 of this chapter.
- F. The re-establishment of a business or commercial enterprise subsequent to its loss of nonconforming status as set forth in Chapter 20.38 of this Code.

#### **5.25.050 Issuance of License—Criteria and Findings.**

- B. At least twenty-one (21) ~~calendar~~-days prior to the decision on the issuance of a license, notice shall be mailed to the applicant and all owners of property within three hundred (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 address. The notice shall indicate that written comments to the decision of the Chief of Police will be accepted until the date of the decision indicated on the notice.
- C. 2. In the case of a business or enterprise offering “entertainment,” as defined in Chapter 5.28, the premises meets all of the criteria in Section 5.28.040(B)(2) through (7);

#### **5.25.060 Notice of Determination.**

- A. Except in such cases as provided in Section 5.25.030(A), the Chief of Police shall make a determination on an application for an operator license within forty-five (45) days of such application being deemed complete.
- B. The applicant shall be served with written notice of the decision, including the findings made by the Chief of Police in conditionally approving or denying the operator license. Notice shall be ~~personally served in the manner provided in Section 1.08.080 or served by deposit in the United States Mail, first class postage prepaid, at the address shown on the application. Service shall be deemed complete upon personal service or deposit in the United States Post Mail.~~
- C. The determination of the Chief of Police to deny or to place conditions upon the approval of an operator license shall be appealable by the applicant or any interested party. Such appeal shall be made in writing to the City ClerkManager, within fifteen (15) days of the ~~postmark date of the service of the~~ Chief of Police’s notice of decision. The appeal shall set forth the particular condition and the reasons that the applicant or any interested party believes the findings or decision is in error. The City CouncilManager shall make a determination on the appeal based on the application materials, the written determination of the Chief of Police and the written appeal of the applicant or any interested party. The City CouncilManager may take any of the following actions on the appeal:

1. Deny the appeal and affirm the determination of the Chief of Police and the conditions contained therein; or
2. Approve the appeal and/or approve or modify an appealed condition; or
3. Refer the application to the Chief of Police for further investigation and determination to be completed by a date certain.

D. The action of the City ~~Manager Council~~ to deny the appeal and affirm the determination of the Chief of Police or to approve the appeal and/or approve or modify an appealed condition shall be final as to the City but subject to judicial review pursuant to Cal. Code of Civ. Proc. Section 1094.5, ~~any other provision of this Code to the contrary notwithstanding.~~

**~~5.25.100 Penalty.~~**

~~A.— Any violation of this chapter is subject to those remedies provided for in Chapters 1.04 and 1.05 in addition to any other remedies allowed by State and Federal law.~~

~~B.— Any violation of this chapter is hereby declared to be a public nuisance.~~

## Chapter 5.28

### LIVE ENTERTAINMENT ESTABLISHMENTS\*

#### Sections:

5.28.010 Definitions.

5.28.020 Permit Required.

5.28.030 Application for Permit.

5.28.035 Application Requirements.

5.28.040 Issuance of Permit—Investigation.

5.28.041 Additional Regulations.

5.28.050 Permits Nontransferable.

5.28.060 Revocation of Permit.

5.28.070 Appeals and Calls for Review.

~~5.28.090 Exceptions.~~

5.28.100 Permits and Fees Not Exclusive.

5.28.110 Public Nuisance.

\* Public dancing hours—See Chapter 11.02.

5.28.010 Definitions.

~~“City Manager” means the City Manager for the City of Newport Beach or his or her designee.~~

5.28.060 Revocation of Permit.

D. The permit holder is convicted of a felony or misdemeanor occurring upon, or relating to the premises or lot upon which the place of entertainment is located which offense is classified by the State as an offense involving sexual crime against children, sexual abuse, rape, distribution of obscene material or material harmful to minors, prostitution or pandering, including, but not necessarily limited to the violation of any crime requiring registration under ~~Cal.~~California Penal Code Section 290, or any violation of Cal. Penal Code Sections 243.4, 261, 261.5, 264.1, 266, 266a through 266k, inclusive, 267, 286, 286.5, 288, 288.1 through 289, 288a, 311 through 311.10, inclusive, 314, 315, 316 or 647;

5.28.070 Appeals and Calls for Review.

B. The right to appeal to the City Council from the denial, suspension or revocation of any permit, or a call for review regarding the same, required by this chapter shall terminate upon the expiration of fifteen (15) days ~~after service, in the manner provided in Section 1.08.080, following the deposit of a certified~~

~~letter in the United States Post Office of the notice~~ advising the applicant of the action of the City Manager and of ~~his or her the applicant's~~ right to appeal such action to the City Council.

D. The City Council ~~of the City of Newport Beach~~ may preside over the hearing on appeal or, in the alternative, appoint a hearing officer to conduct the hearing, receive relevant evidence and to submit to the City Council findings and recommendations to be considered by the City Council ~~of the City of Newport Beach~~. The City Council shall preside over a call for review hearing. The City Council ~~of the City of Newport Beach~~ shall render its decision within five (5) days from the date of the hearing or, in the event that a hearing officer has been appointed, within five (5) days on which the City Council receives the findings and recommendations of the hearing officer. The decision of the City Council shall be final as to the City but subject to judicial review pursuant to Cal. Code of Civ. Proc. Section 1094.5.

~~Editor's Note: The deletion of Section 5.28.090(C) in Section 3 of the ordinance codified in this section shall only apply to new businesses operating as private clubs. All private clubs where admission is not open to the public, lawfully in existence as of the date of adoption of said ordinance shall remain exempt from the provision of this chapter. The City Council finds that all other amendments adopted by said ordinance are declarative of existing law.~~

#### ~~5.28.090 Exceptions.~~

~~The provisions of this chapter shall apply prospectively and shall not operate to revoke any valid live entertainment permit in effect as of the date of the ordinance codified in this chapter. The provisions of this chapter shall not be deemed to require an entertainment permit for the following:~~

- ~~A. For the use of a radio, record player, juke box or television receiver in any establishment;~~
- ~~B. For the use of a nonelectronic piano or organ in any establishment;~~
- ~~C. For entertainment conducted pursuant to a permit issued under Chapter 11.03 of this Code.~~

## Chapter 5.32

### CAFE DANCES\*

#### Sections:

- 5.32.010 Definitions.
- 5.32.020 Permit Required for Cafe Dance.
- 5.32.030 Dance Floor Area Minimum Size.
- 5.32.035 Restricted Hours of Operation.
- 5.32.040 Application for Permit.
- 5.32.050 Issuance of Permit—Investigation.
- 5.32.060 Revocation of Permit.
- 5.32.070 Appeals and Calls for Review.
- ~~5.32.080 Review by City Council.~~
- 5.32.090 Prohibited Dancing.
- 5.32.100 Exceptions.
- 5.32.110 Licenses and Fees Not Exclusive.

#### 5.32.010 Definitions.

~~City Manager. The term “City Manager” shall mean the City Manager of the City of Newport Beach or his authorized representative.~~

#### 5.32.070 Appeals and Calls for Review.

If an applicant is aggrieved by any action or failure to act upon the part of the City Manager in issuing, failing to issue, suspending or revoking any permit under this chapter, such applicant may appeal to the City Council by filing with the City Clerk a statement addressed to the City Council setting forth the facts and circumstances regarding the action or failure to act on the part of the City Manager. A member of the City Council, in their official capacity, may call for review any action of the City Manager under this chapter for the purpose of bringing the matter in front of the entire body for review. A call for review is exempt from the payment of a fee and shall be filed with the City Clerk on a form provided by the Clerk. The City Clerk shall notify the applicant in writing by registered mail of the time and place set for hearing ~~of the~~<sup>his</sup> appeal or a call for review. The City Council at its next regular meeting held not less than five (5) days from the date on which such appeal or call for review shall have been filed with the City Clerk shall hear ~~the applicant, the City Manager~~<sup>the appeal or call for review</sup>, and all relevant evidence. The City Council may sustain, overrule or modify the action of the City Manager, and the decision of the City Council shall be final as to the City but subject to judicial review pursuant to Cal. Code Civ. Proc. Section 1094.5.

The right to appeal to the City Council from the denial, suspension or revocation of any permit required by this chapter or call an item for review shall terminate upon the expiration of fifteen (15) days following ~~the service, in the manner provided in Section 1.08.080, of the notice deposit of a registered letter in the United States Post Office~~ advising the applicant of the action of the City Manager and of ~~the~~<sup>his</sup> right to appeal such action to the City Council.

**~~5.32.080 Review by City Council.~~**

~~The City Council may, on its own motion, hold a hearing for the purpose of reviewing any action or failure to act upon the part of the City Manager in issuing, failing to issue, suspending or revoking any permit under this chapter. The City Clerk shall cause written notice of the time, place and purpose of the hearing to be sent to the applicant or permittee by registered mail at least five days prior to the date set for the hearing. After the conclusion of the hearing, the City Council may sustain, overrule or modify the action of the City Manager and the decision of the City Council shall be final.~~

## Chapter 5.36

### HOTEL REGISTRATIONS

#### Sections:

#### 5.36.010 Registration Required.

#### 5.36.020 Entry of Departure Time—Inspection.

#### ~~5.36.030 Size and Form of Register and Cards—Retention of Records.~~

#### 5.36.040 False Registering Prohibited.

#### 5.36.010 Registration Required.

Every person ~~conducting operating~~ any ~~rooming house, lodging house, bed and breakfast inn,~~ hotel, ~~inn,~~ motel, ~~auto court, recreational vehicle park-~~ or any other similar place in the City, at all times shall keep and maintain therein a register ~~that sets forth the -or series of registration cards. The~~ name and home street and town address of each and every guest or person renting or occupying a room or rooms ~~and the room number(s) therein shall be inscribed with ink or indelible pencil in the register or on a registration card. Such register or registration card shall be signed by the person renting or occupying a room or rooms, and the proprietor or an agent thereof of such rooming house, lodging house, hotel, inn, motel, auto court, or any other similar place thereupon shall write opposite such name or names so registered the number of each room assigned to be occupied by each such guest or person, together with the time when such room is rented, and. U~~ until all of the aforesaid entries shall be made, no guest or person shall be suffered or permitted to occupy any such room.

#### 5.36.020 Entry of Departure Time—Inspection.

When the occupant or occupants of such room so rented shall quit and surrender the same, it shall be the duty of the proprietor or an agent thereof to enter the departure time as nearly as can be determined in such register ~~or on such registration card opposite the name of such occupant or occupants. Modifications to the register Erasures or alterations~~ shall not be made for any purpose. Such register ~~or all such registration cards~~ shall be ~~kept maintained or accessible~~ in the office of the person renting such rooms. ~~The register shall be maintained for a minimum of one year.~~

Any police officer of the City ~~of Newport Beach~~ may inspect the register ~~or registration cards~~ as long as such inspection complies with ~~f~~Federal and State law.

#### ~~5.36.030 Size and Form of Register and Cards—Retention of Records.~~

~~The register shall be permanently bound so that no sheet may be taken therefrom and shall be of the minimum size of eight inches by ten inches. The registration cards shall be numbered consecutively and shall be used in such sequence; the numbers shall be printed or otherwise indelibly affixed to such cards, and such cards shall be of the minimum size of two and one half inches by four inches; all such registration cards shall be retained for a minimum period of one year.~~

#### **5.36.040 False Registering Prohibited.**

No person shall register at any bed and breakfast inn, hotel, motel, recreational vehicle park or other similar rooming house, lodging house, hotel, inn, motel, auto court, or other place in the City under the name of any other person or of a false or fictitious person, ~~or give or sign upon the register of any such place, any assumed, false or fictitious name,~~ or any ~~other~~ name other than the true or correct name of such person so registering ~~or so giving or signing or causing his or her name to be signed.~~

**Chapter 5.42**  
**SOLICITATION**

**Sections:**

- 5.42.010 Findings and Purpose.**
- 5.42.020 Definitions.**
- 5.42.025 Commercial Solicitation—Registration Card Required.**
- 5.42.030 Exemptions.**
- 5.42.040 Application for Registration Card.**
- 5.42.050 Registration Fee.**
- 5.42.060 Issuance of Registration Card.**
- 5.42.070 Term of Registration Card.**
- 5.42.080 Nontransferability of Registration Card.**
- 5.42.090 Waiver of Requirements in Emergency.**
- 5.42.100 Handbills in Public Places.**
- 5.42.110 Placing Handbills in Vehicles.**
- 5.42.120 Distribution of Handbills on Residential Property.**
- 5.42.125 Residential Properties Displaying “No Soliciting” Signs—“No Solicitation” List.**
- 5.42.130 Posting on Public Property.**
- 5.42.140 Posting on Street.**
- 5.42.150 Handbill Exceptions.**
- 5.42.160 Publicly Soliciting Prohibited.**
- 5.42.170 Time, Place and Manner of Solicitation—Prohibitions.**
- ~~**5.42.180 Violations.**~~

#### 5.42.020 Definitions.

~~“City Council” means the City Council of the City of Newport Beach.~~

~~“City Manager” means the City Manager of the City of Newport Beach or his/her designee.~~

“Noncommercial solicitation” means religious and political contacts, and solicitation not primarily commercial in nature, and not primarily related to an economic transaction such as the exchange of goods or services for a financial fee or cost. Noncommercial solicitation may include solicitation of monetary or nonmonetary donations to nonprofit entities, when such solicitation is not conducted by a for-profit entity that is paid for solicitation on the nonprofit entity’s behalf, or that retains any portion of the funds solicited on behalf of the nonprofit entity.

#### 5.42.030 Exemptions.

F. Electronic solicitation, Direct solicitation through United States mail or ; solicitation conducted solely by means of radio or television broadcasts;

#### 5.42.040 Application for Registration Card.

A. At least ten (10) days prior to the date the applicant intends to engage in commercial solicitation, An application for a registration card shall be made to the Police Department on forms supplied by the City. ~~The applicant shall verify the application for a card under penalty of perjury and file it with the Police Department at least ten (10) days prior to the date the applicant intends to begin soliciting.~~ The Police Department may, for good cause shown, allow the filing of an application less than ten (10) days prior to the date the card is requested.

B. The application shall contain the following information:

1. The full name, mailing address, principal business or residential address and telephone number, and the nature of the relationship between the applicant and the card holder, including whether the applicant is a volunteer, a paid officer or employee, an independent contractor, or an agent of the card holder;
2. Written authorization of permission to solicit from any person or organization for which the applicant intends to solicit;
3. Where applicable, documentation from the State of California that the cardholder is in compliance with Cal. Gov. Government Code Section 12599;

#### 5.42.125 Residential Properties Displaying “No Soliciting” Signs—“No Solicitation” List.

Occupants of residential properties who visibly display “No Soliciting” signs, or signs with similar wording, may annually request to have their addresses included on a registry of residential properties whose occupants do not wish to receive unsolicited handbills or commercial solicitation. The registry shall be maintained by the City Manager’s Office and through the City’s website, and shall be available on the City’s website to the public and all potential commercial and noncommercial solicitors. It shall be a violation of this section for any commercial or noncommercial solicitor to ~~solicit or~~ distribute handbills or engage in commercial solicitation at or to any dwelling unit that is included on the City’s “no soliciting” registry.

**5.42.170 Time, Place and Manner of Solicitation—Prohibitions.**

B. No commercial solicitation is permitted at any residential property at which a sign is displayed indicating “No Solicitors” or a similar indication that no solicitation is desired by the occupant(s);

G. No solicitation shall occur when the person to be solicited is in or on any of the following places:

1. During a live presentation or performance on any City property, unless the solicitation is authorized by the City or a special event permit;Any public pier, beach, parking lot or parking structure, dock or ferry landing;

2. Inside aAny public transportation vehicle or public facility;

3. Any vehicle on the public or private street, alleyway or public right of way;

34. Within fifty (50) feet of any automated teller machine;

45. Outdoor and/or indoor dining areas of restaurants or other dining establishments serving food for immediate consumption without the express permission of the restaurant owner, manager or operator; or

56. A queue of five (5) or more persons waiting to gain admission to a place or vehicle, or waiting to purchase an item or admission ticket;

**~~5.42.180 Violations.~~**

~~Violations of this chapter shall be enforced in accordance with the provisions of Chapter 1.04 of the Newport Beach Municipal Code.~~

## Chapter 5.43

### STATE VIDEO FRANCHISES

#### 5.43.010 Definitions.

~~“City” means the City of Newport Beach.~~

“Gross Revenue” shall have the definition set forth in Section 5860 of the California Public Utilities Code section 5860.

#### 5.43.030 State Video Franchise Fees.

A. Any State Franchisee operating within the boundaries of the City of Newport Beach shall pay a fee to the City equal to five percent (5%) of the Gross Revenue of that State Franchisee.

B. Any State Franchisee operating within the boundaries of the City of Newport Beach shall pay an additional fee\* to the City equal to one (1) percent ~~(1%)~~ of the Gross Revenue of that State Franchisee, which fee shall be used by the City for PEG purposes consistent with State and federal law.

\* Code reviser’s note: Ord. 2017-5, Section 1, provides, “The City’s PEG fee imposed in CodeNBMC Section 5.43.030(B) is hereby reauthorized to the extent required by California Public Utilities Code Section 5870(n). All state franchisees operating within the City, including but not limited to the AT&T Franchise, the Cox Franchise, and the Time Warner Cable/Spectrum Franchise, shall continue to collect and remit the PEG fee as required in NBMC-Code Section 5.43.030(B), which fee shall remain unchanged and in full effect as to all state franchisees. The City Council expressly intends for this ordinance to apply retroactively to the expiration and renewal of the AT&T Franchise and/or the Cox Franchise to the extent either or both such franchises expire prior to the effective date of this ordinance.”

#### 5.43.050 Customer Service Penalties Under State Franchises.

B. The City Manager, ~~or his or her designee,~~ shall monitor the compliance of State Franchisee(s) with respect to State and federal customer service and protection standards. The City Manager, ~~or his or her designee,~~ shall provide the State Franchisee(s) written notice of any material breaches of applicable customer service standards, and shall allow the State Franchisee(s) thirty (30) days from the receipt of the notice to remedy the specified material breach. Material breaches not remedied within the thirty (30) ~~dayday;~~ time period shall be subject to the following penalties by the City Manager, ~~or his or her designee.~~

1. For the first occurrence of a violation, a fine of five hundred dollars (\$500.00) shall be imposed for each day the violation remains in effect, not to exceed one thousand five hundred dollars (\$1,500.00) for each violation.

2. For a second violation of the same nature within twelve (12) months, a fine of one thousand dollars (\$1,000.00) shall be imposed for each day the violation remains in effect, not to exceed three thousand dollars (\$3,000.00) for each violation.

C. A State Franchisee may appeal a penalty assessed to the City Council within sixty (60) days. After relevant speakers are heard, and any necessary staff reports are submitted, the City Council will vote to either uphold or vacate the penalty. The City Council’s decision on the imposition of a penalty shall be final ~~as to the City but subject to judicial review pursuant to Cal. Code Civ. Proc. Section 1094.5~~

## Chapter 5.44

### Cable Communications Franchises

#### 5.44.020 Definitions.

~~“Person” means any person, corporation, partnership, proprietorship, individual, or organization authorized to do business in the State of California.~~

“Facilities” or “facility” shall have the same meaning in this chapter as these terms have in Chapter 13.20 of ~~this e Newport Beach Municipal~~ Code.

“Public right-of-way” or “right of way” shall have the same meaning in this chapter as the term or terms have in Chapter 13.20 of ~~this e Newport Beach Municipal~~ Code.

#### 5.44.030 Grant of Franchise.

H. Use of Public Rights-of-Way. Pursuant to Chapter 13.20 of ~~this e Newport Beach Municipal~~ Code and for the purposes of operating and maintaining a system in the franchised service area, a company may place and maintain within the public rights-of-way the property and equipment that conforms to the laws and standards of the City and as are necessary and appurtenant to the operation of the cable communications system. Prior to construction or alteration of the plant in public rights-of-way, a company shall comply with Chapter 13.20.

#### 5.44.070 Services.

G 4. After cable service has been established by activating trunk or distribution cables for any area, company shall provide cable service to any person requesting cable service in that area within nine ~~(9) calendar~~ days from the date of request, provided that the company is able to secure all access rights necessary to extend service to that potential subscriber within that nine ~~(9) day~~ period on reasonable terms and conditions.

#### 5.44.080 Design and Construction of System.

The system shall be designed and constructed in accordance with the provisions of Chapter 13.20 of ~~this e Newport Beach Municipal~~ Code and the franchise. Construction components and techniques shall be in accordance with Chapter 13.20, the franchise and all applicable law.

#### 5.44.090 Operations and Maintenance.

H 4. When applicable, if the company cannot perform standard installations within nine ~~(9) calendar~~ days of request by a subscriber (provided that the schedule or preferences of the person requesting installation have not been responsible for the delay), the subscriber may request and is entitled to receive a twenty dollar (\$20.00) credit. Repeated failure to perform standard installations within the nine ~~(9) calendar~~ days or to provide the credit for late installations shall be grounds for franchise revocation or other enforcement actions.

#### 5.44.110 Termination and Related Rights.

2 j. Substantial failure to comply with the privacy rights of subscribers as provided in this chapter, any franchise, ~~or Section 631 of the Cable Act~~ Section 631 or ~~Section 637.5 of the California Penal Code~~ Section 637.5;

6. Upon any termination of any franchise, if so directed by the City, the company shall, at its own cost and expense, promptly remove that part of the system located in the right-of-way and shall replace or repair and restore to serviceable condition each affected facility therein, in the manner as set forth in this chapter and Chapter 13.20 of ~~this Newport Beach Municipal Code~~.

#### 5.44.135 Indemnity and Liability Insurance.

A. To the maximum extent permitted by applicable law, a company shall at all times defend, indemnify, protect, save harmless, and exempt the City, the City Council, ~~its officers, agents, servants, attorneys and employees, from any and all, penalties, damages or charges arising out of claims, suits, demands, causes of action, award of damages, imposition of fines and penalties, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which arise out of, or are caused by, the construction, erection, location, performance, operation, maintenance, repair, installation, replacement, removal or restoration of facilities within the City based upon any act or omission of a company, its agents or employees, contractors, subcontractors, independent contractors, or representatives except for that which is attributable to the sole negligence or willful misconduct of the City, the City Council, its officers, agents, servants, attorneys and employees. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included as those costs which shall be recovered by the City.~~ its boards and commissioners, officers, agents, volunteers attorneys and employees, from any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorneys' fees, consultants' fees, expert witness fees, disbursements and court costs) of every kind and nature whatsoever whether compensatory or punitive, either at law or in equity, which may arise from or in any manner relate (directly or indirectly) to the construction, erection, location, performance, operation, maintenance, repair, installation, replacement, removal or restoration of facilities within the City based upon any act or omission of a company, its agents or employees, contractors, subcontractors, independent contractors, or representatives. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, or proceeding whether incurred by the company, the City, and/or the parties initiating or bringing such proceeding.

B. Every company subject to this chapter shall procure insurance which types and amounts shall be determined by the Risk Manager. Except as provided in or as supplemented by any franchise agreement, license or permit, a company shall secure and maintain, public liability, property damage insurance, and umbrella coverage in at least the following amounts:

- ~~1. Public Liability. Two million dollars (\$2,000,000.00) per person/per occurrence;~~
- ~~2. Property Damage. Two million dollars (\$2,000,000.00) per any one claim; or~~
- ~~3. Umbrella Liability. Five million dollars (\$5,000,000.00).~~

~~C.—The public and personal liability and property damage insurance policy shall specifically include the City, the City Council, its employees, and agents as additional insureds.~~

~~D.—The public and personal liability and property damage insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and which has one of the three highest or best ratings from the Alfred M. Best Company.~~

~~E.—The public liability and property damage insurance policies shall contain an endorsement obligating the insurance company to furnish the Director with at least thirty (30) days written notice in advance of the cancellation of the policy.~~

~~F.—Renewal or replacement policies or certificates shall be delivered to the Director at least fifteen (15) days before the expiration of the insurance which such policies are to renew or be replaced.~~

~~G.—Before a company commences any construction, the company shall deliver the policies or certificates representing the insurance to the Director as required herein.~~

~~H.—The Director may adjust the coverage amounts specified in subsection B of this section provided that the adjustments result in the company meeting or exceeding the coverage specified in this section.~~

#### **5.44.140 Miscellaneous Provisions.**

~~K.—Severability. If any provision of this chapter is determined to be void or invalid by any administrative or judicial tribunal, the provision shall be deemed severable and the invalidation shall not invalidate the entirety of this chapter or any other provision.~~

~~K.~~ Possessory Interest. By accepting any PROW Permit granted pursuant to this chapter, company acknowledges that notice is and was given to company pursuant to California Revenue & Taxation Code Section 107.6 that the use or occupancy of any public property may cause certain taxes to be levied upon such interest. Company shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interest taxes or other taxes levied against its right to possession, occupancy or use of any PROW or public property pursuant to any right of possession, occupancy or use created by any PROW Permit.

## Chapter 5.46

### REGULATION OF COMMERCIAL FILM PRODUCTION

#### 5.46.020 Exceptions.

~~The provisions of this chapter shall not apply to amateur photographers or any person involved in journalistic activities.~~

The provisions of this chapter shall not apply to:

A. Amateur photographers;

B. Any person involved in journalistic activities; or

C. Any person who is employed by the City or who has a contract with the City to stage, shoot, make, capture, take or record images for a commercial or business purpose.

#### 5.46.060 Appeal or Call for Review.

A. Decision of Film Liaison. Any person aggrieved by the decision of the Film Liaison shall have the right to appeal the approval or disapproval of the application to the City Manager within five ~~(5)calendar~~ days after notice of the decision of the Film Liaison is mailed. The City Manager shall review the application de novo and shall render a decision within fourteen (14) days.

B. Decision of City Manager. Any person aggrieved by the City Manager's decision shall have the right to appeal the approval or disapproval of the application to the City Council within five ~~calendar~~(5) days after notice of the decision is mailed. The City Council shall review the application de novo and act upon the appeal within sixty (60) days after the filing thereof.

C. Call for Review. A member of the City Council, in their official capacity, may call for review any action of the Film Liaison or City Manager under this chapter for the purpose of bringing the matter in front of the entire body for review. A call for review shall be filed with the City Clerk, on a form provided by the Clerk, within five ~~calendar~~(5) days after notice of the decision is mailed. The City Council shall review the application de novo and act upon the call for review within sixty (60) days after the filing thereof.

#### 5.46.080 Bond and Insurance.

The City Manager or the Film Liaison may require, as a condition of issuing such a permit, that the applicant furnish a bond, insurance or both to protect the City against claims of third persons for personal injury, wrongful death and property damage and to indemnify the City for damage to City property arising out of the permittee's activities. If insurance is required, the Risk Manager shall determine the types and amounts to be provided to adequately protect the City.

## Chapter 5.48

### DIRECTTELEPHONIC ALARM MONITORING SYSTEM

#### 5.48.010 Intent.

~~Direct alarm monitoringThe telephonic is a alarm-system-service~~ operated by the ~~Newport Beach~~ Police Department ~~is an alternative service-that is~~ provided to benefit the citizens of Newport Beach. The Police Department is not required to provide this service and citizens have other options to obtain alarm services through private businesses. The regulations contained in this chapter are intended to provide important information and control to the Police Department for effective and efficient operation of the system and to ensure the cost of the service is recovered and to promote efficient policing operations.

#### 5.48.020 Definitions.

~~“Direct alarm monitoringTelephonic alarm system” and “direct alarm monitoring system(s)”~~ means any mechanism, equipment or device which is designed to operate automatically through the use of ~~public telephone facilities-a landline or cellular line~~ to transmit a signal, message or warning to another location.

#### 5.48.030 Permit Required.

No person shall operate or maintain a ~~directtelephonic~~ alarm monitoring system which automatically transmits a signal, message or warning to any Department telephone line, without first obtaining a permit pursuant to Chapter 5.49 of this Code.

#### 5.48.040 Additional Requirements.

A. In addition to the information required by Chapter 5.49, applicants for permits to install, maintain or operate a ~~telephonicdirect alarm monitoring alarm~~ system which is intended to automatically transmit a signal, message or warning to any Department telephone line shall provide additional information required by this chapter to the Chief of the concerned Department. The additional information shall be provided on forms supplied by the City, together with the service charge as established by resolution of the City Council. The application shall include the name, address and telephone number of both the installer of the system and the person or business on whose premises the system will be installed, as well as a description of the system and the location where it is proposed to be installed, and any other information as may be required by the Chief of the concerned Department.

B. The Chief of the concerned Department shall approve such application if he finds that:

1. The use of the alarm system to transmit a signal, message or warning to a designated Department line will not interfere with the orderly conduct of City business;
2. The person installing the system maintains an adequate service organization to repair, maintain and otherwise service ~~the direct telephonic~~ alarm monitoring systems sold or leased by him;
3. The application complies with the applicable provisions of Chapter 5.49.

C. The Department Chief may impose reasonable conditions on the exercise of the permit.

#### **5.48.050 Right of Inspection.**

The Chief of the concerned Department shall have the right to inspect any ~~telephonic-direct~~ alarm monitoring system on the premises where it is intended to function prior to issuance of any permit for its operation and may cause an inspection of such system to be made at any time after issuance of a permit to determine whether it is being used in conformity with the terms of the permit and the provisions of this chapter and Chapter 5.49.

#### **5.48.060 Restricted Numbers.**

No person shall install, operate or maintain a ~~directtelephonic-~~alarm monitoring system which automatically transmits a signal, message or warning to any Department telephone line, except to such telephone number or numbers as designated by the permit issued under the provisions of this chapter.

#### **5.48.06 Notification of Change.**

~~Telephonic-Direct~~ alarm monitoring system permits are not transferable. Permittees shall notify Police Chief within five (5) business days of any change of name, address, phone numbers, ownership, or alarm business. Permittee shall deprogram the police dialer number upon change in ownership of the property.

#### **5.48.070 Revocation.**

Any permit issued for a ~~telephonic-direct~~ alarm monitoring system may be revoked pursuant to the provisions of Chapter 5.49, if the ~~telephonic-direct~~ alarm monitoring system has been installed, maintained or operated in violation of the provisions of this chapter, applicable provisions of Chapter 5.49, or of any term or condition of the permit, or for failure to pay the cost recovery fee specified in Section 5.48.080.

#### **5.48.080 Annual Monitoring Charge.**

In addition to the application fee authorized by Section 5.49.030, each permit holder shall pay to the City on or before July 1st of each year, a monitoring charge as established by resolution of the City Council.

#### **5.48.085 Signs.**

Permittees shall not display any sign indicating the ~~direct telephonic~~ alarm monitoring system permitted under this chapter as an aid to service or safety except approved signs provided by City. Approved signs shall be displayed only in connection with the maintenance of a valid permit issued under this chapter and in compliance with all permit conditions and regulations of Chief Police. Fees representing City's cost for approved signs shall be paid in the amount adopted by resolution of the City Council.

#### **5.48.090 Criminal Penalties.**

Any person who violates the provisions of Sections 5.48.030, 5.48.050, 5.48.060 or 5.48.080 shall be guilty of an infraction.

## Chapter 5.49

### BURGLARY - ROBBERY ALARM SYSTEMS\*

#### Sections:

5.49.010 Definitions.

5.49.020 Permit for Alarm System Required.

5.49.030 Application for Permit.

5.49.040 Application for Alarm Permit—Investigation.

5.49.045 Duration of Permit.

5.49.050 Revocation of Permits.

5.49.060 Notice of Appeal.

5.49.070 False Alarm Penalty.

5.49.080 Alarm System Standards and Regulations.

5.49.090 Prohibitions.

5.49.100 Fees.

5.49.110 Limitations on Liability.

5.49.120 Criminal Penalties.

~~5.49.130 Application of Chapter.~~

5.49.010 Definitions.

~~“City” means the City of Newport Beach.~~

~~“Day” means a calendar day.~~

~~“Person” means a person, firm, corporation, association, partnership, individual, organization or company.~~

5.49.030 Application for Permit.

Application for an alarm permit shall be filed with the Chief of Police ~~or designee~~ on forms provided by the City and the applicant shall, at the time of application, pay the fee established by resolution of the City Council. The application shall be signed and verified by the owner or lessee of the alarm system for which the permit is requested, and the application shall contain such information as may be required by the Chief of Police ~~or designee in order~~ to ensure that the permit is issued in accordance with the provisions of this chapter. Permits provided for in this chapter shall be issued by the Chief of Police ~~or designee~~ and shall be nontransferable.

#### **5.49.040 Application for Alarm Permit—Investigation.**

Upon receiving an application from any person for an alarm permit, the Chief of Police ~~or designee~~ shall cause an investigation to be made of the system to be installed to determine if the system complies with the requirements of this chapter. If the proposed system complies with this chapter, the Chief of Police ~~or designee~~ shall cause a permit to be issued.

#### **5.49.050 Revocation of Permits.**

An alarm permit may be revoked as follows: If, after investigation, the Chief of Police determines that the permittee has violated any provision of this chapter, or in the case of ~~telephonic a direct~~ alarm monitoring systems any provision of Chapter 5.48, or any conditions of the permit or fails to pay a false alarm penalty as provided in Section 5.49.070, the Chief of Police shall send to the permittee, by registered mail, a notice of intent to revoke the permit, which notice shall specify the violation or violations determined by the Chief of Police to exist and that the permittee has the right to appeal the decision to the City Manager as provided in Section 5.49.060, and that failure of the permittee to remedy the violation or violations specified in the notice of revocation within the fifteen (15) day appeal period, or within such additional time as may be allowed by the Chief of Police upon a showing of good cause therefor, then the alarm permit shall be considered revoked. No new alarm permit application may be made for a period of six (6) months after the permit is revoked, unless waived for good cause by the Chief of Police.

#### **5.49.060 Notice of Appeal.**

A. If any permittee is aggrieved by any action of the Chief of Police pursuant to the provisions of this chapter, the applicant may appeal to the City Manager by filing with the City Manager a notice of appeal setting forth the facts and circumstances regarding the appeal. This notice of appeal shall be filed not later than fifteen (15) days after service of a notice of revocation as provided for in Section 5.49.050. The City Manager, ~~or duly authorized representative~~, shall, within fifteen (15) days from the date on which the appeal is filed, hold a hearing, consider all relevant evidence produced by the alarm permittee, the Chief of Police and any other interested party, make findings and determine the merits of the appeal.

B. The City Manager, ~~or his duly authorized representative~~, may affirm, overrule or modify the decision of the Chief of Police and ~~the City Manager's~~ decision shall be final as to the City but subject to judicial review pursuant to Cal. Code Civ. Proc. Section 1094.5.

#### **~~5.49.130 Application of Chapter~~**

~~Any person who, on the effective date of the ordinance codified in this chapter, possesses, has installed or uses an alarm system which requires a permit under this chapter shall apply for and receive a permit, as provided in this chapter, within six weeks after the effective date of said ordinance.~~

## Chapter 5.50

### MASSAGE ESTABLISHMENTS

#### Sections:

- 5.50.005 Findings and Purpose.
- 5.50.010 Definitions.
- 5.50.015 State Certification and Operator's Permit Required.
- 5.50.020 Application for Operator's Permit.
- 5.50.025 Operator's Permit Issuance and Denial.
- 5.50.030 Requirements of Operation.
- 5.50.035 Changes of Business.
- 5.50.040 Operator's Permit Exemptions.
- 5.50.045 Inspection by City Officials and Notices of Violation.
- 5.50.050 Operator's Permit Expiration and Renewal.
- 5.50.055 Suspension, Revocation, Denial and Appeal.
- 5.50.060 Fees.
- ~~5.50.065 Violation and Penalty.~~
- ~~5.50.070 Severability.~~

#### 5.50.005 Findings and Purpose.

A. It is the purpose and intent of this chapter to provide for the orderly regulation of offices and establishments providing massage therapy services, and to prevent and discourage the misuse of massage therapy as a front for prostitution and related activities in violation of State law, all in the interest of the public health, safety, and welfare, by providing certain minimum building, sanitation, and operation standards for such businesses, and by requiring certain minimum qualifications for the operators and practitioners of such businesses. It is the further intent of this chapter to streamline local massage therapy permitting procedures, while still facilitating and advancing the ethical practice of massage therapy, by relying upon the uniform Statewide regulations enacted by the Legislature in 2008, 2011 and 2014 as Cal. Business and Professions Code Sections 4600 et seq., and by restricting the commercial practice of massage in the City to those persons duly certified to practice by the California Massage Therapy Council formed pursuant to those statutes.

### 5.50.010 Definitions.

“Approved school of massage” means any school or institution of learning that is recognized as an “approved school” pursuant to ~~the Cal Bus.iness & Prof.essions~~ Code Division 2, Chapter 10.5, as it may be amended.

“California Massage Therapy Council” means the massage therapy organization formed pursuant to ~~Cal. California~~ Bus.iness & Prof.essions Code Section 4600, ~~and following, et seq. as amended,~~ and referred to as CAMTC herein.

“Certified massage technician” means any person holding a current and valid State Certificate issued by the CAMTC pursuant to ~~Cal.ifornia~~ Bus.iness & Prof.essions Code Section 4600 ~~et seq., and following, as amended,~~ whether as a massage practitioner or massage therapist, as defined therein.

~~“Chief of Police” means the Chief of Police of the City of Newport Beach, or his/her designated representative.~~

~~“City” means the City of Newport Beach.~~

~~“City Council” means the City Council of the City of Newport Beach.~~

~~“City Manager” means the City Manager of the City of Newport Beach, or his/her designated representative.~~

~~“Person” means any individual, or corporation, partnership, association or other group or combination of individuals acting as an entity.~~

“State Certification” or “State Certificate” means a valid and current certification properly issued by CAMTC pursuant to ~~Cal. California~~ Bus.iness & Prof.essions Code Section 4600 ~~et seq., and following, as amended.~~

### 5.50.020 Application for Operator’s Permit.

A 12. An executed and notarized form to be executed by the person who owns the property, on a form approved by the City, in which the owner agrees that if the operator’s permit for the massage establishment is revoked, no new massage establishment may be established at the same property, or continuous parcel owned by the same person, for twenty-four (24) months from the date the massage establishment ceases operating.

B. 7. A complete set of fingerprints taken by the Police Department subject to a fee to cover actual costs to determine whether the applicant has any of the following:

- a. Convictions for any crime involving conduct which requires registration under California Penal Code Section 290 (Sex Offender Registration Act);
- b. Convictions of violations of ~~Ca.ifornia~~ Pen.al Code Sections 266i (pandering), 315 (keeping or residing in house of ill-fame), 316 (keeping disorderly house), 318 (prevailing upon person to visit place for gambling or prostitution), 647(b) (prostitution), 653.23 (supervision of prostitute);
- c. Convictions of any felony offense involving the sale of a controlled substance specified in Cal. Health & Saf. Code Sections 11054, 11055, 11056, 11057, or 11058; ~~of the Health and Safety Code~~

- d. Convictions of crimes designated in ~~Cal. Government~~ Code Section 51032 (massage—grounds for denial of license), or any crime involving dishonesty, fraud, deceit, violence or moral turpitude;
- e. Injunctions for nuisances under ~~Cal. Pen. a~~ Code Sections 11225 through 11235 (red light abatement law);

**5.50.025 Operator’s Permit Issuance and Denial.**

A 5 a. ~~Has not been required to register under the provisions of Section 290 of the Cal. ifornia Pen. a Code;~~

d. Has not been subject to an injunction for nuisance under ~~Cal. Pen. a~~ Code Sections 11225 through 11235 within the last eight (8) years.

B 5. The applicant was convicted of or pled guilty or no contest to a violation of ~~Cal. Pen. a~~ Code Section 415 as a result of an arrest for violation of ~~Cal. Pen. a~~ Code Section 647(b);

A6 That an operator’s permit for a massage establishment located on this property, or continuous parcel owned by the same person, has not been revoked for at least twenty-four (24) months from the date the massage establishment ceased operation.

B7. The applicant, any business owned or managed by the applicant while the applicant owned or managed the business, the applicant’s current employer, or the applicant’s former employer during the applicant’s employment is or was a named party subject to a permanent injunction against the conducting or maintaining of a nuisance under Cal. Pen. a Code Sections 11225 through 11235, or Cal. Health ~~and~~ Saf.ety Code Section 11570 et seq., or equivalent offenses under the laws of another jurisdiction.

**5.50.030 Requirements of Operation.**

B11. Dress Code. No employee or independent contractor of a massage establishment or any other person engaged in the practice of massage for compensation shall dress in attire that is transparent or see-through or substantially exposes the person’s undergarments. In addition, no employee or independent contractor of a massage establishment or any other person engaged in the practice of massage for compensation shall dress in a manner that exposes the person’s breasts, buttocks, or genitals or in a manner that constitutes a violation of ~~Section 314 of the Cal. ifornia Pen. a~~ Code Section 314.

**5.50.055 Suspension, Revocation, Denial and Appeal.**

A 4. Violations of this chapter or of ~~California-Cal. Bus. iness and & Prof. essions~~ Code Section 4600 et seq. have been committed by the massage establishment or by anyone performing massage services on behalf of the massage establishment; or

E. Appeal.

1. The right to appeal to the City Manager shall terminate upon the expiration of fifteen (15) days from the date of ~~mailing or~~ service of the notice as provided in Section 1.08.080. The notice of appeal is to be sent to the Police Department ~~of the City of Newport Beach~~.

2. In the event an appeal is timely filed, the suspension or revocation shall not be effective until a final decision has been rendered by the City Manager ~~or his or her designee~~. If no appeal is filed, the suspension or revocation shall become effective upon expiration of the period for filing appeals.

3. The City Manager may preside over the hearing on appeal or, in the alternative, the City Manager may appoint a hearing officer to conduct the hearing, receive relevant evidence and to submit to the City Manager findings and recommendations to be considered by the City Manager. The City Manager shall render ~~his or her~~a decision within forty-five (45) days from the date of the hearing or, in the event that a hearing officer has been appointed, within forty-five (45) days from the date on which the City Manager receives the findings and recommendations of the hearing officer. The decision of the City Manager shall be final as to the City but subject to judicial review pursuant to Cal. Code Civ. Proc. Section 1094.5. The applicant shall be entitled to notice of the basis for the proposed action, a copy of the documents upon which the decision was based and the opportunity to present contrary evidence at the hearing.

4. Notice of the date, time and place of the hearing shall be mailed at least ten (10) days prior to the date of the hearing ~~as provided in Section 1.08.080, by U.S. mail, with proof of service attached, addressed to the address listed on the operator's permit application or the address given in the notice of appeal, as the case may be.~~

#### **~~5.50.065 Violation and Penalty.~~**

~~A. Violations of this chapter may be enforced pursuant to the provisions of Chapter 1.04.~~

~~B. Any massage establishment operated, conducted or maintained contrary to the provisions of this chapter shall be, and the same is declared to be, unlawful and a public nuisance, and the City may, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings, for the abatement, removal and enjoinder thereof, in the manner provided by law, and shall take such other steps and shall apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such massage establishments and restrain and enjoin any person from operating, conducting or maintaining a massage establishment contrary to the provisions of this chapter.~~

#### **~~5.50.070 Severability.~~**

~~If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter. The City Council hereby declares that it would have passed the ordinance codified in this chapter, and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of this chapter would be subsequently declared invalid or unconstitutional.~~

## Chapter 5.60

### PARAMEDIC SERVICE USER FEES

#### 5.60.020 Fees Established—Resolution.

The City Council shall by resolution establish reasonable fees and charges to be paid by persons using the City's paramedic field services. Upon written application, the City Manager, ~~or his or her designee,~~ may waive all or part of the paramedic user fees referenced in this chapter.

## Chapter 5.70

### NEWSPAPER RACKS AND STANDS

#### Sections:

**5.70.010 Intent and Purpose.**

**5.70.015 Definitions.**

**5.70.020 Newsrack Permits.**

**5.70.025 Requirements and Duties.**

**5.70.030 Special Requirements for Newsracks Along Marine Avenue on Balboa Island.**

**5.70.035 Display of Certain Matter Prohibited.**

**5.70.040 Display of Harmful Matter.**

**5.70.045 Costs.**

**5.70.050 Removal of Newsracks.**

**5.70.055 Appeals and Calls for Review.**

~~**5.70.060 Severability; Supplemental Provisions.**~~

**5.70.015 Definitions.**

~~C. City Manager. "City Manager" shall mean the City Manager or his or her designee.~~

**5.70.020 Newsrack Permits.**

B. Application. A written application for a newsrack permit shall be filed with the City Manager, ~~or his or her designee~~, and shall contain the following information:

1. The name, address, and telephone number of the applicant and owner of the newsrack.
2. The name, address, and telephone number of a representative or other responsible person whom the City may notify or contact at any time concerning the applicant's newsrack.
3. The number of newsracks at the street address of the proposed location of each as shown on a scaled drawing of the proposed location.
4. A diagram of the location proposed for the installation of the newsrack(s).
5. Names of newspapers or periodicals to be contained in each newsrack.
6. Type or brand of newsrack, including description of the newsrack and mount, if other than K-Jack Style Mount Model 100.

### 5.70.025 Requirements and Duties.

G. No person, association, firm or corporation shall place, locate or maintain a newsrack on the public right-of-way unless there is on file with the ~~City Manager, Risk Manager or his or her designee, in full force and effect at all times, a document issued by an insurance company authorized to do business in the State of California~~ proof of insurance, which types and amounts shall be determined by the Risk Manager. ~~evidencing that the permittee or owner is insured under a liability insurance policy providing minimum coverage of five hundred thousand dollars (\$500,000.00) for injury or death to one person arising out of the location, placement or operation of the newsrack on the public right-of way.~~

H. Every permittee of a newsrack located upon the public right-of-way must comply with the provision of ~~Newport Beach Municipal~~ Code, Business Licenses and Regulations, Section 5.04.020.

### 5.70.030 Special Requirements for Newsracks Along Marine Avenue on Balboa Island.

C. ~~In the event that the n~~Newsracks proposed to be placed at any one location violate the provisions of Section 5.70.020(E) or 5.70.030(A), (B), ~~priority~~ shall be given priority on a first-come, first-served basis. ~~as follows:~~

~~1.—Within ninety (90) days after the adoption of the ordinance codified in this chapter:~~

~~a.—First priority shall be given to vending machines used for the sale of daily publications (those published on five or more days in a calendar week) of general circulation in Orange County that otherwise comply with the provisions of this chapter.~~

~~b.—Second priority shall be given to vending machines used for sale of weekly publications (those published on at least one day, but less than five days in a calendar week) of general circulation in Orange County that otherwise comply with the provisions of this chapter.~~

~~c.—Third priority shall be given to vending machines used for sale of daily publications (those published on five or more days in a calendar week) not of general circulation in Orange County that otherwise comply with the provisions of this chapter.~~

~~d.—Fourth priority shall be given to vending machines used for the sale of weekly publications (those published on at least one day, but less than five days in a calendar week) not of general circulation in Orange County that otherwise comply with the provisions of this chapter.~~

~~e.—Fifth priority shall be given to all other vending machines on the basis of first-come, first-served. In the event that an applicant disagrees with the City's priority category for such publication, it shall have the right to appeal in accordance with Section 5.70.055 of this chapter.~~

~~2.—Commencing ninety (90) days after the adoption date of the ordinance codified in this chapter, priority shall be given on a first-come, first-served basis.~~

#### 5.70.040 Display of Harmful Matter.

A. Definitions. For the purposes of this section, the terms “harmful matter,” “matter,” “person,” “distribute,” “knowingly,” “exhibit,” and “minor” shall have the meanings specified in Cal. Pen. Code Section 31.31 of the Penal Code of the State of California. For the purposes of this chapter, the term “blinder rack” shall mean opaque material placed in front of, or inside, the newsrack and which prevents exposure to public view.

#### 5.70.050 Removal of Newsracks.

~~A. Commencing ninety (90) days after the adoption date of the ordinance codified in this chapter, any newsrack in violation of any provision of the ordinance codified in this chapter will be deemed nonconforming.~~

~~B. In the event that~~ the City Manager determines that a newsrack does not comply with the provisions of this chapter ~~or is abandoned, the City Manager~~ ~~he or she~~ shall ~~serve~~ ~~provide~~ written notice of such determination to the permittee or owner in the manner provided in Section 1.08.080. The notice shall specify the nature of the violation ~~and~~, the location of the newsrack which is in violation, the intent of the City Manager to remove ~~the nonconforming~~ ~~the~~ newsrack in the event a hearing is not requested, and the right of the permittee to request a hearing, before the City Manager, within fifteen (15) days from the date of ~~the service of the~~ notice. If the newsrack is one which has not been authorized by the City Manager and ownership is not known, nor apparent after inspection, a notice complying with this section shall be affixed to the newsrack.

~~BC.~~ In the event that a hearing is held pursuant to this section, the City Manager shall render a decision, in writing, within ten (10) days from the date of the hearing, and the decision shall advise the permittee or owner of his or her right to appeal to the City Council, pursuant to the provisions of Section 5.70.055. Notice of the decision shall be ~~mailed to the served on~~ permittee or owner in the manner provided in Section 1.08.080 ~~and shall be considered effective on the date mailed provided that the notice is properly addressed and placed in the U.S. Mail with first-class postage prepaid.~~

~~CD.~~ The City Manager may take possession of a newsrack and, upon the expiration of thirty (30) days, dispose of the newsrack as required by law, if:

1. No hearing is requested by the permittee or owner within fifteen (15) days as provided in Section 5.70.050 ~~(AB)~~; or
2. The appeal period specified in Section 5.70.055 has expired; or
3. In the event that an owner or permittee fails to remove the rack within ten (10) days from the date of the decision of the City Council, that the newsrack is not in compliance with the rules, regulations and standards established by this chapter.

~~DE.~~ The City Manager shall inspect any newsrack reinstalled after removal pursuant to this chapter. The permittee of the newsrack shall be charged a fee for this reinspection as established by resolution of City Council.

~~EF.~~ ~~If a~~ ~~in the event that any~~ newsrack is abandoned, the City Manager may remove it pursuant to the procedures set out in this section. For the purposes of this section, the term “abandonment” shall mean

no publication has been displayed in the newsrack for a period of fifteen (15) consecutive days, no prior written notice has been given by the permittee to the City Manager specifying the reason(s) for nonuse, and the condition of the rack and related circumstances indicate it will not be actively used within a reasonable period of time.

#### **5.70.055 Appeals and Calls for Review.**

The City Council shall have the power to hear and decide appeals based upon the enforcement or interpretation of the provisions of this chapter. Any permittee or owner who is aggrieved by any decision of the City Manager may appeal that decision by submitting a written notice of appeal to the City Clerk within twenty-one (21) days of the date on which notice of the decision was servd in the manner provided in Section 1.08.080~~mailed~~. A member of the City Council, in their official capacity, may call for review any action of the City Manager under this chapter for the purpose of bringing the matter in front of the entire body for review. A call for review shall be filed with the City Clerk, on a form provided by the Clerk, within twenty-one (21) days of the date on which the notice of the decision was servd in the manner provided in Section 1.08.080~~mailed~~. The City Council may preside over the hearing on appeal or may designate a hearing officer to take evidence and submit a proposed decision together with findings, within fifteen (15) days from the date of the hearing. The City Council shall preside over the hearing for a call for review. The City Council shall, within thirty (30) days from the date of the hearing, render its decision on the appeal or call for review, together with findings. The decision of the City Council shall be final as to the City but subject to judicial review pursuant to Cal. Code Civ. Proc. Section 1094.5.

#### **~~5.70.060 Severability; Supplemental Provisions.~~**

~~If any provision of this chapter as herein enacted or hereafter amended, or the application thereof to any person or circumstances, is held invalid, such invalidity shall not affect the other provisions or applications of this chapter (or any section or portion of section hereof) which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are, and are intended to be, severable.~~

~~The provisions of this chapter are intended to augment and be in addition to other provisions of the Municipal Code. Whenever the provisions of this chapter impose a greater restriction upon persons, premises, or practices than is imposed by other provisions of this Municipal Code, the provisions of this chapter shall control.~~

~~If any sentence, clause or phrase of this chapter is, for any reason, held to be unconstitutional or otherwise invalid, such decision shall not effect the validity of the remaining provisions of this chapter. The City Council hereby declares that it would have passed the ordinance codified in this chapter, and each sentence, clause, and phrase thereof irrespective of the fact that any one or more sentences, clauses or phrases be declared unconstitutional or otherwise invalid.~~

## Chapter 5.80

### RETAIL SALES OF FIREARMS

#### Sections:

**5.80.010 Duly Constituted Licensing Authority.**

**5.80.020 Definitions.**

**5.80.030 License Required.**

**5.80.040 Fees.**

**5.80.050 Revocation or Denial of License.**

~~**5.80.060 Severability.**~~

**5.80.010 Duly Constituted Licensing Authority.**

The City Manager, ~~or his or her designated representative,~~ is hereby designated as the City's licensing authority and is authorized to issue licenses for the sale of firearms pursuant to Cal. Pen Code Section 26705 ~~the California Penal Code.~~

**5.80.020 Definitions.**

~~A.—The term “City Manager” as used herein shall include any representative designated by the City Manager of the City of Newport Beach pursuant to this chapter.~~

~~B.—The term “firearms” shall mean the same as that term is defined in the Cal. ifornia Pen. al Code Section 16520.~~

**5.80.030 License Required.**

No person shall conduct, engage in or carry on the business of selling, leasing, transferring, advertising, offering or exposing for sale, lease or transfer of firearms unless he or she has obtained a license from the City Manager pursuant to this Code and the ~~California~~ Cal. Pen. al Code and has paid the required licensing fee. The license shall not be transferrable and shall be valid for one year from the date of issue.

**5.80.050 Revocation or Denial of License.**

The City Manager may refuse to issue or to renew a license or may revoke or suspend an existing license on any of the following grounds:

- A. The applicant or license holder has failed to comply with any of the provisions of the ~~Cal. ifornia~~ Cal. Pen. al Code.
- B. The applicant or license holder has failed to comply with applicable provisions of ~~this~~ Newport Beach Municipal Code.
- C. The applicant or license holder has failed to comply with applicable ~~f~~ Federal firearms laws and regulations.

D. The applicant or license holder has made a material false, misleading, or fraudulent statement of fact to the City in the permit application process.

In any such case, the applicant or license holder shall have the right to appeal to the City Council or a member of the City Council may call an item for review in the time and manner set forth in this section.

When the City Manager concludes that grounds for suspension or revocation or refusal to renew a license exists, the City Manager shall serve the applicant or license holder, ~~either personally or by certified mail addressed to the business address of the applicant or license holder,~~ with a notice of intent to suspend or revoke or refuse to renew the license in the manner provided in Section 1.08.080. This notice shall state the reasons for the proposed suspension, revocation, or refusal to renew, the effective date or if no appeal is filed by applicant or license holder, and the right of the applicant or license holder to appeal to the City Council and the decision of the City Manager to suspend, revoke or refuse to renew the license. A member of the City Council, in their official capacity, may call for review any action of the City Manager under this chapter for the purpose of bringing the matter in front of the entire body for review. A call for review shall be filed with the City Clerk on a form provided by the Clerk. The right to appeal to the City Council or call an item for review shall terminate upon the expiration of fifteen (15) days following the ~~personal service or deposit~~ of the notice of intent to suspend or revoke or refuse to renew the license in the manner provided in Section 1.08.080 ~~the United States mail, whichever shall occur first.~~

The City Council ~~of the City of Newport Beach~~ may preside over the hearing on appeal or, in the alternative, appoint a hearing officer to conduct the hearing, receive relevant evidence and to submit to the City Council findings and recommendations to be considered by the City Council of the City of Newport Beach. The City Council shall preside over a hearing for a call for review. The City Council shall render its decision within forty-five (45) days from the date of the hearing or, ~~in the event that if~~ a hearing officer has been appointed, within forty-five (45) days from the date on which the City Council receives the findings and recommendations of the hearing officer. The decision of the City Council shall be final as to the City but subject to judicial review pursuant to Cal. Code Civ. Proc. Section 1094.5.

#### **~~5.80.060 Severability.~~**

~~If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the chapter. The City Council hereby declares that it would have passed the ordinance codified in this chapter and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.~~

**Chapter 5.90**  
**ESCORT SERVICE**

**Sections:**

**5.90.005 Findings and Purpose.**

**5.90.010 Definitions.**

**5.90.015 Escort Service Permit Required.**

**5.90.020 Application for Escort Service Permit.**

**5.90.025 Escort Service Permit Issuance and Denial.**

**5.90.030 Employee Permit Required.**

**5.90.035 Application for Employee Permit.**

**5.90.040 Employee Permit Issuance and Denial.**

**5.90.045 Change of Business.**

**5.90.050 Fees.**

~~**5.90.055 Existing Escort Services.**~~

**5.90.060 Transfer and Duration of Permits.**

**5.90.065 Employment of Persons Under the Age of Eighteen Prohibited.**

**5.90.070 Age of Customer.**

**5.90.075 Inspection.**

**5.90.080 Daily Register.**

**5.90.085 Prohibited Activities.**

**5.90.090 Suspension, Revocation, Denial, Appeal, and Call for Review.**

**5.90.095 Applications Barred for One Year.**

**5.90.100 Violation and Penalty.**

~~**5.90.105 Severability.**~~

**5.90.010 Definitions.**

For the purpose of this chapter, the following words and phrases shall mean and include:

~~A. Chief of Police: Chief of Police of the City of Newport Beach or his or her designee.~~

~~B. City Manager: City Manager of the City of Newport Beach or his or her designee.~~

~~AC.~~ Employee: Any and all persons who work in or about or render any services whatsoever to the patrons or customers of an escort service.

~~BD.~~ Escort: Any person who, for a fee, commission, hire, reward or profit, accompanies other persons to or about social affairs, entertainments or places of amusement or consorts with others about any place of public resort or within any private quarters. Excluded from this definition are any persons employed by any business, agency or person excluded from the definitions of “escort service” below.

~~CE.~~ Escort service: Any business, agency or person who, for a fee, commission, hire, reward or profit, furnishes or offers to furnish names of persons, or who introduces, furnishes or arranges for persons, who may accompany other persons to or about social affairs, entertainments or places of amusements, or who may consort with others about any place of public resort or within any private quarters. Excluded from this definition are any businesses, agencies or persons which provide escort services for older persons as defined in ~~California Welfare & Institutions~~ Code Section ~~9018.406~~, when such services are provided as part of a social welfare and health program for such older persons.

~~DF.~~ Operator: Any person operating an escort service, including but not limited to the owner or proprietor of the premises upon which it is located, and the lessee, sublessee, or mortgagee in possession.

~~G. Person: An individual, firm, partnership, joint venture, association, social club, fraternal, organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit, excepting the United States of America, the State of California, and any political subdivision thereof~~

#### **5.90.025 Escort Service Permit Issuance and Denial.**

A 1. Any person that will be directly engaged or employed in the escort service has been convicted of a violation of ~~Cal. Health and Safety~~ Code Section 11550 or a violation of ~~Cal. Pen. Code~~ Sections 266i, 315, 316, 318 or 647(b), or has been convicted in any other State of any offense which, if committed or attempted in this State, would have been punishable as one or more of the above-mentioned offenses, or that any such person is required to register under the provisions of ~~Cal. Pen. Code~~ Section 290.

A 2. Any person that will be directly engaged or employed in the escort service has been convicted of any offense involving the sale of a controlled substance specified in ~~Cal. Health and Safety Saf.~~ Code Sections 11054, 11055, 11056, 11057 or 11058 or the possession for sale and/or possession of a controlled substance specified in the ~~Cal. Health and Safety~~ Code Sections 11054, 11055, 11056, 11057 or 11058 either in an escort service or while employed by an escort service or has been convicted in any other State of any offense which, would have been punishable as one or more of the above-mentioned offenses.

B 6. The escort service shall comply with all provisions of this chapter and the applicable provisions of ~~this Newport Beach Municipal Code~~.

#### **5.90.035 Application for Employee Permit.**

B 2 e. Two front-faced portrait photos at least two (2) inches by (2) two inches in size taken by the City Manager or Chief of Police; and

#### **5.90.040 Employee Permit Issuance and Denial.**

A. Upon receipt of a written application for a permit, the Chief of Police shall conduct an investigation in such manner as ~~he or she~~Chief of Police deems appropriate ~~in order~~ to ascertain whether such permit should be issued as requested. The Chief of Police shall make or recommend approval, conditional approval or denial of the application within forty-five (45) days of filing of an application ~~with~~ the City Manager. Said forty-five (45) day period may be continued for an additional thirty (30) days if necessitated by the occurrence of events beyond the control of the Chief of Police. The City Manager shall issue such permit as requested unless the City Manager makes any of the following findings:

1. The applicant has been convicted of a violation of Cal. Health & Saf.ety Code Section 11550 or a violation of Cal. Pen. Code Sections 266~~1~~, 315, 316, 318 or 647(b), or has been convicted in any other State of any offense which, if committed or attempted in this State, would have been punished as one or more of the above-mentioned offenses or that the applicant is required to register under the provisions of Cal. Pen. Code Section 290.
2. The applicant has been convicted of any offense involving the sale of a controlled substance specified in Cal. Health & Saf.ety Code Sections 11054, 11055, 11056, 11057, or 11058, or the possession for sale and/or possession of a controlled substance specified in the Cal. Health and Saf.ety Code Sections 11054, 11055, 11056, 11057, or 11058 either in an escort service or while employed by an escort service has been convicted in any other State of any offense which, if committed or attempted in this State, would have been punishable as one or more of the above-mentioned offenses.
3. The applicant has committed an act, which, if done by a permittee under this chapter, would be grounds for suspension or revocation.
4. The applicant has had a permit license to operate an escort service or to work in or about an escort service revoked by the granting authority.
5. The applicant has been convicted of an act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself, herself or another or substantially injure another or an act of violence, which act or acts are substantially related to the qualifications, functions, or duties of an employee of the escort service.
6. The applicant has knowingly made a false, misleading, or fraudulent statement of fact to the City in the permit application process.
7. The application does not contain the information required by Section 5.90.035.
8. The applicant has not satisfied the requirements of this chapter.

#### **~~5.90.055 Existing Escort Services.~~**

~~A. Commencing on the date of adoption of this chapter, permits are to be issued in accordance with the provisions of this chapter. Existing escort services may continue in effect until one hundred and eighty (180) days after adoption of this chapter. Within one hundred and eighty (180) days, existing escort services shall apply for an escort service permit pursuant to Sections 5.90.015 and 5.90.020 of this chapter.~~

~~B.—Persons currently employed by an escort service may remain in such employment until one hundred and eighty (180) days from the date of adoption of this chapter. Within one hundred and eighty (180) days, each such person shall apply for an employee permit pursuant to Sections 5.90.030 and 5.90.035 of this chapter.~~

~~C.—Reasonable extensions of the time period specified above shall be granted by the City Manager upon~~

~~**5.90.105 Severability.**~~

~~If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter, or application thereof to any person or circumstances, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter or any part thereof. The City Council hereby declares that it would have passed such section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or ineffective.~~

## Chapter 5.96

### ADULT ORIENTED BUSINESS~~ES~~

#### Sections:

**5.96.005 Intent.**

**5.96.010 Definitions.**

**5.96.015 Permit Required.**

**5.96.020 Application Requirements.**

**5.96.025 Application/Findings/ Requirements.**

**5.96.030 Permit Duration.**

**5.96.035 Permit Renewal.**

**5.96.040 Permits Non-Transferable; Use Specific.**

**5.96.045 Enforcement and Revocation.**

~~**5.96.050 Violation.**~~

~~**5.96.055 Existing Adult Businesses.**~~

#### **5.96.010 Definitions.**

“Adult model studio” means any premises where there is furnished, provided or procured a figure model or models who pose in any manner which is characterized by its emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical parts where such model(s) is being observed or viewed by any person for the purpose of being sketched, painted, drawn, sculptured, photographed, filmed, or videotaped for a fee, or any other thing of value, as a consideration, compensation or gratuity for the right or opportunity to so observe the model or remain on the premises. Adult model studio shall not include any live art class or any studio or classroom which is operated by any public agency, or any private educational institution authorized to issue and confer a diploma or degree under Cal. Ed. Code Section 94930300, et seq. ~~of the Education Code.~~

#### **5.96.020 Application Requirements.**

B. Determination of Completeness. The City Manager shall determine whether the application contains all the information required by the provisions of this Chapter 5.96. If it is determined that the application is not complete, the applicant shall be notified in writing within ten (10) business days of the date of receipt of the application that the application is not complete and the reasons therefor, including any additional information necessary to render the application complete. The applicant shall have thirty (30) ~~calendar~~ days to submit additional information to render the application complete. Failure to do so within the thirty (30) day period shall render the application void. Within five (5) business days following the receipt of an amended application or supplemental information, the City Manager shall again determine whether the

application is complete in accordance with the procedures set forth in this subsection. Evaluation and notification shall occur as provided above until such time as the application is found to be complete. The applicant shall be notified within five (5) days of the date the application is found to be complete. All notices required by this ~~chapter section~~ shall be ~~deemed given~~ in the manner provided in Section 1.08.080 ~~on the date they are either deposited in the United States mail or the date upon which personal service of such notice is provided.~~

#### **5.96.025 Application/Findings/ Requirements.**

D. The adult-oriented business shall not conduct any massage, acupuncture, tattooing, piercing, acupressure, fortune-telling or escort services on the premises.

I. The adult-oriented business shall not allow admittance to any person under the age of eighteen (18) if no liquor alcohol is served, or under the age of twenty-one (21) if liquor alcohol is served.

X. The place of entertainment will provide separate restroom facilities for male and female patrons. The restrooms will be free from sexually oriented materials and sexually oriented merchandise as those terms are defined in Chapter 5.96 of ~~this Newport Beach Municipal Code~~. Only one person will be allowed in the restroom at any time, unless otherwise required by law, in which case the adult-oriented business will employ a restroom attendant of the same sex as the restroom users who shall be present in the public portion of the restroom during operating hours. The attendant will ensure that no person of the opposite sex is permitted in the restroom, that not more than one person is permitted to enter a restroom stall, and, with the exception of urination and excretion, and the necessary disrobing associated with the aforementioned bodily functions, that no person engages in any specified sexual activity in the public portion of the restroom.

#### **5.96.045 Enforcement and Revocation.**

C. Revocation Notice. Upon determining that the grounds for permit revocation exist, the City Manager shall furnish written notice of the proposed revocation to the permittee. Such notice shall summarize the principal reasons for the proposed revocation, shall state that the permittee may appeal the decision within fifteen (15) ~~calendar~~ days of the posting or the date of service in the manner provided in Section 1.08.080 ~~postmarked date on the notice~~. The notice shall be delivered both by posting the notice at the location of the adult-oriented business and by ~~sending the same, certified mail, return receipt requested and postage pre-paid~~ servicing the permittee with the notice in the manner provided in Section 1.08.080, to the permittee as that name and address appears on the permit on the same date. Not later than fifteen (15) ~~calendar~~ days after notice is served in the manner provided in Section 1.08.080 ~~the latter of the mailing or posting of the notice~~, the permittee may file an appeal of the City Manager's determination with the City Clerk. If the appeal is filed within fifteen (15) ~~calendar~~ days of the service of the notice in the manner provided in Section 1.08.080 ~~mailing or posting of the notice referenced above~~, the appeal hearing shall be provided as contained in subsection (D) of this section.

D. Appeal or Call for Review. Any person aggrieved by a decision to revoke a permit under this chapter may file an appeal with the City Clerk within ten (10) days of the decision. The request for the appeal shall state the grounds upon which the appeal is based. A member of the City Council, in their official capacity, may call for review any decision to revoke a permit under this chapter for the purpose of bringing the matter in front of the entire body for review. A call for review is exempt from the payment of a fee and

shall be filed with the City Clerk on a form provided by the Clerk. Upon receipt, the City Clerk shall schedule an appeal or call for review hearing before the City Council or an appointed hearing officer and shall provide written notice of the time, date and location of the hearing to the applicant. The City Council shall hear all calls for review. The hearing shall be held no later than forty-five (45) days from the date the request for the appeal or call for review is received by the City Clerk. The City Council shall determine whether grounds for revocation of the adult-oriented business permit exists and shall render their decision at the conclusion of the hearing or upon recommendation of the hearing officer unless the applicant otherwise consents to a continuance. The decision of the City Council shall be final as to the City but subject to judicial review pursuant to Cal. Code Civ. Proc. Section 1094.5

#### **~~5.96.050 Violation.~~**

~~Any establishment operated, conducted or maintained contrary to the provisions of this chapter is unlawful and a public nuisance, and the City Attorney may commence an action or actions, proceeding or proceedings for the abatement, removal and enjoinder thereof in the manner provided by law, and shall take such other steps and shall apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such adult-oriented business and restrain and enjoin any person from operating, conducting or maintaining such an establishment contrary to the provisions of this chapter.~~

#### **~~5.96.055 Existing Adult Businesses.~~**

~~Any lawfully existing and operating adult-oriented business which becomes a nonconforming use by reason of the adoption of this chapter shall be deemed to have been issued a permit pursuant to this chapter subject to the following:~~

~~A. The nonconforming operation shall be brought into immediate full compliance with subsections (C), (H), (I), (J) and (S) of Section 5.96.025; and the nonconforming business shall be brought into compliance with subsections (B), (D), (N), (O), (P), (Q) and (T) of Section 5.96.025 not later than one year from the date the ordinance codified in this chapter is adopted; and the nonconforming businesses shall be brought into compliance with subsections (E), (G), (L), (M), (N), (P), and (R) of Section 5.96.025 not later than five years from the date of adoption of the ordinance codified in this chapter.~~

~~Failure to comply with the requirements of this chapter within the amortization periods provided in this section may subject the business to revocation of the permit. Notwithstanding the above, any business legally existing and operating as of the date of adoption of the ordinance codified in this chapter which does not comply with the zoning provisions found in Title 20 of this Code shall not be required to relocate and shall be considered nonconforming as to its location until such business is abandoned or otherwise terminated.~~

## Chapter 5.97

### SIDEWALK VENDING PROGRAM

#### 5.97.010 Purpose.

The purpose of this chapter is to establish a sidewalk vendor permitting and regulatory program that complies with Cal. Gov. Code Section 51036 et seq. The provisions of this chapter allow the City to encourage small business activities by removing total prohibitions on portable food stands and certain forms of solicitation while still permitting regulation and enforcement of unpermitted sidewalk vending activities to protect the public's health, safety and welfare.

A. The City Council hereby finds that, to promote the health, safety and welfare, restrictions on street vending are necessary to:

1. Ensure no interference with:
  - a. The performance of police, firefighter, lifeguard and emergency medical personnel services;
  - b. The flow of pedestrian or vehicular traffic including ingress into, or egress from, any residence, public building, or place of business, or from the street to the sidewalk, by persons exiting or entering parked or standing vehicles;
2. Provide reasonable access for the use and maintenance of sidewalks, pathways, poles, posts, traffic signs or signals, hydrants, restrooms, trash receptacles, firefighting apparatus, mailboxes, as well as access to locations used for public transportation services;
3. Maximize public access to and along the coast; and
4. Reduce exposure to the City for personal injury or property damage claims and litigation.

B. The City Council hereby finds that the unique characteristics of the City require certain restrictions on sidewalk vending as follows:

1. The Balboa Island Boardwalk is extremely narrow and has a high volume of pedestrians traveling in each direction. Restrictions on sidewalk vending are necessary to protect the public from injury given the Balboa Island Boardwalk's popularity as a tourist destination;
2. The Oceanfront Boardwalk is under twelve (12) feet in width in places and has a centerline, which provides for a high volume of pedestrians, bicyclists, and ~~rollerskaters~~roller skaters to travel in each direction. Restrictions on sidewalk vending are necessary to protect the public from injury given the Oceanfront Boardwalk's popularity as a tourist destination;
3. East Balboa Boulevard between Adams Street and A Street, Marine Avenue on Balboa Island, and East Coast Highway between Avocado Avenue and Hazel Drive are extremely popular tourist destinations with unusually high pedestrian and vehicular traffic volumes. Restrictions on sidewalk vending are necessary to protect the public from injury given the popularity of these tourist destinations;

4. The Civic Center contains the City's emergency operation center, the headquarters for the Fire Department, and other critical infrastructure. Restrictions on sidewalk vending are necessary to ensure that fire equipment is easily accessible and critical infrastructure is maintained and accessible at all times;
5. Many of the City's parks provide passive recreational opportunities and restrictions on sidewalk vending are necessary to protect the natural resources and recreational opportunities, as well as scenic and natural character of these parks;
6. Restrictions on sidewalk vending at active parks is necessary to protect the health, safety and welfare of those persons engaged in active sports activities as well as spectators of sporting activities; and
7. Many of the sidewalks and pathways in the City are under eight (8) feet wide and sidewalk vending in these areas would unreasonably interfere with the flow of pedestrians and disrupt access for persons with disabilities.

**5.97.020 Definitions.**

B. As used in this chapter, the following terms and phrases shall have the meaning ascribed to them in this part, unless the context in which they are used clearly requires otherwise:

1. "Alcohol" means an "alcoholic beverage" as defined in Section 20.70.020(A), ~~or any successor section;~~
2. "Balboa Island Boardwalk" means the pathway area that borders the water and Grand Canal on Balboa Island and Little Balboa Island;
3. "Beach" means any public ocean front, or bay front beach within the City, including ocean or bay public piers, public floats, public wharves or public strands adjoining public ocean front or bay front beach areas;
- ~~4. "Oceanfront Boardwalk" means the concrete walkway approximately twelve (12) to twenty-two (22) feet in width immediately adjacent to the sandy ocean beach (except where the beach has been improved with parking lots, parks or school playgrounds) and that runs from 3<sup>rd</sup> 6th Street to a point east of E Street. The Oceanfront Boardwalk is designated as West Ocean Front and East Ocean Front on the official City atlas;~~
- ~~45. "Certified farmers' market" means a location operated in accordance with Cal. Food & Agr. Code, Division 17, Chapter 10.5 (commencing with Section 47000 et seq.) of Division 17 of the Food and Agricultural Code and any regulations adopted pursuant to that chapter, ~~or any successor chapter;~~~~
- ~~6. "Civic Center" or "City Hall" means the building, facilities, and parking structure located at 100 Civic Center Drive, Newport Beach, California, 92660;~~
- ~~57. "Fire station" means any facility where fire engines and other equipment of the City's Fire Department are housed;~~

~~68.~~ “Food” means any item provided in Cal. Health & Safety Code Section 113781, ~~or any successor section~~;

~~79.~~ “Heating element” means any device used to create heat for food preparation;

~~810.~~ “Lifeguard headquarters” means the lifeguard facilities located at the base of Newport Pier, alongside the Balboa Pier, and on Corona Del Mar State Beach;

~~911.~~ “MarijuanaCannabis” means the substances defined in Section 10.70.020(A), ~~or any successor section~~;

~~1012.~~ “Merchandise” means any item(s) that can be sold and immediately obtained from a sidewalk vendor, which is not considered food. Items for rent shall not be considered merchandise;

11. Oceanfront Boardwalk” means the concrete walkway approximately twelve (12) to twenty-two (22) feet in width immediately adjacent to the sandy ocean beach (except where the beach has been improved with parking lots, parks or school playgrounds) and that runs from 36th Street to a point east of E Street. The Oceanfront Boardwalk is designated as West Ocean Front and East Ocean Front on the official City atlas;

~~123.~~ “Park” means the parks listed in City Council Policy B-1, Exhibit A, ~~or any successor policy. The City has both active parks and passive parks:~~

~~a. “Active parks” contain one or more sporting fields or actively encourage physical activity. The City’s active parks are listed as “community parks” and “neighborhood parks” in City Council Policy B-1, Exhibit A;~~

~~b. “Passive parks” are typically less developed than an active park, but may contain features such as walking tracks, gardens, seating, barbecues, and picnic areas. They do not usually contain sports infrastructure or encourage strenuous physical activity, although they may contain playground equipment. The City’s passive parks are listed as “view parks” in City Council Policy B-1, Exhibit A;~~

~~142.~~ “Pathway” means a paved path or walkway owned by the City or other public entity that is specifically designed for pedestrian travel, other than a sidewalk;

~~15.~~ “Person” means and includes all domestic and foreign corporations, associations, syndicates, joint stock corporations, partnerships of every kind, clubs, Massachusetts Trust, business or common law trusts, societies, and individuals transacting and carrying on any business in the City;

~~156.~~ “Police station” means any facility where police vehicles and other equipment of the City’s Police Department are housed;

~~167.~~ “Public property” means all property owned or controlled by the City, including, but not limited to, buildings, alleys, beaches, boardwalks, parks, pathways, streets, parking lots, sidewalks, and walking trails;

~~178.~~ “Residential” means any area zoned exclusively as residential in Title 20 or 21 or is designated exclusively for residential use as part of a PC (Planned Community) Zoning District,

Planned Community Development Plan, Planned Residential District, Specific Plan District, Specific Plan Area, or residential overlay district or their equivalent;

~~189.~~ “Roaming sidewalk vendor” means a sidewalk vendor who moves from place to place and stops only to complete a transaction;

~~1920.~~ “Sidewalk” means that portion of a highway, other than the roadway, set apart by curbs, barriers, markings or other delineation specifically designed for pedestrian travel and that is owned by the City or other public entity;

~~201.~~ “Sidewalk vending receptacle” or “sidewalk vendor receptacle” means a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance used for sidewalk vending activities;

~~212.~~ “Sidewalk vendor” or “vendor” means a person(s) who sells food or merchandise from a sidewalk vending receptacle or from one’s person, upon a public sidewalk or pathway;

~~223.~~ “Sidewalk vendor activities” or “sidewalk vending activity” means actions that qualify a person as a sidewalk vendor or actions done in anticipation of becoming a sidewalk vendor such as, but not limited to, placement or maintenance of any sidewalk vendor receptacles;

~~234.~~ “Special event” means any special event described in Section 11.03.020(B), or any successor section;

~~245.~~ “Stationary sidewalk vendor” means a sidewalk vendor who vends from a fixed location; and

~~256.~~ “Swap meet” means a location operated in accordance with Cal. Bus. & Prof. Code, Division 8, Chapter 9, Article 6, (commencing with Section 21660 et seq.) of Chapter 9 of Division 8 of the Business and Professions Code, and any regulations adopted pursuant to that chapter, ~~or any successor chapter.~~

#### **5.97.030 Permit Required.**

A. No person, either for themselves or any other person, shall engage in any sidewalk vendor activities within the City without first applying for and receiving a permit from the Finance Director, ~~or the Finance Director’s designee,~~ under this chapter.

B. A written application for a sidewalk vendor permit shall be filed with the Finance Director, ~~or Finance Director’s designee,~~ on a form provided by the City, and shall contain the following information:

1. The name, address, and telephone number of the person applying to become a sidewalk vendor;
2. The name, address, and telephone number of the person who will be in charge of any roaming sidewalk vendors, sidewalk vending activity and/or be responsible for the person(s) working at the sidewalk vending receptacle;
3. The name, address, and telephone number of all persons that will be employed as roaming sidewalk vendors or at a sidewalk vending receptacle;

4. The number of sidewalk vending receptacles the sidewalk vendor will operate within the City under the permit;
5. The location(s) in the City where the sidewalk vendor intends to operate;
6. The day(s) and hours of operation the sidewalk vendor intends to operate at such location(s);
7. Whether the vendor intends to operate as a stationary sidewalk vendor or a roaming sidewalk vendor and, if roaming, the intended path of travel;
8. The dimensions of the sidewalk vendor's sidewalk vending receptacle(s), including a picture of each sidewalk vending receptacle operating under the permit and any signs that will be affixed thereto;
9. Whether the sidewalk vendor will be selling food, merchandise, or both;
10. If the sidewalk vendor is selling food, a description of the type of food to be sold, whether such foods are prepared on site, whether such foods will require a heating element inside or on the sidewalk vending receptacle for food preparation, and the type of heating element, if any;
11. If the vendor is selling merchandise, a description of the merchandise to be sold;
12. A copy of the health permit required for any sidewalk vendors selling food, as required by Chapter 6.08, ~~or any successor chapter~~;
13. Proof the person possesses a valid California Department of Tax and Fee Administration seller's permit which notes the City as a location or sublocation, which shall be maintained for the duration of the sidewalk vendor's permit;
14. An acknowledgment that the sidewalk vendor will comply with all other generally applicable local, State, and ~~f~~Federal laws;
15. A certification that, to their knowledge and belief, the information contained within the application is true;
16. An agreement by the sidewalk vendor to defend, indemnify, release and hold harmless the City, its City Council, boards, commissions, officers and employees from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to the permit or the vendor's sidewalk vending activities. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, or proceeding whether incurred by the permittee, City, and/or the parties initiating or bringing such proceeding;
17. An acknowledgement that use of public property is at the sidewalk vendor's own risk, the City does not take any steps to ensure public property is safe or conducive to the sidewalk vending activities, and the sidewalk vendor uses public property at their own risk;

18. An acknowledgement that the sidewalk vendor will obtain and maintain throughout the duration of any permit issued under this chapter any insurance required by the ~~City's~~ Risk Manager;

19. If the sidewalk vendor has operated in the City in the past, proof of prior sales tax allocation to the City; and

20. Any other relevant information required by the Finance Director, ~~or the Finance Director's designee.~~

C. Each application for a sidewalk vendor permit shall be accompanied by a nonrefundable application fee as established by resolution of the City Council. The application and permit is only applicable to the individual(s) named on the application. If said permit is approved, it shall not be necessary for the permittee to obtain a City business license to carry on the activities authorized by said permit, unless such permittee maintains a permanent place of business within the City.

#### **5.97.040 Issuance of Permit.**

A. Within thirty (30) ~~calendar~~ days of receiving a complete application, the Finance Director, ~~or the Finance Director's designee,~~ may issue a sidewalk vendor permit, with appropriate conditions, as provided for herein, if he or she finds based on all of the relevant information that:

1. The conduct of the sidewalk vendor will not unduly interfere with traffic or pedestrian movement, or tend to interfere with or endanger the public peace or rights of nearby residents to the quiet and peaceable enjoyment of their property, or otherwise be detrimental to the public peace, health, safety or general welfare;

2. The conduct of the sidewalk vendor will not unduly interfere with normal governmental or City operations, threaten to result in damage or detriment to public property, or result in the City incurring costs or expenditures in either money or personnel not reimbursed in advance by the vendor;

3. The conduct of such sidewalk vending activity will not constitute a fire hazard, and all proper safety precautions will be taken;

4. The conduct of such sidewalk vending activity will not require the diversion of police officers to properly police the area of such activity as to interfere with normal police protection for other areas of the City;

5. The sidewalk vendor has paid all previous administrative fines, completed all community service, and completed any other alternative disposition associated in any way with a previous violation of this chapter;

6. The sidewalk vendor has not had a permit revoked within the past twelve (12) months;

7. The sidewalk vendor's application contains all required information;

8. The sidewalk vendor has not made a materially false, misleading or fraudulent statement of fact to the City in the application process;

9. The sidewalk vendor has satisfied all the requirements of this chapter;

10. The sidewalk vendor has paid all applicable fees as set by City Council resolution;
11. The sidewalk vendor's sidewalk vending receptacle and proposed activities conform to the requirements of this chapter;
12. The sidewalk vendor has adequate insurance coverage to protect the City from liability associated with the sidewalk vendor's activities, as determined by the ~~City's Risk Manager, or the Risk Manager's designee, and, if required by the City, the City has been named as an additional insured;~~ and
13. The sidewalk vendor has satisfactorily provided all information requested by the Finance Director, ~~or the Finance Director's designee,~~ to consider the vendor's application.

B. A sidewalk vendor permit is nontransferable. Any change in ownership or operation of a sidewalk vendor or sidewalk vending receptacle requires a new permit under this chapter.

C. All permits issued under this chapter shall expire twelve (12) months from date of issuance.

#### **5.97.070 Penalties.**

D. The Finance Director, ~~or the Finance Director's designee,~~ may revoke a permit issued to a sidewalk vendor for the term of that permit upon the fourth violation or subsequent violations within one year of the first violation.

#### **5.97.080 Appeals.**

A 1. Any recipient of an administrative citation may request an ability-to-pay determination, contest that there was a violation of this ~~Ce~~-code, and/or that he or she is the responsible person, by completing a request for hearing form and returning to the City's Finance Department in accordance with Section 1.05.060(A), ~~or any successor section.~~ Notwithstanding the time limits set forth in Section 1.05.060(A), any person requesting a hearing and ability-to-pay determination may file the request within the time frames set forth in Cal. Government Code Section 51039(f)(1), ~~or any successor section.~~

A4b. ~~If the Hearing Officer finds the person meets the criteria described in subdivision (a) or (b) of Cal. Government Code Section 68632, or any successor section,~~ the Hearing Officer shall order the City to accept, in full satisfaction, twenty (20) percent of the administrative fine imposed pursuant to this chapter;

A 6. After considering all of the testimony and evidence submitted at the hearing, the Hearing Officer shall issue a written decision within ten (10) days of the hearing and shall list in the decision the reasons for that decision:

- a. The Hearing Officer may uphold or deny the administrative citation or take any other action within the Hearing Officer's power;
- b. If the Hearing Officer determines that the administrative citation should be upheld and a fine assessed, then the amount of the fine assessed that is on deposit with the City shall be retained by the City and any remainder on deposit with the City, if any, shall be promptly returned;
- c. If the Hearing Officer determines that the administrative citation should be denied, or imposes an alternative disposition, and the fine was deposited with the City, then the City shall promptly refund the amount of the deposited fine;

d. The decision of the Hearing Officer shall be final as to the City but subject to judicial review pursuant to Cal. Gov. Code Section 53069.4; and

e. The recipient of the administrative citation shall be served with a copy of the Hearing Officer's written decision in the manner provided in Section 1.08.080, ~~or any successor section.~~

B. Decisions of the Finance Director, ~~or the Finance Director's designee~~, to revoke a permit shall be appealed in the following manner:

1. Appeals shall be initiated within fifteen (15) ~~calendar~~ days of service of notice of the decision in the manner provided in Section 1.08.080, ~~or any successor section~~;

2. Appeals of decisions shall be made in writing on forms provided by the City;

3. Decisions that are appealed shall not become effective until the appeal is resolved;

4. All appeals of decisions shall be heard by a Hearing Officer designated pursuant to Section 1.05.070(A), ~~or any successor section~~, and the Hearing Officer may be disqualified as provided in Section 1.05.070(B), ~~or any successor section~~;

5. The Hearing Officer shall have the powers set forth in Section 1.05.070(C)(1) through (4) and (6), ~~or any successor section~~;

6. A hearing before the Hearing Officer may be set for a date that is not less than fifteen (15) and not more than sixty (60) days from the date that the request for hearing is filed in accordance with the provisions of this chapter. The responsible person requesting the hearing shall be notified of the time and place set for the hearing at least ten (10) days prior to the date of the hearing. The City and responsible person may mutually agree to waive, modify or change the date of the proceeding;

7. All appeals of decisions shall be conducted in accordance with Section 1.05.080(B), (D), (F), and (G), ~~or any successor section~~, and shall comply with the following additional procedures:

a. At least ten (10) days prior to the hearing, the responsible person requesting the hearing shall be provided with copies of the citations, reports and other documents or evidence submitted or relied upon by the Finance Director, ~~or the Finance Director's designee~~;

b. No other discovery is permitted. Formal rules of evidence shall not apply. Administrative hearings are intended to be informal in nature. Any relevant evidence shall be admitted if it is the type of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rules, which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this State. Irrelevant and unduly repetitious evidence shall be excluded;

c. The failure of any responsible person who has filed an appeal to appear at the hearing shall constitute a failure to exhaust their administrative remedies;

8. After considering all of the testimony and evidence submitted at the hearing, the Hearing Officer shall issue a written decision within ten (10) days of the hearing and shall list in the decision the reasons for that decision:

- a. The Hearing Officer may uphold or deny the decision and the decision of the Hearing Officer shall be final as to the City but subject to judicial review pursuant to Cal. Code Civ. Proc. Section 1094.5; and
- b. The responsible person who has filed an appeal shall be served with a copy of the Hearing Officer's written decision, by the City Clerk, in the manner provided in Section 1.08.080, ~~or any successor section~~.

## **Title 6**

### **HEALTH AND SANITATION**

- 6.04 Garbage, Refuse and Cuttings**
- 6.05 Use of Expanded Polystyrene Disposable Food Service Ware**
- 6.06 State Mandated Municipal Solid Waste Diversion Programs**
- 6.08 Food Handling Services**
- 6.25 Regulation of Smoking in Public Areas ~~and Work Places~~**

## Chapter 6.04

### GARBAGE, REFUSE AND CUTTING

#### 6.04.020 Definitions.

“Municipal solid waste” or “MSW” means putrescible and non-putrescible solid and semisolid wastes generated in or upon, related to the occupancy of, remaining or emanating from any premises within City including, but not limited to, garbage, trash, rubbish, refuse, ashes, discarded home and industrial appliances, manure, vegetable or animal solid or semisolid wastes, and other solid and semisolid wastes. For purposes of this chapter, “municipal solid waste” does not include recyclable materials, food scraps, green waste, wood waste or construction and demolition debris which shall be separated and segregated from municipal solid waste for diversion and/or (1) hazardous waste or household hazardous waste, (2) low-level radioactive waste regulated under California-Cal. Health & Safety Code Section 114960 et seq. or (3) untreated medical waste which is regulated pursuant to the Medical Waste Management Act, California Health & Safety Code Section 117600 et seq.

#### 6.04.040 Leaf Blowers.

##### A. Definitions.

1. “Leaf blowers” shall mean any air blowing machine that uses a concentrated stream of air to, propel or blow dirt, dust, leaves, grass clippings, trimmings, green waste, solid waste or debris. This definition shall include “mechanical blowers” as that term is used in Chapter 10.28. “Leaf blowers” shall not include any leaf or refuse vacuum.
2. “Common interest development” and “association” shall be defined as those terms are defined in California Civil Code Sections 4100 and 4800, respectively, 1351 or any successor statute.

#### 6.04.060 Collection of Solid Waste and Divertible Materials.

B. No person, except an individual acting within the course and scope of their agency or employment with the City, a sanitary district, or a private collector licensed or contracted by the City, shall manipulate or remove from any place or premises in the City, or transport over public streets, any solid waste, or divertible materials.

E 1. Any person, with the permission and consent of the property owner, from gathering and removing solid waste, construction and demolition debris, green waste and/or wood waste generated by construction, landscaping or gardening on the property when the solid waste and/or divertible material have not been set out for collection by the City, a sanitary district, or a private collector licensed or contracted by the City; provided, that such activities are in compliance with all provisions of this Code including, but not limited to, the provisions of Chapter 6.06;

E. 3. The immediate removal by any person of solid waste, food scraps, and other divertible material which the Health Officer, Code Enforcement Supervisor, City Manager or his/her designee, Fire Chief, Building Official, Public Works Director, or their agents have determined to constitute a nuisance or an immediate threat to the public health, safety and welfare;

#### 6.04.100 Prohibited Material.

A 6. Liquids, paints or any substance the disposal of which is regulated by the Federal Hazardous Substances Act, the Carpenter-Presley-Tanner Hazardous Substance Account Act, or regulations adopted pursuant thereto;

#### 6.04.140 Costs Defrayed from Ad Valorem Tax Revenue.

The cost and expense of collecting, hauling away and disposing of garbage, refuse and cuttings, as those terms are defined by Sections ~~6.04.010~~, 6.04.020 ~~and 6.04.030~~ for any dwelling or dwelling unit, existing or future, within the boundaries of the City as of November 1, 1996, that receives curbside container refuse collection service from the City, shall be defrayed exclusively from the ad valorem tax revenues of the City.

[Note: The definition of “garbage, refuse and cuttings” referred to in Ordinance 96-46 adopted by the voters is now set forth in Section 6.04.020.]

#### 6.04.200 Prohibited Disposal.

B. On Own Property. No owner of real property shall throw, deposit or leave, or knowingly permit another to throw, deposit or leave, solid waste or divertible material on such real property, nor shall he or she fail, neglect or refuse to wholly remove solid waste or divertible material from such real property, within three (3) days after receipt of written notice by the Code Enforcement Supervisor, or Public Works Director ~~or their designee~~ to do so.

#### 6.04.230 Violation, Penalties and Enforcement.

~~A.—It shall be unlawful for any person to violate any provisions or to fail to comply with any of the requirements of this chapter.~~

~~B.—Any person violating any of the provisions or failing to comply with any of the requirements of Section 6.04.060 shall be guilty of a misdemeanor pursuant to the provisions of Section 1.04.010(C); however, the violation may be prosecuted as an infraction pursuant to the provisions of Section 1.04.010(A).~~

~~C.— Except for violations of Section 6.04.060, which may be prosecuted as a misdemeanor or infraction, any person violating any of the provisions or failing to comply with any of the requirements of this chapter shall be guilty of an infraction pursuant to the provisions of Section 1.04.010(A).~~

~~D.— In addition to, or separate from, the foregoing criminal penalties, any person violating any of the provisions or failing to comply with any of the requirements of this chapter is subject to the issuance of an administrative citation pursuant to the provisions of Section 1.04.010(E) and Chapter 1.05.~~

## Chapter 6.05

### USE OF EXPANDED POLYSTYRENE DISPOSABLE FOOD SERVICE WARE

#### 6.05.010 Definitions.

I. "Restaurant" means any establishment located within the City of Newport Beach that sells prepared food for consumption on, near, or off its premises by customers. "Restaurant," for purposes of this chapter, includes mobile food preparation units as defined in Sections 6.08.120 and 6.08.130 of the City of ~~thise Newport Beach Municipal~~ Code.

#### 6.05.040 Undue Hardship.

A. The City Manager ~~or his/her designee~~ may exempt a food provider from the requirements of this ordinance for up to a one-year period, based upon a written request from the applicant containing sufficient information to determine that the conditions of this ordinance would cause undue hardship. An "undue hardship" shall be found in the following situations:

1. Situations unique to the food provider where there are no reasonable alternatives to expanded polystyrene disposable food service ware and compliance with this chapter would cause significant economic hardship to that food provider;
2. Situations where no reasonably feasible available alternatives exist to a specific and necessary expanded polystyrene food service ware.

A food vendor granted an exemption by the City must reapply prior to the end of the exemption period and demonstrate continued undue hardship, if it wishes to have the exemption extended. Extensions may only be granted for intervals not to exceed one year.

B. An exemption application shall include all information necessary for the ~~Assistant~~ City Manager ~~or his/her designee~~ to make ~~his/her a~~ decision, including but not limited to documentation showing the factual support for the claimed exemption. The ~~Assistant~~ City Manager ~~or his/her designee~~ may require the applicant to provide additional information to permit the Director to determine facts regarding the exemption application.

C. The ~~Assistant~~ City Manager ~~or his/her designee~~ may approve the exemption application, in whole or in part, with or without conditions.

D. Exemption decisions are effective within thirty (30) days, unless appealed to the City Manager within fifteen (15) days. The City Manager's decision shall be final.

#### 6.05.050 Enforcement.

~~A.—Any person violating or failing to comply with any of the requirements of this Chapter shall be guilty of an infraction pursuant to Section 1.04.010, and shall be subject to citation and fines pursuant to Chapter 1.05, Newport Beach Municipal Code.~~

~~B.—The City Attorney may seek legal, injunctive, or other equitable relief to enforce this Chapter.~~

## Chapter 6.06

### STATE MANDATED MUNICIPAL SOLID WASTE DIVERSION PROGRAMS

#### 6.06.010 Definitions.

“Director” means the Director of the Public Works Department ~~or his or her designee.~~

“Food facility” shall have the same meaning as that term is defined in Section 113789 of the ~~California-Cal.~~ Health ~~&and~~ Saf.~~ety~~ Code.

“Food recovery organization” means an entity that collects or receives edible food from commercial edible food generators and distributes that edible food to the public for food recovery either directly or through other entities, including, but not limited to, a: (1) food bank as defined in Section 113783 of the ~~Cal.~~ Health ~~&and~~ Saf.~~ety~~ Code; (2) nonprofit charitable organization as defined in Section 113841 of the ~~Cal.~~ Health ~~&and~~ Saf.~~ety~~ Code; and (3) nonprofit charitable temporary food facility as defined in ~~Section 113842 of the-Cal.~~ Health ~~&and~~Saf.~~ety~~ Code Section 113842. For purposes of this chapter, a food recovery organization is not a commercial edible food generator.

“Food scraps” means discarded material resulting from the production, processing, preparation or cooking of food for human consumption that is separated from municipal solid waste and includes surplus or unsold edible food, raw food left over after food preparation, leftover cooked food, as well as spoiled food such as vegetables, culls, and plate scrapings. Food scraps include food from food facilities as defined in ~~California-Cal.~~ Health ~~&and~~ Saf.~~ety~~ Code Section 113789, food processing establishments (as defined in ~~California-Cal.~~ Health ~~&and~~ Saf.~~ety~~ Code Section 111955), grocery stores, farmers’ markets, institutional cafeterias (such as schools, hospitals and assisted living facilities), restaurants, and residential food scraps. For purposes of this chapter, “food scraps” does not include edible food for human consumption that is donated or sold or food soiled paper.

“Municipal solid waste” or “MSW” means putrescible and non-putrescible solid and semisolid wastes generated in or upon, related to the occupancy of, remaining or emanating from any premises within City including, but not limited to, garbage, trash, rubbish, refuse, ashes, discarded home and industrial appliances, manure, vegetable or animal solid or semisolid wastes, and other solid and semisolid wastes. For purposes of this chapter, “municipal solid waste” does not include recyclable materials, food scraps, green waste, wood waste or construction and demolition debris which shall be separated and segregated from municipal solid waste for diversion and/or (1) hazardous waste or household hazardous waste, (2) low-level radioactive waste regulated under ~~California-Cal.~~ Health ~~&and~~ Saf.~~ety~~ Code Section 114960 et seq. or (3) untreated medical waste which is regulated pursuant to the Medical Waste Management Act, ~~Cal,ifornia~~ Health ~~&and~~ Saf.~~ety~~ Code Section 117600 et seq.

“SB 1383 generator” means all entities that generate food scraps, green waste, wood and other material that can be collected, recovered, and recycled into new products including compost, biofuel, or electricity, as codified in ~~Cal.~~ Pub.~~lic~~ Resources Code Section 42652, in a Statewide effort to reduce emissions of short-lived climate pollutants as amended, supplemented, superseded, and replaced from time to time.

#### 6.06.080 Reporting, Inspections, and Compliance Verification.

A. The City’s representatives ~~and/or designee are~~is authorized to conduct inspections and investigations, at random or otherwise, of any collection container, collection vehicle loads, or transfer, processing, or

disposal facility for materials collected from generators, or source separated materials to confirm compliance with this chapter by AB 341 generators, SB 1383 generators, property owners, commercial edible food generators, haulers, self-haulers, food recovery services, and food recovery organizations, subject to applicable laws. This section does not authorize the City ~~or its designees~~ to enter the interior of a private residential property for inspection.

B. Generators shall provide or arrange for access during all inspections (with the exception of residential property interiors) and shall cooperate with the City's employee ~~or its designee~~ during such inspections and investigations. Such inspections and investigations may include confirmation of proper placement of materials in containers, edible food recovery activities, records, or any other requirement of this chapter described herein. Failure to provide or arrange for: (1) access to an entity's premises; or (2) access to records for any inspection or investigation is a violation of this chapter and may result in penalties described.

C. Any records obtained by the City during its inspections, and other reviews shall be subject to the requirements and applicable disclosure exemptions of the Public Records Act as set forth in Cal. Government Code Section 6250 et seq.

D. The City's representatives ~~and/or designee are is~~ authorized to conduct any inspections, or other investigations as reasonably necessary to further the goals of this chapter, subject to applicable laws.

E. The City shall receive written complaints from persons regarding an entity that may be potentially noncompliant, including receipt of anonymous complaints.

#### **6.06.100 Diversion Programs Required at Special Events.**

I. The promoter, coordinator or responsible party shall submit the following information to the City within thirty (30) ~~calendar~~ days of the end of the special event:

1. Name and date(s) of the special event;
2. Contact information for the responsible party, promoter or coordinator;
3. Address of location where event was held;
4. Number of attendees for each day of the event;
5. Quantity of municipal solid waste collected and disposed;
6. Quantity of recyclable materials collected and diverted;
7. Quantity of food scraps collected and diverted; and
8. Copies of weight tickets from municipal solid waste disposal facility and all permitted processing facilities where recyclable materials and food scraps were delivered.

#### **6.06.110 Requirements for Commercial Edible Food Generators.**

A. Tier one commercial edible food generators must comply with the requirements of this section commencing January 1, 2022, and tier two commercial edible food generators must comply commencing January 1, 2024, pursuant to 14 CCR Section 18995.114.

C 4. Allow the City ~~or its designee~~ to access the premises and review records pursuant to 14 CCR Section 18991.4; and

D. Nothing in this chapter shall be construed to limit or conflict with the protections provided by the California Good Samaritan Food Donation Act of 2017, the Federal Good Samaritan Act, or share table and school food donation guidance pursuant to Senate Bill 557 of 2017 (approved by the Governor of the State of California on September 25, 2017, which added Article 13 (commencing with Section 49580) to ~~Chapter 9 of Part 27 of Division 4 of Title 2 of the Cal. Education Code~~ Title 2, Division 4, Part 27, Chapter 9, and to amend ~~Section 114079 of the Cal Health & Safety Code~~ Section 114079; relating to food safety, ~~as amended, supplemented, superseded and replaced from time to time.~~

#### **6.06.120 Requirements for Food Recovery Organizations and Services, Jurisdictions, and Regional Agencies.**

C. Food recovery organizations and food recovery services that have their primary address physically located in the City and contract with or have written agreements with one or more commercial edible food generator pursuant to 14 CCR Section 18991.3(b) shall report to the City ~~it is located in~~ the total pounds of edible food recovered in the previous calendar year from the tier one and tier two commercial edible food generators they have established a contract or written agreement with pursuant to 14 CCR Section 18991.3(b) ~~no later than March 31, 2022.~~

#### **6.06.140 Waivers.**

E. The Director's decision shall be final thirty (30) ~~calendar~~ days after notice is provided to the applicant in ~~the manner provided in~~ Section 1.08.080, unless appealed to the Assistant City Manager within that time frame. Any appeal shall be submitted to the Assistant City Manager on a form approved by the Assistant City Manager along with the appeal fee. If appealed, the Assistant City Manager shall complete his/her review and issue a written decision upholding, overturning or modifying the decision of the Director within thirty (30) ~~calendar~~ days. The decision of the Assistant City Manager shall be final.

#### **6.06.150 Enforcement.**

~~A.— Violation of any provision of this chapter shall constitute grounds for issuance of a notice of violation and assessment of a fine by a City Enforcement Official or representative. Enforcement actions under this chapter are issuance of an administrative citation and assessment of a fine. The City's procedures on imposition of administrative fines are hereby incorporated in their entirety, as modified from time to time, and shall govern the imposition, enforcement, collection, and review of administrative citations issued to enforce this chapter and any rule or regulation adopted pursuant to this chapter, except as otherwise indicated in this chapter.~~

~~B.— Other remedies allowed by law may be used, including civil action or prosecution as misdemeanor or infraction. The City may pursue civil actions in the California courts to seek recovery of unpaid administrative citations. The City may choose to delay court action until such time as a sufficiently large number of violations, or cumulative size of violations exist such that court action is a reasonable use of City staff and resources.~~

~~C.— Enforcement pursuant to this chapter may be undertaken by the Public Works Director or his/her designee.~~

**AD.** Process for Enforcement.

1. The Public Works Director ~~or his/her designee~~ will monitor compliance with the ordinance randomly and through compliance reviews, route reviews, investigation of complaints, and an inspection program. Section 6.06.080 establishes the City's right to conduct inspections and investigations.
2. The City may issue an official notification to notify regulated entities of its obligations under this chapter.
3. The City shall issue a notice of violation requiring compliance within sixty (60) days of issuance of the notice.
4. Absent compliance by the respondent within the deadline set forth in the notice of violation, the City shall commence an action to impose penalties, via an administrative citation and fine, pursuant to Chapter 1.05 (Administrative Code Enforcement Program).

Notices shall be sent to "owner" at the official address of the owner maintained by the tax collector for the City or if no such address is available, to the owner at the address of the dwelling or commercial property or to the party responsible for paying for the collection services, depending upon available information.

**BE.** Penalty Amounts for Types of Violations. The penalty levels are as set forth in Section 1.05.020 subject to any minimum or maximum penalty amounts imposed by SB 1383.

**CF.** Compliance Deadline Extension Considerations. The City may extend the compliance deadlines set forth in a notice of violation issued in accordance with this section if it finds that there are extenuating circumstances beyond the control of the respondent that make compliance within the deadlines impracticable, including the following:

1. Acts of God such as earthquakes, wildfires, flooding, and other emergencies or natural disasters;
2. Delays in obtaining discretionary permits or other government agency approvals; or
3. Deficiencies in recycling infrastructure or edible food recovery capacity and the City is under a corrective action plan with CalRecycle pursuant to 14 CCR Section 18996.2 due to those deficiencies.

**D.G.** Appeals Process. Persons receiving an administrative citation containing a penalty for an uncorrected violation may request a hearing to appeal the citation pursuant to Section 1.05~~6~~.060.

**EH.** Education Period for Noncompliance. Beginning January 1, 2022, and through December 31, 2023, the City will conduct inspections, route reviews or waste evaluations, and compliance reviews, depending upon the type of regulated entity, to determine compliance, and if the City determines that a food scrap and green waste generator, self-hauler, hauler, tier one commercial edible food generator, food recovery organization, food recovery service, or other entity is not in compliance, it shall provide educational materials to the entity describing its obligations under this chapter and a notice that compliance is required by January 1, 2022, and that violations may be subject to administrative civil penalties starting on January 1, 2024.

**F.** Civil Penalties for Noncompliance. Beginning January 1, 2024, if the City determines that the SB 1383 generator, self-hauler, hauler, tier one or tier two commercial edible food generator, food recovery organization, food recovery service, or other entity is not in compliance with this chapter, it shall document the noncompliance or violation, issue a notice of violation, and take enforcement action pursuant to this section.

## Chapter 6.08

### FOOD HANDLING SERVICES

#### 6.08.010 Authorization.

The purpose of this chapter is to authorize the County Health Officer to enforce and observe in the City of ~~Newport Beach~~ all orders and quarantine regulations prescribed by the State Department of Health Services, the California Health ~~and~~ Saf.ety Code and all other applicable statutes and regulations relating to public health, pursuant to the authority of Cal. ~~ifornia~~ Health ~~&~~ Saf.ety Code Section 101375.

#### 6.08.020 Definitions.

The following terms used in this chapter shall have the meanings indicated below, ~~and shall also include any amendments or changes made to referenced sections of the California Health and Safety Code after January 1, 1996:~~

“Certified farmers’ market” shall be as defined in Cal. Health & Saf. Code Section 11374~~25~~ ~~of the California Health and Safety Code.~~

“Commissary” shall be as defined in Cal. Health & Saf. Code Section 11375~~10~~ ~~of the California Health and Safety Code.~~ “Food establishment” shall be as defined in Section 113780 of the California Health and Safety Code.

“Food facility” shall be as defined in Cal. Health & Saf. Code Section 11378~~95~~ ~~of the California Health and Safety Code.~~

“Food processing establishment” shall be as defined in Cal. Health & Saf. Code Section 111955 ~~of the California Health and Safety Code.~~

“Inspector” means a registered environmental health specialist, as defined in Cal. Health & Saf. Code Section 106615, employed by the Health Department, or the Health Officer or any deputy Health Officer authorized to inspect premises or equipment for the enforcement of this article.

“Mobile food ~~preparation unit~~ facility” shall be as defined in Cal. Health & Saf. Code Section 11383~~115~~ ~~of the California Health and Safety Code.~~

~~“Open-air barbecue facility” shall be as defined in Section 113830 of the California Health and Safety Code.~~

~~“Person” means any individual, firm, partnership, corporation, association or other legal entity.~~

“Produce stand” shall be as defined in Cal. Health & Saf. Code Section 11387~~955~~ ~~of the California Health and Safety Code.~~

“Restricted food service ~~transient occupancy establishment~~ facility” shall be as defined in Cal. Health & Saf. Code Section 11389~~3780~~ ~~of the California Health and Safety Code.~~

“Satellite food ~~distribution facility~~ service” shall be as defined in Cal. Health & Saf. Code Section 11389~~980~~ ~~of the California Health and Safety Code.~~

“Temporary food facility” shall be as defined in Cal. Health & Saf. Code Section 11393~~03895~~ ~~of the California Health and Safety Code.~~

“Vehicle” shall ~~be as defined in Section 113900 of the California Health and Safety Code~~ be as defined in Cal. Veh. Section 670.

“Vending machine” shall be as defined in Cal. Health & Saf. Code Section 11390383 ~~of the California Health and Safety Code.~~

#### **6.08.030 Permit Required—Conditions and Terms.**

A. It ~~shall be~~ is unlawful for any person to operate any food facility, vending machine business, ~~food processing establishment,~~ or any other food handling business within the City of Newport Beach without first applying for and receiving a food vending permit issued by the Health Department under the provisions of this chapter.

B. Every applicant for a food vending permit shall file with the Health Department a written application which shall state the name and address of the applicant, the character and location of the activity for which a permit is required under this chapter and such other information as the Health Department may require. Applicants for a permit to operate a mobile food ~~preparation unit~~ facility shall, in addition, provide a list of three (3) service stops which shall include the address of exact location and time of each stop.

#### **6.08.040 Construction, Conversion and Alteration.**

A person proposing to build or remodel a food facility, vending machine business, food processing establishment, or any other food handling business governed by this chapter, shall submit three (3) copies of the complete plans and specifications to the Health Department for review and approval pursuant to the applicable requirements of the Cal. Health & Saf. Code ~~California Health and Safety Code~~. The Health Officer may thereafter issue a certificate stating what modifications, if any, are required for compliance with applicable laws and ordinances.

#### **6.08.060 Notice of Violation.**

When any State laws, this chapter, or Department rules and regulations have been violated, an inspector may serve a written notice entitled “notice of violation,” specifying:

F. That if no hearing is requested or the permittee fails to appear at the scheduled hearing and if the Health Department does not receive notice that all such corrections have been made before 9:00 ~~nine~~ a.m. of the date specified under subsection (D) of this section, the permit will be subject to suspension or revocation from that time until all violations have been corrected.

#### **6.08.070 Hearing.**

A. The hearing shall be held by a hearing officer who is the Health Officer or his or her duly authorized representative and a ~~qualified registered~~ environmental health specialist as defined in Cal. Health & Saf. Code Section 106615 ~~of the Health and Safety Code~~ and registered as provided in Cal. Health & Saf. Code Section 106710 thereof, but shall not be the inspector who reported the violations or who inspected any corrective measure taken.

B. The permit holder shall have the right to a hearing, if requested, on all violations listed in the notice. A written request for a hearing shall be made by the permittee within fifteen (15) ~~calendar~~ days after receipt of the notice. A failure to request a hearing within fifteen (15) ~~calendar~~ days after receipt of the notice shall be deemed a waiver of the right to a hearing. When circumstances warrant, the hearing officer

may order a hearing at any reasonable time within this fifteen (15) day period to expedite the permit suspension or revocation process.

C. The hearing shall be held within fifteen (15) ~~calendar~~ days of the receipt of a request for a hearing. Upon written request of the permittee, the hearing officer may postpone any hearing date, if circumstances warrant such action.

#### **6.08.090 Summary Suspension.**

C. At any time within fifteen (15) ~~calendar~~ days after service of a notice pursuant to subsection (B) of this section, the permittee may request in writing a hearing before a hearing officer to show cause why the permit suspension is not warranted. The hearing shall be held within fifteen (15) ~~calendar~~ days of the receipt of a request for a hearing. A failure to request a hearing within fifteen (15) ~~calendar~~ days shall be deemed a waiver of the right to such hearing.

#### **6.08.120 Mobile Food Preparation Units Generally.**

In addition to all other applicable provisions of the Cal. Health ~~&and~~ Saf.fety Code and of this chapter, mobile food preparation units shall comply with the following safety requirements:

#### **6.08.140 Fees.**

Applications for a food vending permit shall be filed with the Health Department on a form to be provided by the Department. Applications shall be accompanied by payment of the required fee. The required fee shall be any such fee adopted by resolution of the County Board of Supervisors to be paid by the permittee directly to the Health Officer and retained by the County as reimbursement for services related to this chapter, as authorized by Section 101325 of the Cal.~~.ifornia~~ Health ~~&and~~ Saf.ety Code.

## Chapter 6.25

### REGULATION OF SMOKING IN PUBLIC AREAS ~~AND WORKPLACES~~

#### Sections:

6.25.005 Purpose and Intent.

6.25.010 Definitions.

6.25.020 Regulation of Smoking in Public Places.

6.25.025 ~~Regulation of Smoking in Restaurants.~~ Disposal Where Smoking is Prohibited.

~~6.25.030 Regulation of Smoking in Places of Employment.~~

6.25.040 Posting of Signs Required.

~~6.25.050 Structural Modifications Not Required.~~

6.25.060 Penalties.

~~6.25.070 Severability.~~

#### 6.25.005 Purpose and Intent.

The City Council finds and declares as follows:

- A. There is ample evidence to prove that the smoking of tobacco and other substances is a danger to the health of smokers and others who, because of proximity to the smoker or inadequate ventilation, are subject to the smoke; and
- B. The presence of smoke in the environment also constitutes a material annoyance and discomfort to non-smokers ~~and may reduce productivity or increase disharmony among co-workers;~~
- C. The California Legislature has determined that tobacco smoke is a hazard to the health of the general public and has empowered local public entities to ban or regulate smoking in any manner not inconsistent with State law; and
- D. This ordinance furthers the public health, safety and welfare by prohibiting smoking in certain public areas ~~and regulating smoking in the office workplace so as to minimize the toxic effects of smoking by requiring an employer to adopt a policy that will accommodate, so far as possible, the preferences of non-smokers and smokers alike.~~

#### 6.25.010 Definitions.

~~“Person” means any individual person, firm, partnership, association, corporation, company, organization, or legal entity of any kind.~~

~~“Employee” shall mean any person defined as such in 3351 of the Labor Code and any volunteer as specified in Sections 3361, 3361.5, 3363.5 or 3363.6 of the Labor Code.~~

~~“Employer” shall mean any person, partnership, corporation, including municipal corporation, who employs the services of more than four persons.~~

~~“Place of employment” shall mean any enclosed area under the control of a private or public employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, conference rooms, and employee cafeterias. A private residence which serves as an office workplace shall not be regulated by this ordinance.~~

~~“Smoke” or “smoking” means and includes inhaling, exhaling, burning, or carrying any lighted smoking equipment for tobacco, cannabis, or any other weed or plant. “Smoke” and “smoking” shall include inhaling or exhaling e-liquid, vape juice, nicotine, cannabis, cannabidiol, terpenes, synthetic cannabinoids or other chemicals or substances in an aerosolized or vaporized form.~~

#### **6.25.020 Regulation of Smoking in Public Places.**

##### **B. Hospitals and Health Care Facilities.**

~~1.— Smoking is prohibited and unlawful in public areas of health care facilities and hospitals, as defined in Cal. Health & Saf. Code Section 1250, of the California Health and Safety Code, waiting rooms, public hallways and lobbies, all smoking is prohibited, except in specially designated smoking areas, which may be all or part of a public area.~~

~~2.— Every publicly or privately owned health care facility, including hospitals, shall make a reasonable effort to determine the smoking or nonsmoking preference of patients and thereafter assign patients to rooms occupied by persons who share the same preference.~~

~~3.— In rooms and areas occupied by two or more patients, smoking shall be prohibited for hospital staff, visitors, and the general public. “STAFF AND VISITOR SMOKING PROHIBITED” signs shall be conspicuously posted in such areas.~~

~~D. Theaters and Auditoriums. Smoking is prohibited and is unlawful in every publicly or privately owned theater, auditorium, or other similarly enclosed facility which is open to the public for the primary purpose of exhibiting any motion picture, stage production, musical recital, sporting event, or any other performance event except in areas not open to the general public, and in an area which serves as a lobby. Every owner and/or manager of such theater, auditorium, or other enclosed facility used for the purposes stated herein, shall post signs conspicuously in the lobby stating that smoking is prohibited within the theater, auditorium, or facility, and in the case of motion picture theaters, such information shall be shown upon the screen for at least five seconds before showing feature motion pictures.~~

~~F. Indoor Service Lines. Smoking is prohibited and is unlawful in indoor service lines in which more than one person is giving or receiving services of any kind.~~

~~G. Areas Posted as No Smoking. Smoking is prohibited and is unlawful within fifty (50) feet of any area posted as a non-smoking area.~~

~~H. Schools, or Day Care Center. Smoking is prohibited and unlawful within 1,000 feet of a school, or day care center.~~

~~I. Outdoor Dining. Smoking is prohibited and unlawful within fifty (50) feet of any outdoor dining area lawfully provided by an eating and drinking establishment.~~

J. Parked Vehicle. Smoking is prohibited and unlawful in any vehicle that is parked on public property, if the smoking is detectible outside of the vehicle.

K. Parks, Beaches and the Oceanfront Boardwalk. Smoking is prohibited and unlawful in any public park, park facility, beach, or the oceanfront boardwalk or within one hundred (100) feet of a public park, park facility, or beach, while the person is located on public property. This prohibition shall not apply to a person in an alley or in a car or truck that is being driven.

L. Farmers Markets. Smoking is prohibited and unlawful within fifty (50) feet of any farmers market or event that is being conducted pursuant to a special event permit issued by the City.

#### **6.25.025 Disposal Where Smoking is Prohibited.**

No person shall dispose of any cigarette, cigar, tobacco, or any other instrument used to smoke or any part of an instrument used to smoke including, but not limited to, cigarette or cigar butt(s), ashes or used matches in any place where smoking is prohibited under this chapter, except any specifically designated smoking waste receptacle. Punishment under this section shall not preclude punishment pursuant to Health & Saf. Code Section 13002, Pen. Code Section 374.4, or any other law proscribing the act of littering. Nothing in this section shall preclude any person from seeking any other remedies, penalties or procedures provided by law.

#### **6.25.025 Regulation of Smoking in Restaurants.**

Any restaurant which has an approved occupancy load of more than fifty (50) persons shall maintain a non-smoking area of not less than twenty five (25) percent of the enclosed serving area, excluding any portion of the facility utilized primarily for the sale of alcoholic beverages. The provisions of this section shall not apply to any room being used solely for private functions. (Ord. 85-19 § 1 (part), 1985)

#### **6.25.030 Regulation of Smoking in Places of Employment.**

A.— Each employer who operates an office or offices in the City shall, within one hundred twenty (120) days of the effective date of this ordinance, adopt, implement, and maintain a written smoking policy which shall contain, at a minimum, the following provisions and requirements:

1.— Any non-smoking employee may object to his or her employer about smoke in his or her work area at his or her place of employment. Using already available means of ventilation or separation or partition of office space, the employer shall attempt to reach a reasonable accommodation, insofar as possible, between the preferences of nonsmoking and smoking employees. However, an employer is not required by this ordinance to make any expenditures or structural changes to accommodate the preferences of nonsmoking or smoking employees.

2.— Any employee in the office workplace shall be provided the right to designate his or her immediate work area as a nonsmoking area. The policy adopted by the employer shall include a definition of the term “immediate work area” which gives preferential consideration to non-smokers.

3.— If, due to the proximity of smokers, size of the work area, poor ventilation or other factors, the no-smoking designation of an employee’s immediate work area does not significantly reduce the extent to which smoke affects the employee, the employer shall, if feasible, make additional

~~accommodation by reassigning the employee to a different work area, expanding the size of the work area subject to the prohibition against smoking, or by implementing other measures reasonably designated to minimize or eliminate the effect of smoke on the non-smoking employee.~~

~~B.—The employer shall give a written copy of the smoking policy to each employee and post copies of the policy at an appropriate location, or locations, in the workplace. Whenever smoking is prohibited, conspicuous signs shall be posted so stating, containing all capital lettering not less than one inch in height, on a contrasting background.~~

~~C.—Notwithstanding the provisions of subsection (A)(1) of this section, every employer shall have the right to designate any office workplace as a nonsmoking area.~~

~~D.—This section is not intended to regulate smoking in the following places and under the following conditions:~~

~~1.—A private home which serves as an office workplace.~~

~~2.—A private enclosed office workplace occupied exclusively by smokers, even though such an office workplace may be visited by non-smokers, excepting places in which smoking is prohibited by the Fire Marshal or by other law, ordinance, or regulation.~~

~~E.—An employer who, in good faith, develops and promulgates a policy regarding smoking and nonsmoking in the workplace, shall be deemed to be in compliance with this section provided however, a policy which knowingly omits the elements required in subsection (A)(1) or (A)(2) or which designates an entire workplace as a smoking area shall not be deemed a good faith policy.~~

#### **~~6.25.050 Structural Modifications Not Required.~~**

~~A.—It shall be the responsibility of employers to provide smoke free areas for nonsmokers within existing facilities to the maximum extent possible, but employers are not required to incur any expense to make structural or other physical modifications to existing facilities.~~

~~B.—Nothing in this chapter shall require the owner, operator, or manager of any theater, auditorium, health care facility, or any building, facility, structure, or business, to incur any expense to make structural or other physical modifications to any existing area or workplace.~~

~~C.—Nothing in this section shall relieve any person from the duty to post signs or adopt policies as required by this chapter.~~

#### **~~6.25.060 Penalties.~~**

~~A.—It shall be unlawful to wilfully mutilate or destroy any signs required by this section.~~

~~B.—It shall be unlawful to smoke in any area posted as a non-smoking area.~~

~~C.—Compliance with the requirements of this ordinance relative to the adoption, implementation and maintenance of a no smoking policy is mandatory but emphasis will be placed on voluntary employer compliance. Persons who wilfully fail to comply with the provisions of this ordinance shall be subject to the penalties set forth in subsection (D).~~

~~D.—The violation of any provision of this ordinance, or the failure to comply with any duty imposed by this ordinance, shall be an infraction punishable by a fine as provided in Section 1.04.010 of this Code. A separate offense shall be deemed to exist for each and every day during any portion of which any violation of any provision of this ordinance is committed, continued or permitted by any person and shall be punishable accordingly.~~

~~E.— In addition to the penalties provided in this section, any condition caused or permitted to exist in violation of any of the provisions of this ordinance shall be deemed a nuisance.~~

~~**6.25.070 Severability.**~~

~~If any provision or clause of this ordinance or the application thereof to any person or circumstance is held to be unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other ordinance provisions, clauses or applications thereof which can be implemented without the invalid provision, clause or application, and to this end the provisions and clauses of this ordinance are declared to be severable.~~

**Title 7**

**ANIMALS**

**Chapters:**

**7.04 Dogs**

**7.06 Horses Prohibited on Beaches**

**7.08 Wild Animals**

**7.12 Livestock**

**7.15 Fowl**

**7.16 Animals at Large—Impounding**

**7.20 Animal Nuisances**

**7.25 Apiaries**

**7.26 Protection of Natural Habitat for Migratory and Other Waterfowl**

**7.30 Wildlife Protection**

**7.35 Regulation of Kennels**

## Chapter 7.04

### DOGS\*

#### 7.04.010 Definitions.

"Dog" means ~~The term "dog" shall mean and include any dog or~~ canine.

"Emotional support dog" means a dog that provides emotional, cognitive, or other similar support to an individual with a disability, and that does not need to be trained or certified.

"Guide dog" means a guide dog that was trained by a person licensed under Cal. Bus & Prof. Code Section 7200 et. seq. or as defined in the regulations implementing Title III of the Americans with Disabilities Act, being 42 U.S.C. Sections 12101 et seq., and does not include an emotional support dog.

"Service dog" means a dog individually trained to the requirements of the individual with a disability, including, but not limited to, minimal protection work, rescue work, pulling a wheelchair, or fetching dropped items and does not include an emotional support dog.

"Signal dog" means a dog trained to alert an individual who is deaf or hard of hearing to intruders or sounds and does not include an emotional support dog.

#### 7.04.020 Leash Required.

No person having the care, charge or control of any dog shall cause or allow, either ~~wilfully~~willfully or through failure to exercise due care or control, such dog to be present upon any beach, street, alley, or public place, or upon any private property or premises other than his or her own without written consent of the owner or lessee of such land unless such dog is securely restrained by a substantial leash or chain not exceeding six (6) feet in length and controlled by a person competent to restrain such dog. This section shall not be construed as allowing dogs on leashes in the areas from which dogs are prohibited as designated by Sections 7.04.025, 7.04.030, and 7.04.050. This section shall not apply to any State, federal or local government law enforcement officer while performing their duties.

#### 7.04.025 Prohibited on School Grounds.

No person having the care, charge or control of any dog shall cause or allow, either ~~wilfully~~willfully or through failure to exercise due care or control, such dog to be present on or in any public school property other than when specifically invited by the school administration.

The prohibitions contained in this section shall not be applicable to: any guide dog, service dog, or signal dog or any dog being trained to be a guide dog, service dog signal dog pursuant to a recognized program of training, provided the dog is on a leash and the person in charge has an official identification card issued for such purposes; or any State, federal or local government law enforcement officer while performing their duties.~~guide dog while being used by a blind person provided that the dog is on leash, carries clearly visible identification, and the person in charge has an official identification card issued for such purposes.~~

#### 7.04.030 Animals Prohibited on Public Beaches.

D 2. Any guide dog, service dog, or signal dog as defined by the Americans with Disabilities Act ("ADA"), or any dog being trained to be a guide dog, service dog signal dog as defined by the ADA pursuant to a

recognized program of training, provided the dog is on a leash and the person in charge has an official identification card issued for such purposes;:-

D 3. Any State, federal or local government law enforcement officer while performing their duties.

#### **7.04.050 Dogs Prohibited.**

D. The provisions of this section shall not apply to: any guide dog, service dog, or signal dog or any dog being trained to be a guide dog, service dog signal dog pursuant to a recognized program of training, provided the dog is on a leash and the person in charge has an official identification card issued for such purposes; or any State, federal or local government law enforcement officer while performing their duties. any blind person using a guide dog provided the dog is on a leash.

#### **7.04.100 Biting Dog—Report—Custody and Control.**

If the possessor or custodian of such dog cannot provide the Chief of Police with proof of current rabies vaccination or when, in the opinion of the Public Health Officer, the situation warrants it, such dog shall be impounded at the City's animal shelter and the expense shall be borne by the owner, possessor or custodian of such dog, pending a petition pursuant to Cal~~ifornia~~ Food ~~&and~~ Agri~~ultural~~ Code Section 31601 et seq. to have the dog declared potentially dangerous or vicious.

This section shall not apply to any dog working with a State, federal or local government law enforcement officer.

## Chapter 7.06

### HORSES PROHIBITED ON BEACHES

#### 7.06.010 Horses Prohibited on Beaches and Parks.

No person having the care, charge or control of any horse, mule or donkey shall permit or allow such animal to be present upon any beach or public park in the City. This section shall not apply to any: State, federal or local government law enforcement officer while performing their duties; person utilizing the animal in accordance with a valid special events permit issued pursuant to Chapter 11.03; or person who is disabled who is using a miniature horse that has been individually trained to perform a specific task for the person with the disability.

#### 7.06.020 Penalty.

~~Any person convicted of violating or failing to comply with any of the provisions of said section shall be punishable by the fines as is specified in the currently adopted Uniform Infraction Bail Schedule used by the Orange County Municipal Courts.~~

## Chapter 7.08

### WILD ANIMALS

#### 7.08.010 Wild Animal Defined.

The term “wild animal” means and includes any animal which may not be imported, transported or possessed without first obtaining a California Department of Fish and Game permit, as set forth in ~~Title-14 of CCR California Code of Regulations, Section 671, or its successor regulations.~~ This section shall not be construed to include domestic dogs or cats.

#### 7.08.040 Permit for Keeping Wild Animals.

C. Conditions—Issuance. The Chief of Police may issue a permit, valid for one year, for the keeping of any wild animal if ~~the Chief of Police~~he determines that such animal may be kept or maintained without menacing the safety of any person or property; provided, however, that the ~~City Manager~~Chief of Police may impose such conditions in granting a permit as ~~the Chief of Police~~he may deem necessary to protect the public and may limit the term of such permit.

D. Notice of Action. The applicant shall be notified in writing of the action of the Chief of Police in either granting or denying the permit and, if the application has been denied, the notice shall advise the applicant of ~~the applicant's~~ his right to appeal to the City Council. Service of the notice ~~shall be made in the manner provided in Section 1.08.080~~may be made by personal service or by registered mail. If service is made by mail, it shall be deemed complete upon deposit in the United States Mail directed to the applicant at his latest address shown on the application.

## Chapter 7.15

### FOWL

#### 7.15.020 Pigeons.

No person shall keep, maintain or have in his possession within any residential district in the City of ~~Newport Beach~~ any homing or racing pigeons without first obtaining a permit from the City Manager as provided in Section 7.08.040 of ~~this Newport Beach Municipal~~ Code.

## Chapter 7.16

### ANIMALS AT LARGE—IMPOUNDING

#### Sections:

7.16.010 Animals at Large.

7.16.020 Impoundment.

7.16.040 Taking Possession of Animals—Notification.

7.16.050 Impoundment Fees.

7.16.060 Vivisection of Impounded Animals.

~~7.16.070 Penalty.~~

## Chapter 7.16

### ANIMALS AT LARGE – IMPOUNDING

#### ~~7.16.070 Penalty.~~

~~Any person convicted of violating or failing to comply with any of the provisions of said section shall be punishable by the fines as is specified in the currently adopted Uniform Infraction Bail Schedule used by the Orange County Municipal Courts.~~

**Chapter 7.20**  
**ANIMAL NUISANCES**

**7.20.020 Nuisances Committed by Animals.**

C 2. Any guide dog or service dog, as defined by Section 7.04.010, while being used by a blind person ~~or any dog being trained to be a guide dog for the blind pursuant to a recognized program of training provided the dog is on a leash and the person in charge has an official identification card issued for such purposes;~~

~~3.—Any blind person.~~

## Chapter 7.25

### APIARIES

#### 7.25.010 Keeping of Apiaries—Prohibited.

It is unlawful for any person to maintain or keep an apiary as that term is defined in ~~Section 29002 of the California Food and Agricultural Code~~ Section 29002 in any residential area within the ~~City of Newport Beach~~ City.

## Chapter 7.26

### PROTECTION OF NATURAL HABITAT FOR MIGRATORY AND OTHER WATERFOWL

#### Sections:

7.26.010 Findings.

7.26.020 Prohibition on Incubation.

7.26.030 Prohibition on Feeding of Waterfowl.

~~7.26.040 Violation Subject to Administrative Citation.~~

7.26.050 First and Second Violations—Warning and Education.

~~7.26.040 Violation Subject to Administrative Citation.~~

~~It is unlawful for any person to violate any provision or fail to comply with any of the requirements of this chapter. Any person violating any of the provisions or failing to comply with any of the requirements of this chapter shall be subject to civil fines according to Chapter 1.05.~~

**7.26.050 First and Second Violations—Warning and Education.**

Prior to the issuance of any administrative citation ~~under the authority of Section 7.26.040~~, the City or its officers shall, in the first and second instances of any violation by any one person, issue a warning along with educational material to any person found violating this chapter. The educational material shall state the benefits to water quality and to habitat protection of this chapter's prohibitions.

## Chapter 7.35

### REGULATION OF KENNELS

#### Sections:

- 7.35.010 Definitions.
- 7.35.020 Operator’s Permit Required.
- 7.35.030 Application for Operator’s Permit.
- 7.35.040 Police Department Review.
- 7.35.050 Operator’s Permit Issuance and Denial.
- 7.35.060 Requirements of Operation.
- 7.35.070 Humane Animal Care.
- 7.35.080 Kennel Construction Standards—General.
- 7.35.090 Kennel Operating Standards—General.
- 7.35.100 Indoor Kennel Standards.
- 7.35.110 Outdoor Kennel Standards.
- 7.35.120 Kennels for Dogs.
- 7.35.130 Cat Enclosure Construction.
- 7.35.140 Rabies Vaccination.
- 7.35.150 Identification.
- 7.35.160 Fees.
- ~~7.35.170 New/Existing Permittees.~~
- 7.35.180 Transfer and Duration of Permits.
- 7.35.190 Suspension, Revocation, Denial and Appeal.

#### 7.35.010 Definitions.

~~“Chief of Police” means the Chief of Police of the City of Newport Beach, or his or her designated representative.~~

“Non-profit organization” means a non-profit organization, as defined in ~~Section 501(c)(3) of the Internal Revenue Code~~ Section 501(c)(3).

#### **7.35.040 Police Department Review.**

A. Time Limits and Notification. Within thirty (30) ~~calendar~~ days of the filing of an application, the Chief of Police shall determine whether the application is complete and notify the applicant in writing if the application is determined to be incomplete.

B. Incomplete Applications. If the application is determined to be incomplete, the Chief of Police shall notify the applicant in writing and shall specify those parts of the application which are incomplete and shall indicate the manner in which they can be made complete, including a list and thorough description of the specific information or materials needed to complete the application. Upon the receipt of the information or materials needed to complete the application, or any resubmittal of the application, a new thirty (30) ~~calendar~~-day review period shall begin to determine the completeness of the application.

#### **7.35.060 Requirements of Operation.**

A 1. Within eight (8) years preceding the date of the application or a renewal application, been convicted on two occasions of violating any statute, rule or regulation prohibiting cruelty to animals, including, but not limited to, any conviction of California Penal Code Sections 597, 597a, 597b, 597c, 597e, 597f, 597g, 597h, 597i, 597j, 597k, 597m, 597n, 597o, 597r, 597s, 597t, 597u, 597v, 597x, 597y, 597.1, 598, 598a, 598b, 598c, 598d, 599, 600, 600.2, or 600.5, or accepted a plea of guilty or nolo contendere to any lesser included or lesser related offense, in satisfaction of, or as a substitute for, any of the previously listed crimes;

A 5. The operator shall report in writing any changes in address, ownership, or management to the Chief of Police at least fifteen (15) ~~calendar~~ days prior to such change.

A 10. All operators, upon being granted a commercial kennel or non-profit kennel operator's permit, do thereby consent and agree to the entry upon the premises described in the permit by the Chief of Police ~~or his/her authorized designee~~ for the purpose of conducting such inspections as he/she may deem required. The inspections shall be conducted with the operator or manager present.

B 2. The operator shall report in writing any changes in address to the Chief of Police at least fifteen (15) ~~calendar~~-days prior to such change.

B 5. All operators, upon being granted a kennel operator's permit, do thereby consent and agree to the entry upon the premises described in the permit by the Chief of Police ~~or his or her authorized designee~~ for the purpose of conducting such inspections as he or she may deem required upon seventy-two (72) hours' written notice. The inspections shall be conducted with the operator present.

#### **7.35.090 Kennel Operating Standards—General.**

C. Health. No person shall display any animal bearing evidence of malnutrition, ill health, unhealed injury, or having been kept in an unsanitary condition. Operator shall isolate sick or diseased animals from healthy animals at all times and in such a way that diseases or parasites will not be transmitted to other animals. The Chief of Police ~~or his/her designee~~ may order any animal to be examined and/or treated by a veterinarian.

**~~7.35.170 New/Existing Permittees.~~**

~~A.—Commencing on the effective date of the ordinance codified in this chapter, all permits are to be issued in accordance with the provisions of this chapter. Any operator who does not have a permit, shall obtain a permit within ninety (90) days of the effective date of the ordinance codified in this chapter.~~

~~B.—Existing operator’s permits shall continue in effect until expiration or one year after the effective date of the ordinance codified in this chapter, whichever is sooner.~~

**7.35.180 Transfer and Duration of Permits.**

C. Applications for the next ensuing permit shall be filed with the Chief of Police before the expiration of the existing permit. Temporary permits will not be issued and renewal applications must be filed no later than sixty (60) ~~calendar~~ days prior to the expiration of the permit to prevent a lapse of the permit.

**7.35.190 Suspension, Revocation, Denial and Appeal.**

C 1. The right to appeal to an Administrative Hearing Officer shall terminate upon the expiration of fifteen (15) ~~calendar~~ days of the date of mailing of the notice. The notice of appeal is to be sent to the Police Department ~~of the City of Newport Beach.~~

## Chapter 9.04

### FIRE CODE

#### 9.04.040 Amendment of Section 113.4 Failure to Comply.

Section 113.4 is amended to read as follows:

Section 113.4 Failure to comply. ~~No~~ Any person ~~who~~ shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, ~~shall be liable to a fine in accordance with the Newport Beach Municipal Code Title One 1.04.010 "Violation, Penalties and Enforcement."~~

#### 9.04.050 Amendment to Section 202 Definitions.

LOCAL AGENCY VERY HIGH FIRE HAZARD SEVERITY ZONE: A geographical area designated in accordance with the ~~Cal~~ifornia ~~Gov~~ernment Code Section 51179, and by ~~City of Newport Beach~~ ordinance, which contains the type and condition of vegetation, topography, climate and structure density which potentially increases the possibility of uncontrolled fire spread through vegetative fuels threatening life or property. For the purposes of this ~~C~~ode, Local Agency Very High Fire Hazard Severity Zones shall be considered to be Very High Fire Hazard Severity Zones as defined in ~~Cal~~ifornia ~~Gov~~ernment Code Section 51179.

#### 9.04.060 Amendment to Section 305 Ignition Sources.

305.8.1.1 Notice. Uncontrolled or high weeds, brush, plant material, fire hazards, or other items prohibited under this ~~C~~ode increase the danger of fire and thus constitutes a fire hazard. If such condition exists, the fire code official shall give notice to the owner of record to abate the hazard within thirty (30) ~~calendar~~ days.

The notice shall state that the property owner is required to abate the fire hazard and that if the hazard is not abated the City may take further action which can include, (1) the City, or its contractor, may enter upon the parcel of land and remove or otherwise eliminate or abate the hazard, (2) that upon completion of such work the cost thereof, including administrative costs, can be billed to the property owner or can become a special assessment against that parcel, and (3) that upon City Council confirmation of the assessment and recordation of that order, a lien may be attached to the parcel to be collected on the next regular property tax bill levied against the parcel.

305.8.3 Service of notice. The fire code official shall notify the property owner of affected properties as shown on the latest equalized tax assessment roll by certified mail, of the specific conditions that constitute a fire hazard and that the City will take action to abate the fire hazard. Notices shall be mailed not less than fifteen (15) ~~calendar~~ days prior to the date of the proposed abatement.

305.8.4 Appeal. The property owner may appeal the decision of the fire code official regarding the fire code official's determination that a fire hazard exists by sending a written appeal to the fire code official within ten (10) ~~calendar~~ days of the mailing of the notice. The matter will be heard by the Building and Fire Board of Appeals as specified in Section 15.80 of ~~this~~ ~~Newport Beach Municipal~~ Code.

305.8.5 Abatement hearing procedure. All hearings under Chapter 3 of the fire code shall be held before the fire code official or Fire Chief who shall hear all facts and testimony he/she deems pertinent. The facts and testimony may include testimony on the condition of the property and circumstances related to the

fire hazard. The owner of the land may appear in person or present a sworn written statement in time for consideration at the hearing. The fire code official or Fire Chief may impose such conditions and take such other action, as he/she deems appropriate to carry out the purpose of the provisions of this chapter. The decision of the fire code official or Fire Chief shall be final as to the City but subject to judicial review pursuant to Cal. Code Civ. Proc. Section 1094.5. ~~and The decision~~ shall be sent to the property owner via certified mail to the owner's address on the latest equalized tax assessment roll within thirty (30) ~~calendar~~ days.

305.8.7 Emergency private property abatement. When in the opinion of the fire code official a substandard structure or substandard property is an immediate hazard to life and property, and the fire code official makes written findings to the effect that abatement of such a fire hazard requires immediate action, the fire code official may then cause such work to be done to the extent necessary to eliminate the hazard. At least twenty-four (24) hours prior to the abatement, the fire code official shall attempt to contact the property owner to inform the property owner of the work to be done and request their assistance or immediate voluntary removal of the hazard. After the work is performed, the fire code official shall post a notice and mail to the property owner information regarding the nature of the work performed. Any individual aggrieved by the action of the fire code official under this section, may appeal the determination of the action to the Fire Chief, except that the appeal shall be filed within ten (10) ~~calendar~~ days from the date of mailing the notice of work performed.

305.8.8 Abatement costs. The costs involved in the correction of the substandard conditions and fire hazards shall become a special assessment against the property. In addition to the above costs, an administrative processing fee established by resolution of the Council of the City ~~of Newport Beach~~, shall be assessed against each parcel for City incurred costs associated with abatement. An additional inspection fee shall be established by resolution of the Council of the City of Newport Beach for charges related to inspection services for vegetation hazard identification. The schedule for such fees shall be maintained on file in the City Clerk's Office.

The fire code official shall notify, in writing, all parties concerned of the amount of such assessment related to work performed in accordance with Cal. Government Code Section 38773.5. The property owner may appeal the fire code official's assessment by sending a written appeal to the fire code official within fifteen (15) ~~calendar~~ days of the mailing of the notice. Any appeal regarding the reasonableness of the assessment of costs shall be heard by the Fire Chief.

If the total assessment determined as provided for in this section is not paid within thirty (30) ~~calendar~~ days after mailing of such notice or after a decision has been rendered on any appeal, the property owner shall be billed. If unpaid, such charges shall be placed as a special assessment on the tax bill for the property pursuant to the procedures set forth in Section 38773.5 of the Cal. Gov. Government Code Section 38773.5, which is incorporated herein by this reference.

#### **9.04.280 Amendments to Section 903.2.8 Group R.**

5. Pursuant to Cal. Health & Safety Code, Section 13113, occupancies housing ambulatory children only, none of whom are mentally ill children or children with intellectual disabilities, and the buildings or portions thereof in which such children are housed are not more than two stories in height, and building or portions thereof housing such children have an automatic fire alarm system activated by approved smoke detectors.

6. Pursuant to Cal. Health & Safety Code, Section 13143.6, occupancies licensed for protective social care which house ambulatory clients only, none of whom is a child (under the age of 18 years), or who is elderly (65 years of age or over).

When not used in accordance with ~~in Section 504.2 or 506.3 of the California Building Code, area or height increases for automatic fire sprinklers as set forth in the Cal. Building Code,~~ an automatic sprinkler system installed in accordance with Section 903.3.1.2~~3~~ shall be allowed in Group R-2.1 occupancies. An automatic sprinkler system designed in accordance with Section 903.3.1.3 shall not be utilized in Group R-2.1 or R-4 occupancies.

**9.04.440 Amendments to Section 5704.2.11.1 Underground Tanks.**

Section 5704.2.11.1 is amended by adding subsection 4 to read as follows:

4. The underground storage of flammable liquids shall be prohibited in any residential district or any residential area of a planned community district, as defined in Section 20.14.020 ~~of the Newport Beach Municipal Code.~~

**9.04.470 Local Agency Very High Fire Hazard Severity Zone.**

The City ~~of Newport Beach~~ designates those areas identified in green on the map attached to the ordinance codified in this section and on file with the City Clerk as the Local Agency Very High Fire Hazard Severity Zone for the City in accordance with ~~Section 51179 of the Cal. Government Code~~ Section 51179.

## Title 10

### OFFENSES AND NUISANCES

#### Chapters:

10.04 Intoxicating Liquor

10.06 Human Waste

10.08 Interference With Public Access

10.12 Interfering With Law Enforcement

10.14 Prohibition Against Camping in Public Places

10.16 Gambling

10.24 Discharge of Weapons

10.26 Community Noise Control

10.28 Loud and Unreasonable Noise

10.32 Sound-Amplifying Equipment

10.36 Minor's Curfew

~~10.40 Interference with Radio Reception~~

~~10.45 Hotel Loitering~~

10.48 Weed and Rubbish Abatement

10.50 Public Nuisance Abatement

10.52 Abandoned or Wrecked Vehicles

10.54 Public Nudity

~~10.56 Drug Paraphernalia~~

10.58 Police Services at Large Parties, Gatherings or Events on Private Property

10.59 Graffiti

10.60 Regulation of Display of Material, Which is Harmful to Minors, in a Public Place

10.64 Construction and Maintenance Projects in Residential Districts

10.66 Loud and Unruly Gatherings

10.68 Targeted Residential Picketing

10.70 ~~Medical Marijuana~~ Cannabis Regulations

## Chapter 10.04

### INTOXICATING LIQUOR

#### 10.04.010 Drinking in Public.

~~A. \_\_\_\_\_ No person shall drink or consume any alcoholic beverage, or possess any can, bottle or other receptacle containing any alcoholic beverage which has been opened, or a seal broken, or the contents of which have been partially removed, in or on any public street or alley, public sidewalk, public or private parking lot, public restroom, public pier, private pier open to the public upon the payment of any fee, public beach, vacant lot, or public park or private property which is open to public view, without the consent of the owner or person in lawful possession or control of the private property. The provisions of this section shall also apply to any beach or public parking facility in the area commonly known as Newport Dunes. The provisions of this section shall not apply where the consumption or possession is within premises located in a park or other public place for which a license has been issued pursuant to Division 9 of the Business and Professions Code of the State of California and approved under a special event permit in compliance with Chapter 11.03, or where the consumption or possession is within an outdoor dining establishment having a valid sidewalk café license encroachment permit in compliance with Chapter 13.18.~~

~~B. \_\_\_\_\_ No person shall possess any can, bottle or other receptacle containing any alcoholic beverage which has been opened, or a seal broken, or the contents of which have been partially removed, in or on any public street or alley, public sidewalk, public or private parking lot, public restroom, public pier, private pier open to the public upon the payment of any fee, public beach, vacant lot, or public park, or private property which is open to public view, without the consent of the owner or person in lawful possession or control of the private property. The provisions of this section shall also apply to any beach or public parking facility in the area commonly known as Newport Dunes.~~

~~C. \_\_\_\_\_ Alcoholic beverages as used in this section includes alcohol, spirits, wine or beer and which contains one-half of one (0.5) percent or more of alcohol by volume, and which is fit for beverage purposes, either alone or when distilled, mixed or combined with other substance.~~

~~D. \_\_\_\_\_ The provisions of this section shall not apply where the consumption or possession is within premises located in a park or other public place for which a license has been issued pursuant to Cal. Bus & Prof. Code, Division 9, pursuant to an approved special event permit in compliance with Chapter 11.03, or where the consumption or possession is within the outdoor area of a lawfully permitted eating and drinking establishment.~~

~~E. \_\_\_\_\_ Any person violating or failing to comply with Section 10.04.010(B) shall be guilty of an infraction, and subject to punishment as set forth in this Code.~~

## Chapter 10.06

### HUMAN WASTE

#### 10.06.010 Human Waste.

No person shall urinate or defecate ~~or evacuate his bowels~~ on private property in an area exposed to the public view, or on any public street, sidewalk, alley, park, beach or other public place except in a public or private restroom.

## Chapter 10.08

### INTERFERENCE WITH PUBLIC ACCESS\*

#### 10.08.005 Definitions.

“Day care center” ~~shall have the same meaning as set forth in Section 1.08.120 means a child care—infant center, and child care center (preschool) licensed by the State of California Department of Social Services that is not located on a residentially zoned property including, but not limited to, Bright Horizons at Newport Beach; Carden Hall; Catalyst Kids Newport Heights; Christ Church by the Sea Children’s Center; Environmental Nature Center (ENC) Nature Preschool; Miraculous Milestones; Montessori Way Learning Center, Inc., Newport Coast Child Development Preschool; Newport Harbor Lutheran Church; St. Andrew’s Preschool; St. Mark Community Preschool; St. Matthew’s Montessori Preschool; Temple Bat Yahm; and Tutor Time Child Care/Learning Center.~~

“School” ~~shall have the same meaning as set forth in Section 1.08.120 means an institution of learning, whether public or private, which offers in-person instruction in grades K through twelve (12) in those courses of study required by the California Education Code and is licensed by the State Board of Education. This definition includes all kindergarten, elementary, junior high, senior high or any special institution of learning under the jurisdiction of the State Department of Education including, but not limited to, Andersen Elementary School; Carden Hall; Corona del Mar Middle and High School; Eastbluff Elementary School; Ensign Intermediate School; Harbor Day School; Harbor View Preschool and Elementary School; Lincoln Elementary School; Mariners Elementary School; Newport Christian Academy; Newport Coast Preschool and Elementary School; Newport Preschool & Elementary School; Newport Harbor High School; Newport Heights Elementary School; Our Lady Queen of Angels Catholic School; Pacifica Christian High School; and Sage Hill High School.~~

#### 10.08.030 Use of Streets and Sidewalks for Commercial Purposes.

B 5. For the temporary sale or display of goods or merchandise in conjunction with a special event for which a permit has been issued by the City Manager ~~or designee~~ pursuant to Chapter 11.03 of this Code and the City Council has approved a resolution of street closure pursuant to authorization granted by the Cal~~i~~for~~n~~ia Veh~~i~~c~~e~~ Code;

6. For the conduct of special celebrations, sporting events or similar activities involving a nonprofit corporation, nonprofit association, community organization or similar entity provided a permit is issued by the City Manager ~~or designee~~ pursuant to Chapter 11.03 of this Code, the City Council has adopted a street closure resolution pursuant to the authority granted by the Cal~~i~~for~~n~~ia Veh~~i~~c~~e~~ Code and, the event, celebration or activity is consistent with Council Policy;

C. 6. The sponsor of the event shall provide, at the sponsors sole cost and expense, all security personnel and traffic control equipment required by the City Manager ~~or designee~~;

C 7. The sponsor of the celebration or event shall provide ~~proof of liability insurance, which types and amounts shall be determined by the Risk Manager. adequate to protect the City with the City designated as an additional insured.~~

D. The sponsor of any event, sale or celebration authorized by this section shall comply with all conditions imposed by the City Council, ~~or~~ City Manager ~~or designee~~ pursuant to resolution or permit.

## Chapter 10.12

### INTERFERING WITH LAW ENFORCEMENT

#### Sections:

**10.12.010 False Report to Police/Animal Control Officer.**

**10.12.020 Interference.**

**10.12.020 Interference.**

No person shall interfere with, oppose or resist any authorized person charged with the enforcement of this title while such person is engaged in the performance of his or her duties.

## Chapter 10.14

### PROHIBITION AGAINST CAMPING IN PUBLIC PLACES

#### 10.14.010 Definitions.

~~“Public park” or “park facility” shall have the same meaning as set forth in Section 1.08.120 means all publicly owned, managed or leased land that is open to the public, bike paths, walking or hiking trails, parks and park-related buildings, facilities and improvements, and any school facilities when they are in use as recreational or community center facilities and under the control of the Director of the Recreation and Senior Services Department including, but not limited to, Arroyo Park; 38th Street Park; Back Bay View Park; Bayside Park; Bayview Park; Begonia Park; Big Canyon Park; Bob Henry Park; Bolsa Park; Bonita Canyon Sports Park; Bonita Creek Park & Community Center; Buck Gully Reserve; Buffalo Hills Park; Canyon Watch Park; Carroll Beek Community Center and Balboa Island Park; Castaways Park; Channel Place Park; Civic Center Community Center; Civic Center Park; Cliff Drive Park and Community Center; Coastal Peak Park; Corona del Mar Pocket Park; Corona del Mar State Beach; Dog Park; Eastbluff Park & Boys and Girls Club; Galaxy View Park; Gateway Park; Grant Howald Park & Community Youth Center; Harbor View Nature Park; Harbor Watch Park; Inspiration Point; Irvine Terrace Park; Jasmine Creek Park; John Wayne Park and Theater Arts Center; Kings Road Park; L Street Park; Lake Ave Park; Lido Park; Lincoln Athletic Center; Lookout Point; Los Trancos Canyon View Park (lower, middle, upper); Lower Castaways Park; M Street Park; Marian Bergeson Aquatic Center; Marina Park; Mariners Park and VJ Community Center; Mesa Birch Park; Miramar Park; Myrtle Park; Newport Aquatic Center; Newport Coast Community Center; Newport Island Park; Newport Shores Park; North Star Beach; OASIS Senior Center; Old School Park; Peninsula Park; Rhine Wharf Park; San Joaquin Hills Park and Lawn Bowling Center; San Miguel Park; Spyglass Hill Park; Spyglass Hill Reservoir Park; Sunset Ridge Park; Sunset View Park; Upper Buck Gully; Upper Newport Bay Regional Park; Uptown Park; Veteran’s Memorial Park; West Jetty View Park; West Newport Community Center; West Newport Park; and Westcliff Park.~~

## Chapter 10.16

### GAMBLING\*

#### 10.16.010 Gambling Prohibited.

It shall be unlawful for any person to play or bet at or against any game not mentioned in ~~Sections 330 or 330a of the Cal. Pen. al Code~~ Sections 330 or 330a of the State of California, which is played, conducted, dealt or carried on with cards, dice, billiard balls, pool balls, or cues, for money, checks, chips, credit, merchandise or any other representative of value.

#### 10.16.020 Use of Premises for Gambling.

No person, either as principal, agent, employee or otherwise, shall knowingly permit any building, house, apartment, room or place owned or rented by him or under his charge or control in the City, to be used in whole or in part as a gambling house or place for playing, conducting, dealing or carrying on any game not mentioned in ~~Sections 330 and 330a of the Cal. Pen. al Code~~ Sections 330 or 330a of the State of California, which is played, conducted, dealt or carried on with cards, dice, billiard balls, pool balls, or cues, for money, checks, chips, credit, merchandise or any other representative of value.

#### 10.16.030 Operating Gambling Place.

No person, either as principal, agent, employee or otherwise, shall operate, conduct or maintain within the City any building, house, apartment, place or room used in whole or part as a gambling house or place for playing, conducting, dealing or carrying on any game not mentioned in ~~Sections 330 and 330a of the Cal. Pen. al Code of the State of California~~ Sections 330 or 330a, which is played, conducted, dealt or carried on with cards, dice, billiard balls, pool balls, or cues, for money, checks, chips, credit, merchandise or any other representative of value.

## Chapter 10.24

### DISCHARGE OF WEAPONS\*

#### 10.24.010 Discharge of Weapons—Permission Required.

It is declared unlawful for any person or persons, except peace officers in the discharge of their duties, to discharge or cause to be discharged within the corporate limits of the City of Newport Beach any rifle, shotgun, pistol, revolver or other firearm, or any air-gun, air-pistol or air-rifle, or any other device which forcefully discharges a projectile from a barrel, unless the person or persons have first obtained permission in writing so to do from the Chief of Police. This section shall not apply to any person who lawfully discharges a firearm in self-defense of themselves or another person.

## Chapter 10.26

### COMMUNITY NOISE CONTROL

#### Sections:

- 10.26.005 Declaration of Policy.
- 10.26.010 Definitions.
- 10.26.015 Decibel Measurement Criteria.
- 10.26.020 Designated Noise Zones.
- 10.26.025 Exterior Noise Standards.
- 10.26.030 Interior Noise Standards.
- 10.26.035 Exemptions.
- 10.26.040 Schools, Day Care Centers, Churches, Libraries, Museums, Health Care Institutions—  
Special Provisions.
- 10.26.045 Heating, Venting and Air Conditioning—Special Provisions.
- 10.26.050 Sound-Amplifying Equipment.
- 10.26.055 Noise Level Measurement.
- 10.26.065 Proposed Developments.
- 10.26.070 Prima Facie Violation.
- 10.26.075 Violations.
- 10.26.080 Violations—Additional Remedies—Injunctions.
- 10.26.085 City Manager Waiver.
- 10.26.090 Noise Abatement Programs.
- 10.26.095 Manner of Enforcement.

~~10.26.100 Severability.~~

#### 10.26.005 Declaration of Policy.

B. It is determined that certain noise levels are detrimental to the public health, welfare and safety and contrary to public interest, therefore, the City Council ~~of the City of Newport Beach~~ does ordain and declare that creating, maintaining, causing or allowing to be created, caused or maintained, any noise in a manner prohibited by, or not in conformity with, the provisions of this chapter, is a public nuisance and may be punished as a public nuisance. ~~The ordinance codified in this chapter is effective thirty (30) days~~

~~from adoption, however, all fixed noise sources existing at the date of adoption shall have ninety (90) days from the date of adoption to achieve compliance with this chapter.~~

**10.26.010 Definitions.**

~~“Person” means any individual, firm, partnership, association, corporation, company or organization of any kind, including public agencies.~~

**~~10.26.100 Severability.~~**

~~If any provision, clause, sentence, or paragraph of this chapter, or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the other provisions of this chapter which can be given effect without the invalid provisions or application and, to this end, the provisions of this chapter are hereby declared to be severable.~~

## Chapter 10.28

### LOUD AND UNREASONABLE NOISE\*

#### 10.28.010 Loud and Unreasonable Noise.

~~M.—Penalties. Any person who violates any provision of this section is guilty of a misdemeanor, unless the violation is deemed an infraction pursuant to the provisions of Section 1.04.010 of this Code.~~

#### 10.28.020 Loud and Raucous Noise from Sound-Making or Amplifying Devices Prohibited.

~~D.—Penalties. Any person who violates any provision of this section is guilty of a misdemeanor unless the violation is deemed an infraction pursuant to the provisions of Section 1.04.010 of this Code.~~

#### 10.28.040 Construction Activity—Noise Regulations.

B 3. Emergency work performed pursuant to written authorization of the Community Development Director, ~~or his or her designee.~~

B 4. Maintenance, repair or improvement of any public work or facility by public employees, by any person or persons acting pursuant to a public works contract, or by any person or persons performing such work or pursuant to the direction of, or on behalf of, any public agency; provided, however, this exception shall not apply to the City ~~of Newport Beach~~, or its employees, contractors or agents, unless:

~~D.—Any person who violates any provision of this section is guilty of a misdemeanor unless the violation is deemed an infraction pursuant to the provisions of Section 1.04.010, or any successor section, of this Code.~~

DE. Designated High-Density Area. The term “designated high-density area” shall mean any shaded area on the following map. See Exhibit A\*. The geographical boundaries of a homeowners’ association, as defined in subsection (F) of this section, shall be excluded from the definition of a “designated high-density area” if the City Council adopts a resolution pursuant to subsection (F) of this section.

EF. A homeowners’ association located within a designated high-density area may exclude the geographical boundaries of the homeowners’ association from the definition of a designated high-density area if:

#### 10.28.045 Real Property Maintenance—Noise Regulations.

E 1. Emergency property maintenance authorized by the Community Development Director, ~~or his or her designee;~~

~~F.—Penalties. Any person who violates any provision of this section is guilty of a misdemeanor unless the violation is deemed an infraction pursuant to the provisions of Section 1.04.010 of this Code.~~

## Chapter 10.32

### SOUND-AMPLIFYING EQUIPMENT

#### 10.32.040 Issuance of Permit.

A. Upon receiving a complete application for a permit for the use of sound-amplifying equipment or a sound truck, the Finance Director ~~or designee~~ shall conduct an investigation within ten (10) days of receipt of a complete application to determine whether to approve the application. Unless the application is denied pursuant to subsection (B) of this section, the Finance Director ~~or designee~~ shall approve or conditionally approve the application for a permit if it is determined that all the requirements of this chapter are met and if it appears from the information contained in the application and such additional information as may be presented to the Finance Director ~~or designee~~ that the proposed use of the sound-amplifying equipment or sound truck complies with the regulations contained in Section 10.32.060. The permit shall be nontransferable and valid for a period not to exceed six (6) months.

C. Specification of Hours. If a permit is granted, the Finance Director ~~or designee~~ shall specify the hours during which the sound-amplifying equipment or sound truck may be used after considering the needs of the applicant, the area or areas in which the sound will be emitted, and the effects of such use on the public's health, safety and welfare.

D. Appeals. Actions by the Finance Director ~~or designee~~ may be appealed by any interested party to the City Manager by filing a written statement with the City Clerk setting forth the facts and circumstances regarding the action by the Finance Director ~~or designee~~. The City Manager shall notify the appellant and applicant in writing of the time and place of the hearing on the appeal. The hearing on appeal shall be heard and determined by the City Manager within ten (10) days of receipt of a written appeal. The decision of the City Manager shall be final as to the City but subject to judicial review pursuant to Cal. Code Civ. Proc. Section 1094.5.

## Chapter 10.36

### MINOR'S CURFEW

#### 10.36.020 Definition.

For the purpose of this chapter, any person under the age of eighteen (18) years who is not an "emancipated minor" as provided in Cal. Fam. Code Section 7002 shall be deemed a minor.

## Chapter 10.40

### INTERFERENCE WITH RADIO RECEPTION

#### Sections:

#### ~~10.40.010 Interference Prohibited.~~

#### ~~10.40.020 Enforcement—Right of Entry—Notice.~~

#### ~~10.40.030 Restriction on Sale of Electrical Devices.~~

#### ~~10.40.040 Authority to Disconnect Power Lines.~~

#### ~~10.40.010 Interference Prohibited.~~

~~No person shall operate any device, appliance, equipment or apparatus in the City, generating or causing high frequency oscillations, or radiations which interfere with radio broadcast receiving apparatus or wireless receiving apparatus, except that a person duly licensed to practice medicine, osteopathy, chiropractic or dentistry, by the State, or duly licensed by the City to carry on or conduct the business of a massage parlor or x-ray laboratory, may operate or cause to be operated any machine necessary to give treatment; provided, that all reasonable methods of preventing interference with radio broadcast, receiving apparatus or wireless receiving apparatus has been applied.~~

~~This section shall not apply to radio broadcast stations, either commercial or amateur, licensed by the Federal Government or which are engaged in interstate communication or are public utilities under the supervision of the Public Utilities Commission.~~

#### ~~10.40.020 Enforcement—Right of Entry—Notice.~~

~~The Electrical Inspector, or his duly authorized deputies, shall have the right to enter upon any premises at all reasonable hours for the purpose of inspecting the installation and working of all apparatus coming within the terms of this Code, and it shall be unlawful for any person to interfere with the Electrical Inspector, or his duly authorized deputies, in making such inspection, or to refuse to permit the Electrical Inspector, or his duly authorized deputies, to enter the premises for such purposes.~~

~~When an inspection and test shall have been made by the Electrical Inspector and it is found that equipment or apparatus coming within the terms of this Code, is being operated in violation of the terms of this Code, the person responsible for the operation of such equipment shall be notified in writing to discontinue the use of such machine, or to make additions, repairs or modifications thereof, in order that the same may be operated in a manner which complies with the provisions of this Code. In the event that the owner or operator of such machine, or apparatus does not, within forty eight (48) hours after receipt of notice to repair or discontinue the use of such machine, either discontinue the use of such machine or repair the same so that it complies with the provisions of this Code, such owner shall be deemed to be operating such machine or apparatus in violation of the provisions of this Code.~~

**~~10.40.030 Restriction on Sale of Electrical Devices.~~**

~~No person shall sell or offer to sell, or keep in stock for the purpose of sale, any electrical appliance, equipment or device, for use in the City, the operation of which in the ordinary course of use will constitute a violation of the terms of Sections 10.40.010 and 10.40.020.~~

**~~10.40.040 Authority to Disconnect Power Lines.~~**

~~The Electrical Inspector is hereby authorized to disconnect the power line from any meter through which power is furnished to any appliance, equipment or apparatus being operated in violation of the provisions of this chapter, and the same shall not be connected until the apparatus has been properly shielded or altered so that its operations will not constitute a violation of Section 10.36.010.~~

~~Chapter 10.45~~

~~HOTEL—LOITERING~~

**Sections:**

~~10.45.010 Hotel—Loitering.~~

~~10.45.020 Exceptions.~~

~~10.45.010 Hotel—Loitering.~~

~~No person shall enter upon the premises of or remain in any public room of a hotel after being notified by the owner, manager or other person in charge thereof to leave or remove himself therefrom.~~

~~10.45.020 Exceptions.~~

~~The provisions of Section 10.45.010 shall not apply in the following instances:~~

~~A.—Where its application results in or is coupled with an act prohibited by the Unruh Civil Rights Act or any other provision of law relating to prohibited discrimination against any person on account of color, race, religion, creed, ancestry or national origin;~~

~~B.—Where its application results in or is coupled with an act prohibited by Section 365 of the California Penal Code or any other provision of law relating to duties of innkeepers and common carriers;~~

~~C.—Where its application would result in an interference with or inhibition of any other exercise of a constitutionally protected right of freedom of speech such as (but not limited to) peaceful expressions of political or religious opinions, not involving offensive personal conduct.~~

## Chapter 10.48

### WEED AND RUBBISH ABATEMENT\*

#### 10.48.010 Definitions.

~~Fire Chief. The term "Fire Chief" shall mean the Chief of the Newport Beach Fire Department.~~

~~Fire Marshal. The term "Fire Marshal" shall mean the Fire Marshal of the Newport Beach Fire Department, his assistants and deputies, or other public officers designated by the Fire Chief, to perform the duties imposed by this chapter upon the Fire Marshal.~~

#### 10.48.020 Authority to Declare Nuisance and Abate.

E. Weeds, trees, shrubs, or vegetation determined by the Fire Marshal to be a fire hazard, and which is located in the Local Responsibility Area Very High, High and Moderate Fire Hazard Severity Zones.

#### 10.48.030 Notice of Nuisance.

B. Notice of Abatement Proceedings. Whenever the Fire Marshal ~~or a designee~~ determines that a nuisance exists and the owner of a property fails to properly abate the nuisance, the Fire Marshal is ordered to take appropriate correction actions based upon those findings. The Fire Marshal shall notify the owner of affected properties, as shown on the latest equalized tax assessment roll, by mail, of intention to abate the nuisance.

#### 10.48.040 Hearing Procedure.

A. The City Manager ~~or his designee~~ shall only consider evidence that is relevant to whether a nuisance existed and whether the property owner caused or maintained the nuisance.

G. A hearing before the City Manager, ~~or his designee~~, shall be set for a date that is not less than ten days and not more than fourteen (14) days from the date the request for hearing is filed. The person requesting the hearing shall be notified of the time and place set for the hearing at least five (5) days prior to the date of the hearing.

#### 10.48.050 Appeal Decision.

A. After considering all the testimony and evidence submitted at the appeal hearing, the City Manager, ~~or his designee~~, shall issue a written decision within forty-eight (48) hours of the hearing upholding or denying the notice of abatement proceeding and shall list within the decision the reasons for that decision. The City Manager, ~~or his designee~~, may impose such conditions and take such other actions as is deemed appropriate to carry out the purpose of the provisions of this chapter.

B. The decision of the City Manager ~~or his designee~~ shall be final as to the City but subject to judicial review pursuant to Cal. Code Civ. Proc. Section 1094.5.- and The decision shall be served ~~by mail~~ on the property owner in accordance with Section 1.08.080 within forty-eight (48) hours of the hearing.

**10.48.060 Abatement Costs.**

B. The Fire Chief ~~or his designee~~ shall notify, in writing, all parties concerned of the amount of such assessment resulting from such work. If the total assessment determined as provided for in this section is not paid within thirty (30) days after mailing of such notice, the property owner shall be billed. If unpaid, such charges shall be placed as a special assessment on the tax bill for the property pursuant to Cal. Gov. Code Section 38773.5 ~~of the Government Code~~.

## Chapter 10.50

### PUBLIC NUISANCE ABATEMENT

#### 10.50.010 Definitions.

~~“City Clerk” means the City Clerk of the City of Newport Beach or his or her designee.~~

~~“City Manager” means the City Manager of the City of Newport Beach or his/her designee, including, without limitation, a Hearing Officer designated by the City Manager to conduct proceedings pursuant to this chapter.~~

#### 10.50.020 Nuisance.

B. Any swimming pool, spa, pond, fountain or other body of water which is allowed to become stagnant, unsanitary or unsafe ~~or does not comply with the provisions of Sections 15.04.180 and 15.05.140;~~

I. A violation of any provision of this ~~Newport Beach Municipal Code;~~

#### 10.50.110 Hearing on Assessment.

In the event of abatement by the City, the City Clerk shall submit the report and account for hearing by the City Council at a regular meeting held no more than thirty ~~(30) calendar~~ days after the date of filing. The City Clerk shall post a copy of the report and account and notice of the time and place of hearing in a conspicuous place in or near the entrance of the Newport Beach City Hall. The owner of the property on which the nuisance was abated shall be sent a notice advising of the date, time and place of the hearing. The notice shall be served as provided in Section 10.50.040.

#### 10.50.160 Alternative Actions.

~~A.—Nothing in this chapter shall be deemed to prevent the City Council from authorizing the City Attorney to commence a civil action to abate the nuisance in addition to, alternatively to, or in conjunction with the proceeding set forth in this chapter, nor shall anything in this chapter be deemed to prevent the City from commencing a criminal action with respect to the violation of this chapter.~~

AB. This chapter is not the exclusive regulation of property maintenance. It shall be supplemental in addition to other regulatory codes, statutes and ordinances heretofore or hereinafter enacted by the City, State ~~of California~~, or any other legal agency having jurisdiction.

~~C.—Each day that an owner allows a public nuisance to remain on his/her property shall be considered a violation of this code and may be punished as provided in Chapter 1.04 or Chapter 1.05 of this code.~~

BD. The prevailing party in any judicial action or administrative proceeding to abate a nuisance shall recover the attorneys’ fees and costs incurred as follows:

2. In no judicial action or administrative proceeding shall an award of attorneys’ fees to a prevailing party exceed the ~~amount of~~ reasonable attorneys’ fees incurred by the City in the judicial action or administrative proceedings; and

3. Attorneys' fees and costs may include, but not be limited to, costs and expenses related to the use of expert witnesses incurred in the evaluation and/or prosecution of any nuisance abatement proceedings pursuant to the provisions of this ~~c~~Chapter.

## Chapter 10.52

### ABANDONED OR WRECKED VEHICLES\*

#### Sections:

**10.52.005 Findings and Purpose.**

**10.52.010 Declaration of Nuisance.**

**10.52.015 Definitions.**

**10.52.020 Exceptions.**

**10.52.025 Other Regulations.**

**10.52.030 Administration and Enforcement.**

**10.52.035 Authority to Abate and Remove.**

**10.52.040 Notice of Intention to Abate and Remove—Form Mailing and Procedure.**

**10.52.045 Removal/Without Hearing.**

**10.52.050 Hearing Procedures.**

**10.52.055 Removal—When Authorized.**

**10.52.060 Assessment of Costs of Removal/Administration.**

**10.52.065 Notice to Department of Motor Vehicles.**

~~**10.52.070 Severability.**~~

**10.52.020 Exceptions.**

Nothing in this section shall authorize the maintenance of a public or private nuisance as defined under provisions of law other than Chapter 10 (commencing with Section 22650) of Division 11 of the Cal. Veh. Vehicle Code and this chapter.

**10.52.045 Removal/Without Hearing.**

B. A vehicle, or part thereof, is inoperable due to the absence of a motor, transmission, or wheels, is incapable of being towed, is located on property that is either zoned for agricultural use or which contains no dwelling units, is valued at less than two hundred dollars (\$200.00) by a person specified in Section 22855 of the California-Cal. Veh. icle Code, has been determined by the City Council to be a public nuisance presenting an immediate threat to the public health or safety and the property owner has signed a release authorizing removal of, and waiving further interest in, the vehicle or part thereof, and no request for hearing was made by the registered or legal owner of the vehicle at the time the release was signed. The vehicle or part shall be disposed of pursuant to the provisions of Section 22661 and 22662 of the California Cal. Veh. icle Code; or

#### **10.52.050 Hearing Procedures.**

A. Upon a timely request for hearing, a public hearing shall be held by and before the City Manager ~~or his designee~~. The City Manager, ~~or designee,~~ shall mail notice of the hearing, specifying the date, time and location of the hearing, by certified mail, at least ten (10) days prior to the hearing, to the owner of the land and to the owner(s) of the vehicle unless the vehicle is in such condition that identification numbers are not available to determine ownership. The City Manager, ~~or designee,~~ shall hear and receive all facts, evidence and testimony pertinent to the status and condition of the vehicle or parts, the circumstances surrounding its presence on private or public property, any facts which may render provisions of this chapter inapplicable to the vehicle or parts, the appropriate conditions that should be attached to an order for abatement, and the responsibility, if any, of the land owner for the cost of removal and the administrative proceedings. The City Manager shall not be limited by the technical rules of evidence. The owner of land, and the owner(s) of the vehicle may appear in person at the hearing, may appear by representatives, or may submit a sworn written statement prior to the hearing.

B. City Manager ~~or designee~~ may impose such conditions, or take such action, as ~~he or she~~ the City Manager ~~deems~~ appropriate under the circumstances to carry out the purposes of this chapter. The City Manager, ~~or designee,~~ may delay the time for removal of the vehicle or parts;

C. The City Manager, ~~or designee,~~ shall determine if the vehicle, or part, constitutes a public nuisance as provided in this chapter and upon such determination shall enter an order directing the vehicle or part to be removed from the property and disposed of as provided in this chapter. The order requiring removal shall include a description of the vehicle or parts, the correct identification number and license number of the vehicle, if available, and the location of the property on which the vehicle or part is located. Written notice of the decision shall be given by certified mail to each owner of land, vehicle or part that does not appear at the hearing and to any interested party that makes a written presentation, but does not appear.

#### **10.52.055 Removal—When Authorized.**

Five (5) days after adoption of the order declaring the vehicle or parts to be a public nuisance, or five (5) days from the date of mailing of the notice of decision, if notice is required by this chapter, the vehicle or parts may be removed and disposed of as provided by law. After a vehicle has been removed, it shall not thereafter be reconstructed or made operable unless it is a vehicle which qualifies for either horseless carriage license plates or historical vehicle license plates pursuant to Section 5004 of the ~~California Cal.~~ Vehicle Code, in which case the vehicle may be reconstructed or made operable.

#### **10.52.060 Assessment of Costs of Removal/Administration.**

The cost of administering and enforcing this chapter, and the cost of removal of any vehicle or part declared a public nuisance pursuant to this chapter, shall be charged against the owner of the land unless it is determined that the vehicle was placed on the land without the consent of the land owner and the land owner did not subsequently acquiesce in the presence of the vehicle. The amount of the cost of administration, enforcement and removal shall be assessed against the property on which the vehicle or part was located and pursuant to ~~Section 38773.5 of the Cal.~~ Government Code Section 38773.5 and shall be transmitted to the tax collector for collection.

**~~10.52.070 Severability.~~**

~~If any section, subsection, sentence, clause, or phrase of this chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.~~

## Chapter 10.56

### DRUG PARAPHERNALIA

#### Sections:

#### ~~10.56.010 Purpose.~~

#### ~~10.56.020 Definitions.~~

#### ~~10.56.030 Minors Excluded.~~

#### ~~10.56.040 Sale and Display Rooms.~~

#### ~~10.56.050 Nuisance.~~

#### ~~10.56.010 Purpose.~~

~~The task of protecting minors from drug abuse poses unique problems in that minors often lack the discretion and judgment of adults. They frequently do not make distinctions made by adults between the freedom to advertise or sell an item which may be used for illegal purposes and the impropriety of using that item for an illegal manner. The unrestricted display and sale by businesses of paraphernalia such as that defined in this chapter may create the impression in the minds of minors that use of such paraphernalia in conjunction with controlled substances is endorsed by those businesses displaying the paraphernalia and condoned by the community at large. The impression of endorsement or acceptance of the use of controlled substances is likely to encourage drug abuse by minors. Thus, in an effort to protect the health, safety and well-being of the community in general, and minors in particular, it is necessary and desirable to regulate the display and sale of such paraphernalia in businesses within the City of Newport Beach.~~

#### ~~10.56.020 Definitions.~~

~~For the purpose of this chapter, the following definitions shall apply:~~

~~A. "Business" shall mean any commercial enterprise or establishment, whether ongoing or transient, and whether occupying space within a structure or outside.~~

~~B. "Cocaine spoon" shall mean a spoon with a bowl so small that the primary use for which it is reasonably adapted or designed is to hold or administer cocaine, and which is so small as to be unsuited for the typical lawful uses of a spoon. A cocaine spoon may or may not be merchandized on a chain, may or may not be labeled as a cocaine spoon or "coke" spoon.~~

~~C. "Marijuana or hashish pipe" shall mean a pipe characterized by a bowl which is so small that the primary use for which it is reasonably adapted or designed is the smoking of marijuana or hashish, and not the lawful smoking of tobacco, and which may or may not be equipped with accessories which are designed to cool or concentrate the smoke.~~

~~D. "Drug paraphernalia" shall mean a cocaine spoon, marijuana or hashish pipe, or other device, contrivance, instrument or paraphernalia designed or adapted for the purpose of smoking, injecting or~~

~~consuming marijuana, hashish, PCP, or any controlled substance, as defined in the Health and Safety Code of the State of California, other than prescription drugs, and devices which aid in the smoking, ingestion, or injection of marijuana, PCP, hashish, cocaine, or other controlled substances such as roach clips and cigarette papers and rollers.~~

~~**10.56.030 Minors Excluded.**~~

~~No owner, manager, proprietor or other person in charge of any business selling, or displaying for the purpose of sale, any drug paraphernalia, shall allow or permit any person under the age of eighteen (18) years to be in, remain in, enter or visit any room within such business where drug paraphernalia is displayed or sold, or purchase or receive drug paraphernalia, unless such person is accompanied by one of his or her parents, or by his or her legal guardian. No owner, manager, proprietor or other person in charge of any place of business selling, or displaying for the purpose of sale, any drug paraphernalia, where such business is located outside of a structure, shall allow or permit any person under the age of eighteen (18) years to be in, or remain in, proximity to such display, or purchase or receive any such drug paraphernalia, unless such minor is accompanied by one of his or her parents, or by his or her legal guardian. This section shall not apply to a licensed pharmacist or physician dispensing properly prescribed drugs, otherwise illegal, and selling or advertising devices for the consumption of those prescribed drugs.~~

~~**10.56.040 Sale and Display Rooms.**~~

~~No person shall maintain in any place of business open to the general public the display for purposes of sale of drug paraphernalia unless such display is within a separate room or enclosure, the display not being visible from outside of the room or enclosure, and a sign shall be posted at the entrance of such room or enclosure, the sign clearly stating that drug paraphernalia are being offered for sale in the room or enclosure and that minors, unless accompanied by a parent or legal guardian, are excluded from the room or enclosure.~~

~~**10.56.050 Nuisance.**~~

~~A violation of the provisions of this chapter, in addition to other remedies provided by law, including the penalty provisions applicable for violation of terms and provisions of this Code, shall constitute a public nuisance and may be abated pursuant to the provisions of Section 731 of the Code of Civil Procedure of the State of California.~~

## Chapter 10.58

### POLICE SERVICES AT LARGE PARTIES, GATHERING OR EVENTS ON PRIVATE PROPERTY

#### Sections:

**10.58.010 Findings and Purpose.**

**10.58.020 Definitions.**

**10.58.030 Police Services at Large Parties, Gatherings or Events Requiring Second or Subsequent Responses.**

**10.58.040 Procedures for Imposition of Civil Fines.**

~~**10.58.050 Confidentiality.**~~

~~**10.58.060 Severability.**~~

**10.58.020 Definitions.**

~~“Owner” means the person(s) or entity(ies) that hold(s) legal and/or equitable title to the private property.~~

**10.58.030 Police Services at Large Parties, Gatherings or Events Requiring Second or Subsequent Responses.**

The initial call, or any subsequent call, may also result in the arrest and/or citation of violators of the [State Cal. Pen. Code](#) or other local regulations.

**10.58.040 Procedures for Imposition of Civil Fines.**

B. If the person responsible for the event appeals the fine within the time specified in subsection (A), the City Clerk shall serve written notice to the person responsible and to the owner, if different, by first class mail, of the date, time and place for a hearing on the appeal. The hearing shall be scheduled not less than fifteen (15) days, nor more than sixty (60) days, from the date on which notice of the hearing is served by the City Clerk. The City Manager may preside over the hearing or may designate a Hearing Officer to take evidence and submit proposed findings and recommendations to the City Manager. The City Manager shall uphold the fine only upon a finding that a violation has been proven by a preponderance of the evidence. The hearing shall be conducted according to the rules normally applicable to administrative hearings. The City Manager shall render a decision within thirty (30) days of the hearing and the decision shall be final [as to the City but subject to judicial review pursuant to Cal. Code Civ. Proc. Section 1094.5.](#)

~~**10.58.050 Confidentiality.**~~

~~Information furnished and secured pursuant to this chapter shall be confidential in character and shall not be subject to public inspection and shall be kept so that the contents thereof shall not be known except to person charged with the administration of this chapter.~~

~~**10.58.060 Severability.**~~

~~If any section, subsection, sentence, clause, phrase or portion of this chapter is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter. The City Council hereby declares that it would have adopted the ordinance codified in this chapter and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.~~

## Chapter 10.59

### GRAFFITI

#### 10.59.010 Purpose.

4. This chapter is consistent with provisions of the Cal. Government Code which authorizes the enactment of ordinances to provide for the use of City funds to remove graffiti (Cal. Government Code Section 53069.3), and to pay rewards (Cal. Government Code Section 53069.5).

5. This chapter is intended to be complimentary to and not in conflict with Cal. Pen. Code Section 594, which provides that any person who maliciously defaces property is guilty of vandalism, and Section 594.1 which provides that certain activities involving the possession, sale and use of aerosol paint containers are misdemeanors.

#### 10.59.020 Definitions

~~7.—City Manager: The term “City Manager” shall mean the Newport Beach City Manager or his or her designee.~~

#### 10.59.090 Abatement and Cost Recovery Proceedings.

A. Notice. The City Manager ~~or his/her designee~~ shall issue a forty-eight (48) hour written notice of intention to abate and remove the graffiti as a public nuisance and shall serve such notice by any of the following methods:

B. Form. The notice of intention shall be in substantially the following form:

NOTICE OF INTENT TO REMOVE GRAFFITI

(Name and address of person notified)

Date:

NOTICE IS HEREBY GIVEN that you are required by Newport Beach Municipal Code §Section 10.59.070 at your expense to remove or paint over the graffiti in existence on the property located at (address), which is visible to public view, within forty-eight (48) hours after receipt of this notice; or, if you fail to do so, City employees or private contractors employed by the City will enter upon your property and abate the public nuisance by removal or painting over the graffiti. The cost of the abatement by the City employees and private contractors will be assessed upon your property and such costs will constitute a lien upon the land until paid.

All persons having any objection to, or interest in said matters are hereby notified to submit any objections or comments to the City Manager ~~or his/her designee~~ within forty-eight (48) hours from receipt of this notice. At the conclusion of this forty-eight (48) hour period, without further notice and at your expense, the City may proceed with the abatement of the graffiti inscribed on your property.

C. Appeal.

1. Within forty-eight (48) hours of receipt of the notice, the owner or person occupying or controlling such property affected may appeal the order of abatement to the City Council of the

City of Newport Beach. Appeals shall be filed with the City Clerk and shall be accompanied by a letter stating the reasons for the appeal and a deposit/fee as required by City Council resolution. The City Council shall designate a Hearing Officer to hear such appeals. An appeal shall be accompanied by a deposit/fee as required by City Council resolution.

2. Within fifteen (15) days of receipt of the appeal application, the City Clerk shall notify the applicant of the date, time and location at which the Hearing Officer shall hear the appeal. The Hearing Officer shall hear and pass upon the appeal within fifteen (15) days. The decision of the Hearing Officer thereupon shall be final ~~and conclusive~~ as to the City but subject to judicial review pursuant to Cal. Code Civ. Proc. Section 1094.5.

D. Removal by City. Forty-eight (48) hours after service of the notice, or if appealed, not less than twenty-four (24) hours after the decision of the Hearing Officer declaring the graffiti to be a public nuisance, the City is authorized and directed to cause the graffiti to be abated by the City or private contractor; and the City or its private contractor is expressly authorized to enter upon the property for such purposes.

E 2. Pursuant to ~~Cal. Government~~ Code Section 38773.5, the total cost of abatement, including all administrative costs, shall constitute a special assessment against that parcel. After the assessment is made and confirmed, it shall constitute a lien on the parcel.

**10.59.100 Reward.**

Pursuant to ~~Section 53069.5 of the Cal. ifornia~~ ~~Gov.ernment~~ Code Section 53069.5, the City may pay a reward, the amount to be established by City Council resolution, to any person who furnishes information leading to the identification and apprehension of any persons convicted of ~~wilfully~~willfully applying graffiti to any surface located on private or public property.

## Chapter 10.60

### REGULATION OF DISPLAY OF MATERIAL, WHICH IS HARMFUL TO MINORS, IN A PUBLIC PLACE

#### Sections:

10.60.010 Findings and Purpose.

10.60.020 Definitions.

10.60.030 Prohibition.

~~10.60.040 Enforcement.~~

#### 10.60.020 Definitions.

A. "Harmful matter" shall be defined as specified in Cal. Pen Code Section 313(a) ~~of the Penal Code of the State of California;~~

B. "Matter" shall be defined as specified in Cal. Pen Code Section 313(b) ~~of the Penal Code of the State of California;~~

~~C. "Person" shall mean any individual, partnership, firm, association, or other legal entity;~~

CD. "Knowingly" shall mean being aware of the character of the matter;

DE. "Exhibit" shall mean to show or display to members of the public;

EF. "Minor" shall mean any natural person under eighteen (18) years of age.

~~10.60.040 Enforcement.~~

~~Any violation of this chapter shall be punishable as a misdemeanor or an infraction in accordance with the provisions of Section 1.04.010 of the Newport Beach Municipal Code. In addition, the City Attorney may institute an action in any court of competent jurisdiction to restrain, enjoin, or abate any condition found to be in violation of this chapter.~~

## Chapter 10.64

### CONSTRUCTION AND MAINTENANCE PROJECTS IN RESIDENTIAL DISTRICTS

#### Sections:

10.64.010 Purpose and Intent.

10.64.020 Definitions.

10.64.030 Construction and Maintenance Projects—Regulations.

~~10.64.040 Penalty.~~

10.64.050 Construction/Maintenance Project Permits.

10.64.060 Approval, Denial, Revocation of Construction/Maintenance Project Permits.

10.64.070 Appeal of Denial or Revocation of Construction/Maintenance Project Permit.

~~10.64.080 Amortization.~~

**10.64.030 Construction and Maintenance Projects—Regulations.**

B. Upon completion or abandonment of a construction or maintenance project, it shall be removed from the lot within fifteen (15) ~~calendar~~ days.

C. Nothing in this chapter shall prevent the enforcement of any other provision of the ~~Newport Beach Municipal~~ Code. In the event of any conflict between this chapter and another provision in this Code, the provision establishing a more stringent restriction shall control.

~~10.64.040 Penalty.~~

~~A.—Any violation of this chapter is subject to those remedies provided for in Chapters 1.04 and 1.05 in addition to any other remedies allowed by State and Federal law.~~

~~B.—Any violation of this chapter is hereby declared to be a public nuisance.~~

**10.64.050 Construction/Maintenance Project Permits.**

E. No construction/maintenance project permit shall be issued for a period in excess of six (6) months. A permit may not be extended beyond the initial six-month period unless the Community Development Director, ~~or his or her designee~~, finds both that: (1) due to circumstances beyond the control of the construction/maintenance project permittee, the construction or maintenance project could not be fully completed within the time permitted by the initial construction/maintenance project permit; and (2) extension of the construction/maintenance project permit will not adversely affect the public views or the public health, safety or welfare. The Community Development Director, ~~or his or her designee~~, may limit the term of the construction/maintenance project permit to a period of less than six (6) months upon a determination of any of the following:

2. That any period of time in excess of that prescribed by the Community Development Director, ~~or his or her designee~~, would adversely affect the public views, or the public health, safety or welfare; or

3. That similar construction or maintenance projects previously approved by the Community Development Director, ~~or his or her designee~~, were completed in a period of time less than the six-month maximum.

#### **10.64.060 Approval, Denial, Revocation of Construction/Maintenance Project Permits.**

A. The ~~Community Development Planning~~ Director ~~or his designee~~ shall be responsible for the review and approval, denial or revocation of construction/maintenance project permits pursuant to this chapter.

B. No construction/maintenance project permit shall be issued for any construction or maintenance project where:

1. The activity to be conducted under the construction/maintenance project permit violates any provision of this ~~Newport Beach Municipal~~ Code, State or ~~F~~ederal law;

2. The ~~Community Development Planning~~ Director, ~~or his designee~~, determines that the activity described in the permit would adversely affect the public views, or the public health, safety or welfare.

C. The ~~Community Development Planning~~ Director, ~~or his designee~~, may deny or revoke construction/maintenance project permit, or the application for the same, if he determines any of the following:

D. The procedure for revocation of a construction/maintenance project permit shall require that the ~~Community Development Planning~~ Director ~~or his designee~~ conduct an investigation of the facts surrounding the alleged violation of any portion of this chapter and notify the permittee in writing of his intent to revoke any construction/maintenance project permit issued pursuant to this chapter. The notice of intent to revoke shall become effective, and the construction/maintenance project permit shall be revoked, fifteen (15) days after the date of the notice of intent to revoke unless the permittee elects an administrative hearing as set forth in this chapter.

#### **10.64.070 Appeal of Denial or Revocation of Construction/Maintenance Project Permit.**

A. Any person whose application is denied or who receives notice of intent to revoke a construction/maintenance project permit may appeal that decision by requesting a hearing in writing to the City Clerk, including payment of any applicable fee(s), within fifteen (15) days from the date of denial or date of the notice of intent to revoke the permit. Failure to timely appeal the denial or intent to revoke a permit by the ~~Community Development Planning~~ Director, ~~or his designee~~, shall render that decision final.

E. The Hearing Officer shall only consider evidence that is relevant to whether the ~~Community Development Planning~~ Director ~~or his designee~~ has properly denied or notified the permittee of their intent to revoke the construction/maintenance project permit pursuant to this chapter.

F. The written notice from the ~~Community Development Planning Director or his designee~~ denying or intending to revoke a construction/maintenance project permit shall constitute prima facie evidence of

the respective facts contained in those documents supporting the basis for denial of the construction/maintenance project permit application or intended revocation of the construction/maintenance project permit.

G. At least ten (10) days prior to the hearing, the appellant shall be provided with copies of any documents submitted or relied upon by the Community Development Planning Director ~~or his designee~~ in making the Community Director'shis determination to deny the construction/maintenance project permit application or revoke the permit. No other discovery is permitted. Formal rules of evidence shall not apply.

I. The failure of any person requesting an appeal to appear at the administrative hearing shall constitute a failure to exhaust their administrative remedies and render the decision of the Community Development Planning Director ~~or his designee~~ final.

J. The Hearing Officer may continue the hearing and request additional information from either the Community Development Planning Director ~~or his designee~~ or the appellant, or both, prior to issuing a written decision.

K. Any person aggrieved by an administrative decision of a Hearing Officer at a hearing under this chapter may obtain review of the administrative decision by filing a petition for review with the Orange County Superior Court—Harbor Judicial District in accordance with the timelines and provisions as set forth in California-Cal. Gov.ernment Code Section 53069.4.

**~~10.64.080 Amortization.~~**

~~Any construction or maintenance project otherwise subject to this chapter but that is commenced prior to the enactment of the ordinance codified in this chapter shall not be exempted from the construction/maintenance project permit requirement of this chapter. However, any construction or maintenance project which was commenced prior to the enactment of the ordinance codified in this chapter shall be exempt from enforcement for a period of six months following the effective date of the ordinance codified in this chapter.~~

## Chapter 10.66

### LOUD AND UNRULY GATHERING

#### Sections:

**10.66.010 Definitions.**

**10.66.020 Loud or Unruly Gathering—Public Nuisance.**

**10.66.030 Posting of Notice Regarding Loud or Unruly Gathering.**

**10.66.040 Second and Subsequent Responses.**

**10.66.050 Notice of Violation.**

**10.66.060 Violation—Penalty—Civil Fine.**

**10.66.070 Administrative Hearing, Appeal.**

**10.66.080 Collection of Delinquent Costs.**

~~**10.66.090 Cumulative Remedies.**~~

#### **10.66.040 Second and Subsequent Responses.**

If, after posting of a notice pursuant to Section 10.66.030(A), a peace officer is required to respond to the residential unit based upon another loud or unruly gathering and the owner of that residential unit does not reside within the residential unit, then the owner shall not be liable for the increased fine amount for the second or subsequent response unless notice has been mailed to the owner in compliance with Section 10.66.030(D) and fourteen (14) ~~calendar~~ days have passed since the mailing of said notice.

#### **10.66.060 Violation—Penalty—Civil Fine.**

G. Any owner or responsible person who intends to request an administrative hearing pursuant to Section 10.66.070 may request an advance deposit hardship waiver pursuant to Section 1.05.060(B). An owner or responsible person who is unable to pay all or a part of the civil fine due to the person's actual financial inability may file a written request for a civil fine waiver with the City's Finance Director, ~~or his or her designee~~, within fifteen (15) ~~calendar~~ days from the date of service of the citation or notice, whichever is earlier. The failure of any owner or responsible person to timely file a written request for a civil fine waiver with the City's Finance Director, ~~or his or her designee~~, shall be deemed a failure to exhaust the owner's or responsible person's administrative remedies with regard to the same.

1. The written request for a civil fine waiver shall be in writing and describe with particularity the owner's or responsible person's actual financial inability demonstrating why all or a part of the fine should be waived. Further, the written request for a civil fine waiver must be accompanied by a sworn affidavit and demonstrate to the satisfaction of the City's Finance Director, ~~or his or her designee~~, the owner's or responsible person's actual financial inability, that necessitates a waiver of all or a part of the civil fine amount. The City's Finance Director, ~~or his or her designee~~, is entitled to request additional documentation and information from the owner or responsible person in

order to fully assess the owner's or responsible person's actual financial inability. The failure of any owner or responsible person to timely submit all requested additional documentation and information to the City's Finance Director, ~~or his or her designee~~, as requested shall be deemed a failure to exhaust the owner's or responsible person's administrative remedies with regard to the same.

2. Once a complete written request for a civil fine waiver is filed with the City's Finance Director, ~~or his or her designee~~, the requirement to pay the civil fine shall be stayed until the City's Finance Director, ~~or his or her designee~~, determines whether to grant or deny the request.

3. If the City's Finance Director, ~~or his or her designee~~, grants the written request for a civil fine waiver, the owner or responsible person shall not be required to pay the civil fine. If the City's Finance Director, ~~or his or her designee~~, determines that the owner or responsible person has the financial ability to pay all or a part of the civil fine on a reasonable payment plan, the City's Finance Director, ~~or his or her designee~~, shall so notify the owner or responsible person and the owner or responsible person shall execute any agreements required by the City's Finance Director, ~~or his or her designee~~, to establish the payment plan.

4. The granting of any request for a civil fine waiver or payment plan shall not excuse or discharge any continuation or repeated occurrence of any violation of this chapter, nor shall it bar further enforcement action by the City.

5. If the City's Finance Director, ~~or his or her designee~~, denies the written request for a civil fine waiver the civil fine must be paid within ten (10) ~~calendar~~ days from the date of service of the City Finance Director's, ~~or his or her designee's~~, determination.

6. The City Finance Director's, ~~or his or her designee's~~, determination shall be (a) made within fifteen (15) ~~calendar~~ days of the date of receipt of the complete request or any additional information as requested by the City Finance Director, ~~or his or her designee~~; (b) be in writing; and (c) served either by personal delivery on the owner or responsible person or by deposit in the mail for delivery by the United States Postal Service, in a sealed envelope, postage prepaid, addressed to such owner or responsible person. The decision of the City's Finance Director, ~~or his or her designee~~, shall be final as to the City but subject to judicial review pursuant to Cal. Code Civ. Proc. Section 1094.5.

J. Any owner who does not reside within the residential unit, has a written lease or rental agreement for the residential unit and had the same residential unit posted with a notice pursuant to Section 10.66.030(A) may file a written petition with the Chief of Police, ~~or his or her designee~~, requesting permission to remove posted notice prior to the expiration of the ninety (90) day period. The Chief of Police, ~~or his or her designee~~, may grant the owner's written petition upon a satisfactory showing by the owner that the responsible person(s) for the loud or unruly gathering are no longer in possession of or allowed to occupy the residential unit.

#### **10.66.070 Administrative Hearing, Appeal.**

P. Any owner or responsible person aggrieved by a written decision of a Hearing Officer following an administrative hearing may obtain review of the decision by filing a petition for review with the Orange

County Superior Court, Harbor Justice Center in accordance with the timelines and provisions as set forth in California Government Code Section 53069.4.

~~**10.66.090 Cumulative Remedies.**~~

~~The remedies provided under this chapter are cumulative, and shall not restrict the City's ability to pursue any other remedy to which it is entitled under law or equity. Nothing in this chapter shall be deemed to preclude the imposition of any criminal penalty, nor shall anything in this chapter be deemed to conflict with any penalty or provision under State law, or prohibit any conduct authorized by the State or Federal constitutions.~~

## Chapter 10.68

### TARGETED RESIDENTIAL PICKETING

#### Sections:

10.68.010 Legislative Findings and Statement of Purpose.

10.68.020 Definitions.

10.68.030 Targeted Residential Picketing Prohibited.

~~10.68.040 Public Nuisance.~~

~~10.68.040 Public Nuisance.~~

~~Any violation of this chapter is hereby declared to be a public nuisance.~~

## Chapter 10.70

### ~~MEDICAL MARIJUANA CANNABIS REGULATIONS~~

#### Sections:

**10.70.010** Legislative ~~F~~findings and ~~S~~statement of ~~P~~urpose.

**10.70.020** Definitions.

**10.70.030** Prohibited ~~A~~activities.

~~**10.70.040** Public nuisance.~~

~~**10.70.050** Violations.~~

~~**10.70.060** Severability.~~

**10.70.010** Legislative ~~F~~findings and ~~S~~statement of ~~P~~urpose.

A. The City Council finds that the prohibitions on marijuana cultivation, marijuana processing, marijuana delivery, and marijuana dispensaries are necessary for the preservation and protection of the public health, safety, and welfare for the City and its community. The City Council's prohibition of such activities is within the authority conferred upon the City Council in ~~the City its~~ Charter and State law.

~~B. On October 9, 2015, the Governor signed the "Medical Marijuana Regulation and Safety Act" ("Act") into law. The Act becomes effective January 1, 2016, and contains new statutory provisions that:~~

~~1. Allow local governments to enact ordinances expressing their intent to prohibit the cultivation of marijuana and their intent not to administer a conditional permit program pursuant to Health and Safety Code Section 11362.777 for the cultivation of marijuana (Health and Safety Code Section 11362.777(c)(4));~~

~~2. Expressly provide that the Act does not supersede or limit local authority for local law enforcement activity, enforcement of local ordinances, or enforcement of local permit or licensing requirements regarding marijuana (Business and Professions Code Section 19315(a));~~

~~3. Expressly provide that the Act does not limit the authority or remedies of a local government under any provision of law regarding marijuana, including but not limited to a local government's right to make and enforce within its limits all police regulations not in conflict with general laws (Business and Professions Code Section 19316(c)); and~~

~~4. Require a local government that wishes to prevent marijuana delivery activity, as defined in Business and Professions Code Section 19300.5(m) of the Act, from operating within the local government's boundaries to enact an ordinance affirmatively banning such delivery activity (Business and Professions Code Section 19340(a)).~~

~~BC.~~ The City Council finds that this chapter: (1) expresses its intent to prohibit the cultivation of ~~cannabismarijuana~~ in the City and to not administer a conditional permit program pursuant to Health and Safety Code Section 11362.777 for the cultivation of marijuana in the City; (2) exercises its local authority

to enact and enforce local regulations and ordinances, including those regarding the permitting, licensing, or other entitlement of the activities prohibited by this chapter; (3) exercises its police power to enact and enforce regulations for the public benefit, safety, and welfare of the City and its community; and (4) expressly prohibits the delivery of ~~cannabis~~marijuana in the City, to the extent permitted by State and federal law.

#### **10.70.020 Definitions.**

For purposes of this chapter, the following definitions shall apply:

A. ~~“MarijuanaCannabis”~~ means any or all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin or separated resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin, including ~~marijuana~~cannabis infused in foodstuff or any other ingestible or consumable product containing ~~marijuana~~cannabis. “Cannabis” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this chapter, “cannabis” does not mean “industrial hemp” as defined by Cal. Food & Agr. Section 81000 or Cal. Health & Saf. Code Section 11018.5. The term “marijuana” shall also include “medical marijuana” as such phrase is used in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the State of California or subject to the provisions of California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).

B. “Caregiver” or “Primary Caregiver” shall have the same meaning as set forth in Cal. Health & Saf. Code Section 11362.7e.

C. “Commercial cannabis activity” shall have the same meaning as set forth in Cal. Bus. & Prof. Code Section 26001(j).

D. “Cooperative” means two (2) or more persons collectively or cooperatively cultivating, using, transporting, possessing, administering, delivering, or making available cannabis, with or without cultivation.

E. “Cultivation” or “Cultivate” shall have the same meaning as set forth in Cal. Bus. & Prof. Code Section 19300.5(l).

F. “Delivery” shall have the same meaning as set forth in Cal. Bus. & Prof. Code Section 19300.5(m).

G. “Dispensary” shall have the same meaning as set forth in Cal. Bus. & Prof. Code Section 19300.5(n). For purposes of this chapter, Dispensary shall also include a Cooperative.

H. “Medical cannabis” shall have the same meaning as set forth in Cal. Bus. & Prof. Code Section 19300.5(af).

I. “Medicinal and Adult-Use Cannabis Regulation and Safety Act” shall mean and refer to Cal. Bus. & Prof. Code Section 26000 et seq.

J. ~~“Marijuana processing”~~ means any method used to prepare ~~cannabismarijuana~~ or its byproducts for commercial retail and/or wholesale, including but not limited to: drying, cleaning, curing, packaging, and extraction of active ingredients to create ~~cannabismarijuana~~ related products and concentrates.

K. ~~“Qualifying Patient” or “Qualified Patient” shall have the same meaning as set forth in Cal. Health & Saf. Code Section 11362.7. B. “Marijuana cultivation” means growing, planting, harvesting, drying, curing, grading, trimming, or processing of marijuana.~~

~~C. “Marijuana processing” means any method used to prepare marijuana or its byproducts for commercial retail and/or wholesale, including but not limited to: drying, cleaning, curing, packaging, and extraction of active ingredients to create marijuana-related products and concentrates.~~

~~D. “Marijuana dispensary” or “marijuana dispensaries” means any business, office, store, facility, location, retail storefront or wholesale component of any establishment, cooperative or collective that delivers (as defined in Business and Professions Code Section 19300.5(m) or any successor statute thereto) whether mobile or otherwise, dispenses, distributes, exchanges, transmits, transports, sells or provides marijuana to any person for any reason, including members of any medical marijuana cooperative or collective consistent with the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the State of California, or for the purposes set forth in California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).~~

~~E. “Medical marijuana collective” or “cooperative or collective” means any group that is collectively or cooperatively cultivating and distributing marijuana for medical purposes that is organized in the manner set forth in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the State of California or subject to the provisions of California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code Sections 11362.7 to 11362.83~~

#### **10.70.030 Prohibited ~~A~~activities.**

A. No person shall establish, operate, conduct, permit or allow any cannabis or medical cannabis related use in the City, including, but not limited to, ~~Marijuana~~~~cannabis~~ cultivation, ~~marijuana~~ processing, ~~delivery~~, ~~marijuana~~ delivery, and ~~marijuana~~ dispensaries, cooperatives and all other commercial cannabis activities for which a State license is required under the Medicinal and Adult-Use Cannabis Regulation and Safety Act, regardless of whether the cannabis is used for medicinal purposes, ~~shall be prohibited activities in the City~~, except where the City is preempted by ~~f~~Federal or ~~S~~State law from enacting a prohibition on any such activity.

B. ~~No use permit, variance, building permit, or any other entitlement, license, or permit, whether administrative or discretionary, shall be approved or issued for~~ the any activities that relate in any way to ~~of~~ cannabis or medical cannabis uses including, but not limited to, ~~marijuana~~~~cannabis~~ cultivation, ~~marijuana~~ processing, ~~marijuana~~ delivery, ~~or~~ the establishment or operation of a ~~marijuana~~ dispensary, a cooperative or other commercial cannabis activities for which a state license is required under the Medicinal and Adult-Use Cannabis Regulation and Safety Act ~~in the City, and no person shall otherwise establish or conduct such activities in the City,~~ in the City, except where the City is preempted by ~~f~~Federal or ~~S~~State law from enacting a

prohibition on any such activity for which the use permit, variance, building permit, or any other entitlement, license, or permit is sought.

C. This section shall not limit the retail sale by delivery of medical cannabis to a qualified patient or caregiver from a location outside of the City’s jurisdiction, or from a non-storefront retailer, which is closed to the public, and which is located in the City’s jurisdiction on or after January 1, 2024. Any non-storefront retailer shall:

1. Have a non-storefront license issued by the Department of Cannabis Control prior to beginning operations within the City’s jurisdiction.

2. Employ or contract for security personnel who are at least 21 years of age to provide security services on the premises. All security personnel employed or contracted for by the non-storefront retailer shall be licensed by the Bureau of Security and Investigative Services and shall comply with Cal. Bus & Prof. Code, Division 3, Chapters 11.4 and 11.5.

3. Obtain a business license from the City.

4. Require every person delivering cannabis to carry a copy of the following documentation, which shall be provided to law enforcement upon request:

a. A copy of the non-storefront retailer’s current permits, licenses, and entitlements authorizing them to provide transportation and distribution services;

b. The person’s government-issued identification;

c. A copy of the transportation and distribution request; and

d. Chain of custody records for all medical cannabis being delivered, which shall include, but not be limited to, (i) the name, phone number and address of the qualified patient or caregiver; (ii) the amount of medical cannabis to be or that was delivered; (iii) the date and time of delivery; and (iv) the delivery location.

D. No person who is an owner, manager, operator, contractor, or employee of a non-storefront retailer shall:

1. Sell or deliver cannabis or medical cannabis to any person other than a qualified patient or caregiver.

2. Sell any cannabis, medical cannabis, cannabis accessories, or branded merchandise from the non-storefront retailer’s business location.

3. Sell or deliver within the City any promotional materials, branded merchandise, or cannabis accessories including, but not limited to, pipes, rolling paper, or vape cartridge batteries.

~~**10.70.040 Public nuisance.**~~

~~Any violation of this chapter is hereby declared to be a public nuisance.~~

**~~10.70.050 Violations.~~**

~~Any violation of this chapter shall be punishable as provided in Section 1.04.010 or any successor section thereto.~~

**~~10.70.060 Severability.~~**

~~If any section, subsection, sentence or clause of this chapter is, for any reason, held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter.~~

**Chapter 11.03**  
**SPECIAL EVENTS**

**11.03.030 Definitions.**

~~“City” means the City of Newport Beach.~~

~~“City Council” or “Council” means the City Council of the City of Newport Beach.~~

~~“City Manager” means the City Manager of the City of Newport Beach.~~

~~“Person” includes an individual, corporation, partnership, trust, non-profit organization, association, group or other business entity or organization.~~

“Parade” means any march or procession consisting of people, animals or vehicles, or combination thereof, except funeral processions, upon any public street, sidewalk or alley, which does not comply with traffic regulations or controls provided in this Code and the Cal. California Vehicle Code.

“Title 20” or “Zoning Code” means Title 20 of ~~this Newport Beach Municipal Code.~~

**11.03.050 Standards and Requirements.**

C. Other Requirements. In addition to the requirements set out in this section, the Reviewing Authority may also impose conditions of approval relating to use of City beaches, fire protection, traffic, parking, security, dust control, water quality protection of the bay and ocean, noise, temporary structures, signs and banners, outdoor lighting, insurance, which types and amounts shall be determined by the Risk Manager, and other matters deemed by the Reviewing Authority to be necessary for protection of public health, safety and general welfare.

**11.03.060 Permit Review Procedures.**

F. Appeals to City Manager. Within ten (10) days of the date of written notification of action by the Director, an Applicant for a Level 2 or Level 3 Permit may appeal any denial of the application or any condition of approval to the City Manager. The City Manager shall hear appeals at least ten (10) days following filing of the appeal. The City Manager’s decision on the appeal of a Level 2 Permit shall be final as to the City but subject to judicial review pursuant to Cal. Code Civ. Proc. Section 1094.5.

H. Appeals or Calls for Review of City Manager Decision. The City Manager’s decision under subsection (F) or (G) of this section shall be rendered within ten (10) days of his or her consideration of the appeal or special review. The City Manager shall approve the application unless he or she makes one (1) or more of the findings for denial set out in subsection (E)(4) of this section, in which case the City Manager may deny the application. In approving a special event permit, the City Manager may impose conditions of approval, as set out in subsection (E)(5) of this section. The City Clerk shall notify the applicant in writing within five (5) days of the City Manager’s decision. The City Manager’s decision on an appeal under subsection (F) of this section for all Level 2 permits shall be final as to the City but subject to judicial review pursuant to Cal. Code Civ. Proc. Section 1094.5. The City Manager’s decision under subsection (G) of this section and on all Level 3 permits may be appealed or called for review pursuant to Section 11.03.100.

### **11.03.070 City Services Deposits and Damage Reimbursement for Certain Special Events.**

D. Appeals. If the applicant or operator disputes the cleanup charge, he or she may appeal to the Director within five (5) days after receipt of the cleanup bill. The Director shall hear the appeal and the decision of the Director shall be final as to the City but subject to judicial review pursuant to Cal. Code Civ. Proc. Section 1094.5.

### **11.03.100 Appeals and Calls for Review.**

Except as expressly provided herein, if an applicant is aggrieved by any decision of the City Manager under this chapter, the applicant may appeal to the City Council by filing with the City Clerk a statement addressed to the City Council setting forth the facts and circumstances regarding the City Manager's decision and the basis for the appeal. The appeal shall be accompanied by a fee as established by resolution of the City Council. A member of the City Council, in their official capacity, may call for review any action of the City Manager under this chapter for the purpose of bringing the matter in front of the entire body for review in the manner provided in Section 1.08.080. A call for review is exempt from the payment of a fee and shall be filed with the City Clerk on a form provided by the Clerk. The City Clerk shall provide written notification of the time and place set for hearing the appeal or call for review. The City Council at its next regular meeting held not less than ten (10) days from the date on which the appeal or call for review was filed with the City Clerk shall hear the appeal or call for review and all relevant evidence. The City Council may sustain, overrule or modify the action of the City Manager, and decision of the City Council shall be final as to the City but subject to judicial review pursuant to Cal. Code Civ. Proc. Section 1094.5.

## Chapter 11.04

### PARKS, PARK FACILITIES, AND BEACHES

#### Sections:

11.04.010 Intent and Purpose.

11.04.020 Definitions.

11.04.030 General Administration.

11.04.040 Park Hours.

11.04.050 Closed Park Areas.

11.04.060 Permit or Agreement Requirement.

11.04.070 Prohibited Conduct.

~~11.04.080 Smoking Prohibited.~~

11.04.090 Abandoned Bicycle.

11.04.100 Violation of Rules and Policies of Department.

11.04.110 Ejection.

11.04.120 Prohibition Against Obstructing Performance of City Employee.

11.04.130 Exemption.

11.04.140 Penalty.

11.04.020 Definitions.

“Director” means the Director of the Recreation and Senior Services Department, ~~or his or her designee.~~

~~“Person” means an individual, group, organization, association, corporation or any business entity.~~

11.04.050 Closed Park Areas.

When necessary for the protection of the public interest, health, or welfare, the Director, Chief of Police, ~~or Fire Chief, or their designee~~ shall have the authority to close from public access or use any park, park facility, or portion thereof, on a temporary basis. No person shall enter or remain upon areas posted or publicly noticed as closed.

~~11.04.080 Smoking Prohibited.~~

~~A. No person shall smoke or be smoking in a park, park facility, beach, or oceanfront boardwalk or within one hundred (100) feet of a park, park facility, or beach while the person is located on public property. This prohibition shall not apply to a person in an alley or in a car or truck that is being driven on a public street, alley or in a parking lot.~~

~~B.—No person shall dispose of any cigarette, cigar or tobacco, or any part of a cigarette or cigar, including cigarette or cigar butts or ashes or used matches in any place where smoking is prohibited under this chapter, except any specifically designated smoking waste receptacle.~~

~~C.—Punishment under this section shall not preclude punishment pursuant to Health and Safety Code Section 13002, Penal Code Section 374.4, or any other law proscribing the act of littering. Nothing in this section shall preclude any person from seeking any other remedies, penalties or procedures provided by law.~~

#### **11.04.090 Abandoned Bicycle.**

Any bicycle that is attached or fastened to any City property, including a bicycle rack, or left in a park, park facility, on a beach, or oceanfront boardwalk for a period of forty-eight (48) hours or longer shall be deemed abandoned property and may be impounded by the City. Any bicycle which has been impounded by the City and held for ninety (90) days without redemption by or on behalf of the lawful owner thereof shall, if saleable, be sold at such time and place and in such a manner as required by Cal. Civ. Code Section 2080 et seq.

#### **11.04.140 Penalty.**

~~A.—Any violation of this chapter is subject to those remedies provided for in Chapters 1.04 and 1.05 in addition to any other remedies allowed by State and Federal law.~~

~~B.—Any violation of this chapter is hereby declared to be a public nuisance.~~

~~C.—Notwithstanding this chapter, uUnlawful sidewalk vending activities shall be punished in accordance with Chapter 5.97, ~~or any successor chapter.~~~~

## Chapter 11.17

### REGULATION OF VESSELS ALONG THE PACIFIC OCEAN

#### Sections:

**11.17.005 Purpose and Intent.**

**11.17.010 Definitions.**

**11.17.020 Vessel Launching and Operation Prohibited.**

**11.17.030 Exceptions.**

**11.17.040 Vessel Storage Prohibited.**

~~**11.17.050 Penalty.**~~

**11.17.010 Definitions.**

C. Vessel. All watercraft, including boats and personal watercraft, that are required to be numbered pursuant to the provisions of the ~~Cal. Vehicle Code of the State of California~~Veh. Code.

**11.17.020 Vessel Launching and Operation Prohibited.**

C. No person shall operate a vessel in any protected swimming area as specified in Chapter 11.12 of ~~this Newport Beach Municipal Code~~.

**11.17.030 Exceptions.**

The provisions of this chapter shall not apply to:

A. Any vessel owned, operated by or under contract with the City, ~~to~~ the United States, any State or any ~~P~~political ~~s~~Subdivision of ~~the~~any State.

B. Activity involving vessels if authorized pursuant to a permit issued in accordance with the provisions of Chapter 11.03 of ~~this Newport Beach Municipal Code~~ and approved by the City Council.

~~**11.17.050 Penalty.**~~

~~Any person violating the provisions of this chapter shall be guilty of a misdemeanor unless the violation is deemed an infraction pursuant to the provisions of Section 1.04.010(A) of this Code.~~

**Title 12**  
**VEHICLES AND TRAFFIC\***

**Chapters:**

- 12.04 Definitions**
- 12.08 General Provisions**
- 12.12 Vehicles on City Property**
- 12.16 Enforcement and Obedience**
- 12.20 Traffic Control Devices and Markings**
- 12.24 Special Speed Zones**
- 12.28 Turning Movements**
- 12.32 Restricted Use of Certain Streets**
- 12.36 Stop and Yield—Requirements—Signs**
- 12.40 Stopping, Standing and Parking Regulations**
- 12.44 Stopping, Standing and Parking Restrictions**
- 12.46 ~~Physically Handicapped Parking Ordinance~~ Parking for Persons with Disabilities**
- 12.48 Loading and Unloading**
- 12.52 One-way Streets and Alleys**
- 12.54 Oceanfront Boardwalk Safety Program**
- 12.55 Upper Newport Bay Recreation and Scenic Trail**
- 12.56 Bicycles—Registration and Regulations**
- 12.57 Skateboarding and Rollerskating Regulations**
- 12.62 Temporary Street Closure**
- 12.63 Solid Waste Management**
- 12.64 Vehicular Nuisances**
- 12.66 Private Roads**
- 12.68 Residents' Preferential Parking**

## Chapter 12.04

### DEFINITIONS

#### Sections:

12.04.010 Definition Provision.

12.04.020 Alley.

12.04.030 Angle Parking.

12.04.040 Parallel Parking.

12.04.050 Central Traffic District.

12.04.055 Holidays.

12.04.060 Loading Zone.

12.04.070 Operator.

12.04.080 Park.

12.04.090 Parking Meter.

12.04.095 Payment.

12.04.100 Pedestrian.

~~12.04.110 Street.~~

12.04.120 Traffic.

12.04.130 Official Time Standard.

12.04.140 Official Traffic Control Devices.

12.04.150 Official Traffic Signals.

12.04.160 Parkway.

12.04.170 Passenger Loading Zone.

~~12.04.180 Person.~~

12.04.190 Police Officer.

12.04.200 Stop.

#### **12.04.010 Definition Provision.**

For the purpose of this title, certain words and phrases are defined and certain provisions shall be construed as herein set forth, unless the provisions of the context otherwise require.

Whenever any words or phrases used in this title are not defined herein, but are now defined in the [Cal. Vehicle Code](#) ~~of this State~~, such definitions are incorporated herein, and shall be deemed to apply to such words and phrases used herein as though set forth herein in full.

#### **~~12.04.110 Street.~~**

~~The term "street" shall mean and include every way set apart for public travel except alleyways, bridle paths and foot paths.~~

#### **~~12.04.180 Person.~~**

~~The term "person" shall mean every natural person, firm, copartnership, association or corporation.~~

## Chapter 12.08

### GENERAL PROVISIONS

#### 12.08.135 Cruising Prohibited.

A. The ranking peace officer within any area affected by traffic congestion may establish traffic control points to regulate cruising. Cruising is defined to mean the driving of a motor vehicle past a traffic control point established on a portion of any street identified as subject to cruising controls by signs posted at the beginning and end of the controlled roadway that briefly and clearly state the appropriate provisions of this section and [Cal. Veh. Code](#) Section 21100(k) ~~of the Vehicle Code~~, and after the operator of the vehicle has been given the notice specified in this section. The ranking peace officer on duty within the area affected by traffic congestion, ~~or his designee~~, shall be empowered to post the signs required by this section.

## Chapter 12.12

### VEHICLES ON CITY PROPERTY

#### Sections:

**12.12.010 Parking.**

**12.12.020 Speed.**

**12.12.030 Traffic Control Devices.**

~~**12.12.040 Parking Meters on City Hall Property.**~~

**12.12.050 Parking Fees for City Parking Lots.**

**12.12.080 Parking Restrictions for Motorcycles, Motor-Driven Cycles and Motorized Bicycles.**

**12.12.010 Parking.**

C. Impoundment. When signs authorized by the provisions of subsection (B) are in place giving notice thereof, any member of the Police Department designated by the Chief of Police is authorized to remove or cause the removal of any such vehicle from City property to the nearest public garage or other place of safety, and shall give such notice as is indicated in ~~Sections 22852 and 22853 of the Cal. Vehicle Code~~ Sections 22852 and 22853.

~~**12.12.040 Parking Meters on City Hall Property.**~~

~~The City Manager shall have authority to install parking meters on the City Hall property and to determine the denomination of the coin or coins to be deposited in such parking meters, the parking time allowed following deposit of such coins, the hours during which such deposits are required, and the days of the week and the weeks of the year during which such deposits are required for such parking meters, and to suspend the operation of said meters for any limited period of time that he may deem desirable. The following sections of the Municipal Code relating to parking meters in parking meter zones shall also apply to the parking meter spaces on the City Hall property designated as such by the City Manager: 12.44.060, 12.44.070, 12.44.090, 12.44.100, and 12.44.10.~~

## Chapter 12.16

### ENFORCEMENT AND OBEDIENCE

#### 12.16.060 Exceptions.

A. Emergency Vehicles. The provisions of this title regulating the operation, parking and standing of vehicles shall not apply to any vehicle of the Police or Fire Department, any public ambulance or any public utility vehicle or any private ambulance, which public utility vehicle or private ambulance has qualified as an authorized emergency vehicle, when any vehicle mentioned in this section is operated in the manner specified in the California Vehicle Code [Section 165](#) in response to an emergency call.

## Chapter 12.20

### TRAFFIC CONTROL DEVICES AND MARKINGS

#### 12.20.010 Authority to Install and Maintain.

B. Installation. Whenever this Code or the Cal. Veh.icle Code ~~of this State~~ requires for the effectiveness of any provision thereof that traffic control devices be installed to give notice to the public of the application of such law, the City Traffic Engineer is hereby authorized to install the necessary devices subject to any limitations or restrictions set forth in the law applicable thereto.

#### 12.20.020 Appropriate Signs Requisite for Enforcement.

No provision of the Cal. Veh.icle Code or of this chapter for which signs are required shall be enforced against an alleged violator unless appropriate signs are in place and sufficiently legible to be seen by an ordinarily observant person giving notice of such provisions of the traffic laws. No vehicle may be towed or removed from private property unless that property is posted with signs as required by Section 22658 of the Cal. Veh.icle Code ~~Section 22658 and signs the size and content of which have been approved by the Traffic Engineer.~~

#### 12.20.040 Installation of Traffic Signals.

The City Traffic Engineer is hereby ~~directed~~ authorized to install and maintain official traffic control signals at those intersections and other places where traffic conditions are such as to require that the flow of traffic be alternately interrupted and released ~~in order~~ to prevent or relieve traffic congestion or to protect life or property from exceptional hazard.

The City Traffic Engineer shall ascertain and determine the locations where such signals are required by resorting to field observation, traffic counts and other traffic information as may be pertinent and his determinations therefrom shall be made in accordance with those traffic engineering and safety standards and instructions set forth in the "California ~~Maintenance~~ Manual on Uniform Traffic Control Devices," issued by the ~~Division of Highways of the State Department of Public Works~~ California Department of Transportation.

#### 12.20.060 Removal, Relocation or Discontinuation.

The City Traffic Engineer is hereby authorized to remove, relocate or discontinue the operation of any traffic control device not specifically required by State law by the provision of this chapter, wherever the City Traffic Engineer shall determine in any particular case that the conditions which warranted or required the installation no longer exist ~~or obtain~~.

## Chapter 12.32

### RESTRICTED USE OF CERTAIN STREETS\*

#### **12.32.015 Balboa Island Bridge Speed Restrictions.**

Pursuant to the procedures set forth in Section 22404 of the California Vehicle Code, and after a public hearing held thereon, the City Council has determined that the maximum speed limit which can be maintained with safety on the Balboa Island Bridge shall be fifteen (15) miles per hour.

#### **12.32.075 Balboa Peninsula Traffic Access Control—Findings.**

E. The City Council finds that the threat to the public health, safety and welfare brought about by severe traffic congestion along the Balboa Peninsula can be eliminated by authorizing the Chief of Police ~~or his or her designee~~, to restrict motor vehicle access to the peninsula during times of significant traffic congestion and/or when conditions are such that severe congestion will occur if access is not restricted.

#### **12.32.080 Balboa Peninsula Traffic Access Control Points—Authorization to Establish.**

The Chief of Police, ~~or his or her designee~~, shall be authorized to establish appropriate traffic access control points along Balboa Boulevard when it is determined by the Newport Beach Police that:

## Chapter 12.36

### STOP AND YIELD – REQUIREMENTS – SIGNS

#### Sections:

#### 12.36.010 Stop Signs.

#### 12.36.020 Yield Right-of-Way Signs.

#### 12.36.030 Through Streets and Alleys Designated.

#### ~~12.36.040 Stop Intersections Designated.~~

#### 12.36.010 Stop Signs.

~~The City Traffic Engineer is authorized to approve the installation of, removal of, and erect and maintain stop signs conforming to the requirements of Cal. Veh. Code Section 21400 at the entrances to any or all through highways and stop intersections as in the City Traffic Engineer's opinion are reasonably necessary for the protection and safety of the traveling public.~~

~~In accordance with Cal. Veh. Code Section 21354, all major, primary and secondary streets and highways of the City as shown on the County Master Plan of Arterial Highways, originally adopted by resolution of the County Board of Supervisors on May 31, 1956, on file in the Office of the County Clerk, are hereby declared to be through highways together with such other highways as the City Council may by resolution from time-to-time declare to be through highways. Whenever any ordinance or resolution of this City designates and describes any street or portion thereof as a through street or an intersection at which vehicles are required to stop at one or more entrances thereto, the City Traffic Engineer shall erect and maintain stop signs on each and every street intersecting such through street or portion thereof so designated and at those entrances of other intersections where a stop is required.~~

~~Every such sign shall conform with and shall be placed as provided in the California Vehicle Code.~~

~~When stop signs are erected as herein provided, every driver of a vehicle shall stop as required by the California Vehicle Code.~~

#### 12.36.020 Yield Right-of-Way Signs.

~~The City Traffic Engineer is authorized to determine those locations where the safe and orderly movement of traffic requires vehicles to yield the right-of-way to other traffic and to install, remove, erect and maintain yield signs conforming to the requirements of Cal. Veh. Code Section 21400. shall erect and maintain yield right-of-way signs on any street or intersection when such signs are authorized by resolution or ordinance of the City Council.~~

~~When yield right-of-way signs are erected as herein provided, every driver of a vehicle shall yield the right-of-way as required by the California Vehicle Code.~~

**~~12.36.040 Stop Intersections Designated.~~**

~~The following intersections are hereby designated as stop intersections at which the City Traffic Engineer shall erect and maintain stop signs as provided in Section 12.36.010:~~

~~Balboa Boulevard at McFadden (southbound traffic only).~~

~~Balboa Boulevard at Main Street.~~

~~Lafayette Avenue at Via Lido.~~

~~32nd Street at Lafayette Avenue.~~

~~31st Street at Lafayette Avenue.~~

~~Clay Street at Santa Ana Avenue.~~

~~Clay Street at Tustin Avenue.~~

~~Marine Avenue at Park Avenue.~~

~~Park Avenue at Marine Avenue.~~

~~Seaview Avenue at Marguerite Avenue.~~

~~Fernleaf Avenue at Bayside Drive.~~

## Chapter 12.40

### STOPPING, STANDING, AND PARKING REGULATIONS

#### Sections:

- 12.40.010 Application of Regulations.
- 12.40.020 Standing in Parkways Prohibited.
- 12.40.030 Parking on Private Property.
- 12.40.035 Parking on Private Streets and Drives.
- 12.40.040 Parking Duration Period.
- 12.40.055 Parking of Certain Oversized Vehicles and Nonmotorized Vehicles ~~in Residential District~~ **Prohibited.**
- 12.40.060 Parking for Certain Purposes Prohibited.
- 12.40.070 Parking on Grades.
- 12.40.080 Parking Parallel with Curb.
- 12.40.090 Angle Parking Indicators.
- 12.40.100 Angle Parking Streets.
- 12.40.110 Parking Space Indicators.
- 12.40.120 Obstructing Parking Space.
- 12.40.130 Permit for Angle Loading or Unloading.
- 12.40.140 Parking Adjacent to Schools.
- 12.40.150 Parking Prohibited on Narrow Streets.
- 12.40.160 Prohibited Parking Areas.
- 12.40.165 Parking Restriction in Electric Cart Zones.
- 12.40.170 Parking Restrictions for Vendors and Vehicles for Hire.
- 12.40.180 Emergency Parking Restrictions—Signs.
- 12.40.190 Causes for Removal and Storage.

#### 12.40.010 Application of Regulations.

B. Time Limits. The provision of this chapter imposing a time limit on standing or parking shall not relieve any person from the duty to observe other and more restrictive provisions of the ~~State Cal.-~~ Vehicle Code, this Code or the ordinances of this City, prohibiting or limiting the standing or parking of vehicles in specified places or at specified times.

#### 12.40.035 Parking on Private Streets and Drives.

No person shall park a vehicle on a private street or drive in such a fashion that the vehicle blocks the private street or drive so as to prevent vehicular ingress or egress thereto; provided that signs giving notice that such parking is in violation of Section 12.40.035 of this ~~Newport Beach Municipal~~ Code are erected or placed twenty-four (24) hours prior to the violation.

#### 12.40.055 Parking of Certain Oversized Vehicles and Nonmotorized Vehicles ~~in Residential Districts Prohibited.~~

A. Prohibition.

1. Subject to the exceptions set forth in subsection (G), no person shall, at any time, park or leave standing any large motor vehicle, heavy-duty commercial vehicle, or nonmotorized vehicle, as defined in this section, on any public street or alley within any residential district or adjacent to any public park or school, or within five (500) hundred feet of the entrance to any public park, day care center, or school, as measured from the property line.

2. Subject to the exception set forth in subsection (G)(8), no person who owns, operates or has charge of a large motor vehicle, heavy-duty commercial vehicle, or nonmotorized vehicle, as defined in this section, shall use a generator that is associated in any way with the vehicle while the vehicle is located on any City property including, but not limited to, any public street or alley, or public parking lot.

3. Subject to the exception set forth in subsection (G)(8), no person who owns, operates or has charge of a large motor vehicle, heavy-duty commercial vehicle, or nonmotorized vehicle, as defined in this section, shall do any of the following while the vehicle is located on any City property including, but not limited to, any public street or alley, or public parking lot: (a) conduct any business or commercial activity; (b) park the vehicle outside of the area marked for the parking of the vehicle; or (c) place any item outside of the vehicle on City property or store any item under or around the vehicle including, but not limited to, solar panels, a barbeque, a mat, recliner, table, or chairs.

E. Residential District. For the purpose of this section, the term “residential district” shall mean any area within the City which is zoned R-A, R-1, R-~~B1-5~~, R-2, ~~RM-3~~, ~~RMDR-4~~, ~~MFR~~, PRD (planned residential district), and those portions of planned community districts and specific plan districts which are specified for residential uses.

G. 2. Large motor vehicles, or nonmotorized vehicles which are attached to a motor vehicle, parked adjacent to the owner’s residence or at such other location approved by the Chief of Police, for no more than seventy-two (72) hours for the purposes of loading, unloading, cleaning, battery-charging, or other activity preparatory or incidental to travel, provided permission has been granted by the Chief of Police, ~~or his or her designee;~~

5. To any motor vehicle displaying authorized placards or license plates pursuant to the California Vehicle Code Sections 5007 and 22511.55 identifying the physically handicapped or disabled person.

7. To a motor vehicle legally parked in public park parking lot.

8. To any motor vehicle that is: (a) legally parked in a school or day care center parking lot; (b) authorized to be at the location pursuant to a special events permit; (c) authorized to be at the location by the City Manager; (d) authorized to be at the location by the lessee of the property; (e) owned by a governmental entity; or (f) trucks actively being used for commercial purposes including the preparation of food, the delivery of food or cargo, and construction or maintenance activities.

#### **12.40.080 Parking Parallel with Curb.**

Subject to other and more restrictive limitations, a vehicle may be stopped or parked within eighteen (18) inches of the left-hand curb facing in the direction of traffic movement upon any one-way street unless signs are in place prohibiting stopping or standing. In the event a highway includes two or more separate roadways and traffic is restricted to one direction upon any such roadway, no person shall stand or park a vehicle upon the left-hand side of such one-way roadway unless signs or markings are in place permitting such standing or parking.

The City Traffic Engineer is authorized to determine when standing or parking shall be prohibited upon the left-hand side of any one-way street or when standing or parking may be permitted upon the left-hand side of any one-way roadway of a highway having two or more separate roadways and shall erect signs giving notice thereof.

#### **12.40.100 Angle Parking Streets.**

28th Street, north side only, from Balboa Boulevard to Newport Boulevard

#### **12.40.160 Prohibited Parking Areas.**

C. Within twenty-five (25) feet of the approach to any traffic signal, boulevard stop sign, or official electric flashing traffic control device.

## Chapter 12.44

### STOPPING, STANDING AND PARKING RESTRICTIONS

#### 12.44.030 Off-Street Parking Meter Zones.

The City Council may by resolution establish off-street parking meter zones, including any land owned, leased or controlled by the City, as traffic and parking conditions require. Such resolution shall also establish the fees for parking in such off-street parking meter zones. ~~This section shall not be applicable to the property on which the City Hall is located. (See Section 12.12.040 for regulations applicable to parking meters on the City Hall property.)~~

#### 12.44.125 Commercial In-Lieu Parking Fees.

A. Permit Required. In lieu of providing the required off-street parking on site pursuant to Title 20 of ~~this Newport Beach Municipal~~ Code, a commercial business may provide all or a portion of its required commercial off-street parking in a municipal fee-owned lot by paying an annual fee of one hundred fifty dollars (\$150.00) per parking space or a fee per space as set by resolution adopted by the City Council. Said municipal parking lot must be located within reasonable proximity to the commercial business as to be useful to said business.

## Chapter 12.46

### **PHYSICALLY HANDICAPPED-PARKING FOR PERSONS WITH DISABILITIES ORDINANCE**

#### Sections:

**12.46.010 ~~Physically Handicapped~~-Parking for Persons with Disabilities Ordinance.**

**12.46.020 Establishment of On-Street Parking Spaces.**

**12.46.030 Establishment of Off-Street Parking Spaces.**

**12.46.040 Unauthorized Parking Prohibited.**

**12.46.010 ~~Physically Handicapped~~-Parking for Persons with Disabilities Ordinance.**

This ordinance shall be known and may be cited as the ~~Physically Handicapped~~-Parking for Persons with Disabilities Ordinance of the City of Newport Beach.

**12.46.020 Establishment of On-Street Parking Spaces.**

When so directed by a resolution of the City Council, the City Traffic Engineer is authorized to designate parking spaces for the exclusive use of ~~physically handicapped~~-persons who are physically disabled and whose vehicles display a distinguishing placard or license plate issued to ~~disabled individuals with disabilities~~ persons, as specified in the California Vehicle Code.

**12.46.030 Establishment of Off-Street Parking Spaces.**

A. The City Traffic Engineer when so directed by a resolution of the City Council, is authorized to designate spaces City-owned, leased or controlled off-street parking facilities for the exclusive use of ~~physically handicapped persons~~ individuals who are physically handicap and whose vehicles display a distinguishing placard or license plate issued to ~~disabled~~ persons with disabilities pursuant to the California Veh,icle Code.

B. The City may cause the removal, from a stall or space designated for ~~physically handicapped~~ persons who are physically handicap ~~in such facility to the nearest public garage,~~ of any vehicle not displaying one of the distinguishing placards or license plates authorized by the California, Vehicle, Code, if there is posted immediately adjacent to, and visible from, such stall or space a sign which clearly and conspicuously states the following:

“Unauthorized vehicles not displaying distinguishing placards or license plates issued to ~~physically handicapped~~ persons with physical disabilities will be towed away at owner’s expense. Towed vehicles may be reclaimed at the ~~Newport Beach~~-Police Department, 870 Santa Barbara Drive, Newport Beach, California, or by telephoning the ~~Newport Beach~~-Police Department at 644-3677717.”

**12.46.040 Unauthorized Parking Prohibited.**

No person shall park a vehicle in a space or stall as designated in Sections 12.46.020 or 12.46.030 of this chapter without displaying distinguishing placards or license plates issued for persons who are physically handicapped ~~persons~~ pursuant to ~~the~~ California Veh,icle Code Sections 5007, 22511.55 or 22511.59.

## Chapter 12.52

### ONE-WAY STREETS AND ALLEYS

#### Sections:

12.52.010 Placement of Appropriate Signs.

12.52.020 Obedience to One-Way Signs.

12.52.030 Balboa Island.

12.52.040 Corona del Mar.

12.52.050 Balboa.

12.52.060 Newport Beach.

12.52.070 Lido Isle.

~~12.52.080 Newport Heights.~~

~~12.52.080 Newport Heights.~~

~~The following streets and alleys shall be one-way streets and alleys in the direction indicated:~~

~~Irvine Avenue from a point three hundred thirty (330) feet south of Westcliff Drive to Holiday Road.  
Northwest bound traffic only.~~

~~Via Firenze from Via Lido Soud to Piazza Lido. Northeast bound traffic only.~~

## Chapter 12.54

### OCEANFRONT BOARDWALK SAFETY PROGRAM

#### 12.54.020 Definitions.

“Electric bicycle” has the same meaning as defined in ~~California Vehicle~~Cal Veh. Code Section 312.5.

“Electrically motorized board” has the same meaning as defined in ~~California Vehicle~~Cal. Veh. Code Section 313.5.

“Motorized bicycle” has the same meaning as defined in ~~California Vehicle~~Cal. Veh. Code Section 406.

“Motorized scooter” has the same meaning as defined in ~~California Vehicle~~Cal. Veh. Code Section 407.5.

## Chapter 12.55

### UPPER NEWPORT BAY RECREATION AND SCENIC TRAIL

#### 12.55.070 Penalties.

B. Any person violating the provisions of Section 12.55.040 shall be guilty of a misdemeanor, punishable by a fine not to exceed five hundred dollars (\$500.00) provided, however, the violation may be prosecuted as infraction pursuant to the provisions of Section 1.04.010 (A) of ~~the Newport Beach Municipal~~ Code.

## Chapter 12.56

### BICYCLES – REGISTRATION AND REGULATIONS

#### Sections:

**12.56.010 Definitions.**

**12.56.025 Voluntary Licensing.**

**12.56.030 Operating Bicycle on Sidewalk.**

**12.56.040 Operating a Surrey Cycle or Pedicab.**

**12.56.050 Designation of Bicycle Lanes.**

**12.56.060 Obedience to Signs.**

**12.56.070 Placement of Appropriate Signs.**

**12.56.080 Motorized Bicycles.**

#### **12.56.050 Designation of Bicycle Lanes.**

~~The specified portions of the following streets are designated as bicycle lanes and shall be marked and signed in an appropriate manner.~~The City Traffic Engineer is authorized to designate bicycle lanes on streets and shall mark and sign them in conformance with Cal. Veh. Code Section 21400.

~~Southerly side of Cliff Drive from Kings Place to Dover Drive.~~

~~Southerly side of Riverside Avenue — Cliff Drive from Coast Highway to El Modena Avenue.~~

~~Westerly side of Eastbluff Drive from Back Bay Drive to two hundred (200) feet northerly of Mar Vista Drive.~~

~~Southerly side of Vista del Sol from Vista del Oro to Eastbluff Drive.~~

#### **12.56.080 Motorized Bicycles.**

The licensing requirements of this chapter are applicable to motorized bicycles as that term is defined by ~~the California~~ Vehicle Code Section 406.

## Chapter 12.62

### TEMPORARY STREET CLOSURE

#### 12.62.030 Issuance of Permit.

The City Manager may issue a permit if the City Manager determines that the granting of the application for the time and location requested will not unreasonably inconvenience the public, create unusual traffic or policing problems, or interfere with the peace and quiet of the surrounding neighborhood. If the City Manager determines not to issue a permit, the City MangerManager may either deny the same or refer the application to the City Council for a decision. If tThe City Manager decides to not issue the permit, the City Manager shall notify the applicant in writing, by personal service or by certified mail of his in the manner provided in Section 1.08.080, of the City Manager's -decision to deny the permit and of thehis right to appeal said decision to the City Council or, if the matter is referred to the City Council, the date, time and location the application will be considered by the City Council.

If the City Manager issues a permit, the City Manager may impose such conditions in connection with its issuance as the City Manager deems reasonably necessary to einsure that the activity or special event will be conducted in an orderly manner with a minimum of inconvenience to the public. In addition, the City Manager may require that the permittee provide:

- A. Liability insurance for the protection of the public which names the City as an additional insured with specified minimum liabilityInsurance, which types and amounts shallto be determined by the City Risk Manager.
- B. ACash security deposit to be used to reimburse the City for all extraordinary costs resulting from the activity or special event, such as placing and removing barricades, extra traffic control or police protection, and street sweeping and cleanup.

#### 12.62.040 Appeal and Call for Review.

If an applicant is aggrieved by any action or failure to act upon the part of the City Manager in issuing, failing to issue, suspending or revoking any permit under this chapter, such applicant may appeal to the City Council by filing with the City Clerk a statement addressed to the City Council setting forth the facts and circumstances regarding the action or failure to act on the part of the City Manager. A member of the City Council, in their official capacity, may call for review any action of the City Manager in issuing, failing to issue, suspending, or revoking any permit under this chapter for the purpose of bringing the matter in front of the entire body for review. A call for review shall be filed with the City Clerk on a form provided by the Clerk. The City Clerk shall notify the applicant in writing by certified mail of the time and place set for hearing his appeal or call for review. The City Council at its next regular meeting held not less than five (5) days from the date on which such appeal or call for review shall have been filed with the City Clerk shall hear the applicant, the City Manager, and all relevant evidence. The City Council may sustain, overrule, or modify the action of the City Manager, and the decision of the City Council shall be final as to the City but subject to judicial review pursuant to Cal. Code Civ. Proc. Section 1094.5.

The right to appeal or call an item for review regarding the denial, suspension or revocation of any permit required by this chapter shall terminate upon the expiration of fifteen (15) days following the ~~deposit of a certified letter in the United States Post Office~~ notification of the ~~advising the~~ applicant of the action of the City Manager and of ~~the~~ his right to appeal such action to the City Council, which notice shall be served in the manner provided in Section 1.08.080.

## Chapter 12.63

### SOLID WASTE MANAGEMENT\*

#### 12.63.010 Purpose and Intent.

B. It is necessary to regulate the collection of solid waste and to encourage recycling of solid waste materials, to meet the requirements of the California Integrated Waste Management Act of 1989, Cal. Pub. Resources Code, Division 30, Sections 40000 et seq.

#### 12.63.020 Definitions

~~“City” means the City of Newport Beach.~~

~~“City Council” means the City Council of the City of Newport Beach.~~

~~“City Manager,” “Municipal Operations Director,” “Finance Director,” and “Public Works Director” mean the City Manager, Municipal Operations Director, Finance Director and Public Works Director of the City or their designee.~~

~~“Person” means an individual, firm, partnership, corporation, joint venture, limited liability company, or any other business entity.~~

“Franchise fee” means the fee or assessment imposed by the City on the franchisee, which among other things, is intended to offset the City’s expenses related to the administration of the Franchise Agreement, the Integrated Waste Management Program, the maintenance and implementation of the City’s Source Reduction and Recycling Element, compliance with the California Integrated Waste Management Act, Cal. Pub. Resources Code, Division 30, Sections 40000 et seq., to compensate the City for damages to its streets, sidewalks, curbs and gutters and other infrastructure resulting from the franchisee’s exercise of its rights under the franchise, reporting requirements and other related expenses.

“Hazardous waste” means any substance or waste materials or mixture of wastes defined as “hazardous,” a “hazardous substance” or “hazardous waste” pursuant to California-Cal. Public-Pub. Resources Code Section 40141, the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. Sections 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. Sections 9601 et seq., the Carpenter-Presley-Tanner Hazardous Substance Account Act (“HSAA”), codified at California-Cal. Health & Safety Code Sections 25300 et seq.; and all future amendments to any of them, or as defined by the Environmental Protection Agency, the California legislature, the California Integrated Waste Management Board, the Department of Toxic Substances Control or other agency of the United States Government or the State of California empowered by law to classify or designate waste as hazardous. If there is a conflict in the definitions employed by two or more agencies having jurisdiction over hazardous or solid waste, the term “hazardous substance” or “hazardous waste” shall be construed to have the broader, more encompassing definition.

“SRRE” means the Source Reduction and Recycling Element of the Integrated Waste Management document for the City prepared and updated pursuant to the California-Cal. Pub. Resources Code.

~~“State” means the State of California.~~

### **12.63.050 Application for Franchise.**

A. Required Forms. An application for a franchise shall be filed in the office of the ~~Municipal Operations~~Public Works Department in writing on forms prescribed by the ~~Municipal Operations~~Public Works Director.

B.7. Such further information as the ~~Municipal Operations~~Public Works Director may reasonably require to evaluate and process the application.

E. Waivers. The ~~Municipal Operations~~Public Works Director may waive the submission of items deemed unnecessary.

### **12.63.060 ~~Municipal Operations~~Public Works Department Review.**

A. Time Limits and Notification. Within thirty (30) ~~calendar~~ days of the filing of an application, the ~~Municipal Operations~~Public Works Department shall determine whether the application is complete and notify the applicant in writing if the application is determined to be incomplete.

B. Incomplete Applications. If the application is determined not to be complete, the ~~Municipal Operations~~Public Works Department shall notify the applicant in writing and shall specify those parts of the application which are incomplete and shall indicate the manner in which they can be made complete, including a list and thorough description of the specific information or materials needed to complete the application. Upon the receipt of the information or materials needed to complete the application, or any resubmittal of the application, a new thirty (30) ~~calendar~~ day review period shall begin to determine the completeness of the application.

C. Extension of Time Limits. Extensions of the time limits of the review period are permitted when mutually agreed upon by the ~~Municipal Operations~~Public Works Department and the applicant.

### **12.63.070 Processing the Application.**

Upon receiving an application that contains all of the information described in this chapter which is both complete and in a form acceptable to the ~~Public Works Director~~General Services Director, the ~~Public Works Director~~General Services Director shall process the application in accordance with the provisions of this chapter and Article XIII of the City Charter ~~of the City of Newport Beach~~ for consideration by the City Council.

### **12.63.090 Franchise Fees and Environmental Liability Fund Fees.**

B. Pursuant to Cal. Pub. Resources Code, Division 30, Part ~~23~~, Chapter 8 of the ~~Public Resources Code~~ Section 41900, et seq., ~~or any successor provision~~, the ordinance granting the franchise shall prescribe a specific percentage of the fee for preparing, adopting and implementing an integrated waste management plan consistent with the SRRE. That portion of the fee shall be separately accounted for and shall be used only for the costs stated in Cal. Public Resources Code Section 41901 ~~or any successor provision~~.

### **12.63.130 City Inspection Authority.**

Any franchisee providing commercial solid waste handling services or conducting a solid waste enterprise in the City of Newport Beach shall keep and maintain books of account, income statements, tonnage reports and supporting documents and all other documents that relate in any way to business transactions

conducted by the person in the City of Newport Beach for a period of three (3) years after said service was provided and shall make these records and documents available to the City upon request by the City Manager, ~~Municipal Operations~~Public Works Director or Finance Director, ~~or their designee.~~

**12.63.140 Termination.**

B. A notice of intent to terminate a nonexclusive franchise shall be personally delivered or mailed, at the discretion of the ~~Municipal Operations~~Public Works Director, to the franchisee at the franchisee's address of record, shall state grounds for suspension or termination and shall give the franchisee notice of the time, date and place of a hearing before the City Council, which shall be convened not less than fifteen (15) days and no more than sixty (60) days after the date of notice, subject to continuance with the consent of the parties.

E. The decision to suspend or terminate shall contain findings of fact, a determination of the issues presented and shall be final as to the City but subject to judicial review pursuant to Cal. Code Civ. Proc. Section 1094.5~~and conclusive~~. Any suspension of a nonexclusive franchise shall state specific conditions upon which the nonexclusive franchise may be reinstated or terminated.

## Chapter 12.64

### VEHICULAR NUISANCES

#### Sections:

**12.64.010 Scope.**

**12.64.020 Definitions.**

**12.64.030 Prohibited Operations.**

**12.64.040 Exceptions.**

**12.64.050 Operation by Permit.**

**12.64.060 Right to Revoke.**

**12.64.070 Appeal or Call for Review.**

~~**12.64.080 Violation—Penalties.**~~

~~**12.64.090 Separability.**~~

#### **12.64.070 Appeal or Call for Review.**

Any person whose application for a permit is denied or revoked may appeal such decision to the City Council by filing a written notice of appeal with the City Clerk within ten (10) days after notification by the Chief of Police that said permit has been denied. A member of the City Council, in their official capacity, may call for review any decision of the Chief of Police under this chapter by filing written notice with the City Clerk within ten (10) days after the Chief of Police's decision. A call for review shall be for the purpose of bringing the matter in front of the entire body for review. The City Council shall thereupon conduct a hearing on said appeal or call for review within thirty (30) days from the date of filing said notice of appeal or call for review with the City Clerk. The decision of the City Council shall be final as to the City but subject to judicial review pursuant to Cal. Code Civ. Proc. Section 1094.5 and conclusive upon all persons concerned.

~~**12.64.080 Violations—Penalties.**~~

~~Any person violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not less than twenty-five dollars (\$25.00), but not exceeding one hundred dollars (\$100.00), or imprisonment for a period not to exceed thirty (30) days, or by both said fine and imprisonment.~~

**~~12.64.090 Separability.~~**

~~If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter. The City Council of the City of Newport Beach declares that it would have added this chapter to the Newport Beach Municipal Code, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.~~

## Chapter 12.66

### PRIVATE ROADS

#### 12.66.010 Intent and Purpose.

This chapter is designed to provide for the application of the provisions of the ~~California-Cal.~~ Veh.~~icle~~ Code to privately owned and maintained roads that are not generally open for use of the public for purposes of vehicular travel by reason of their proximity to or connection with highways, when it is determined that the interests of any resident residing along such roads and the motoring public will be best served by the application of said provisions, as authorized by ~~Section 21107.7 of the California-Cal.~~ Veh.~~icle~~ Code Section 21107.7.

Whenever the term "California Vehicle Code" is used in this chapter, it shall be deemed to and shall include traffic regulations adopted by the City Council pursuant to any authorization of the ~~California-Cal.~~ Veh.~~icle~~ Code as codified in Title 12 of this ~~Newport Beach Municipal~~ Code.

#### 12.66.020 Signs.

Appropriate signs shall be erected at the entrance to any privately owned and maintained road, of such size, shape and color as to be readily legible during daylight hours from a distance of one hundred (100) feet, to the effect that said road is subject to the provisions of the ~~California-Cal.~~ Veh.~~icle~~ Code.

#### 12.66.030 Application of Vehicle Code to Private Roads in The Big Canyon Planned Community District.

The provisions of the ~~California-Cal.~~ Veh.~~icle~~ Code shall not apply to any streets except the following: Canyon Island Drive, Sea Pine Lane, Sea Island Drive, Pine Valley Lane, Pauma Lane, Eldorado Lane.

#### 12.66.050 Application of Vehicle Code to Private Roads in Newport Condominiums.

The provisions of the ~~California-Cal.~~ Veh.~~icle~~ Code shall apply to the following private streets in the Newport Condominiums residential development in the City ~~of Newport Beach~~:

#### 12.66.060 Application of Vehicle Code to Private Roads in Broadmoor Seaview Development.

The provisions of the ~~California-Cal.~~ Veh.~~icle~~ Code shall apply to the following private streets in the Broadmoor Seaview residential development in the City ~~of Newport Beach~~:

#### 12.66.062 Application of Vehicle Code to Private Roads in the Belcourt Development.

The provisions of the ~~California-Cal.~~ Veh.~~icle~~ Code shall apply to the following private streets in the Belcourt residential development in the City ~~of Newport Beach~~:

#### 12.66.064 Application of Vehicle Code to Private Roads in the Harbor Pointe Development.

The provisions of the ~~Cal. Veh. California Vehicle~~ Code shall apply to the following private streets in the Harbor Pointe residential development in the City ~~of Newport Beach~~:

#### 12.66.070 Application of Vehicle Code to Private Roads in the Sea Island Development.

The provisions of the ~~Cal. Veh. California Vehicle~~ Code shall apply to the following private streets in the Sea Island residential development in the City ~~of Newport Beach~~:

**12.66.080 Application of Vehicle Code to Private Roads in Harbor Ridge Development.**

The provisions of the ~~Cal. Veh. California Vehicle~~ Code shall apply to the following private streets in the Harbor Ridge residential development in the City ~~of Newport Beach~~:

**12.66.082 Application of Vehicle Code to Private Roads in the Terraces of Corona del Mar Development.**

The provisions of the ~~Cal. Veh. California Vehicle~~ Code shall apply to the following private streets in The terraces of Corona del Mar residential development in the City ~~of Newport Beach~~:

**12.66.083 Application of Vehicle Code to Bayview Circle.**

The provisions of the ~~Cal. Veh. California Vehicle~~ Code shall apply to Bayview Circle.

**12.66.085 Application of Vehicle Code to Private Roads.**

~~The provisions of Section 22514 of the Cal. Veh. California Vehicle~~ Code Section 22514 which prohibits parking within fifteen (15) feet of a fire hydrant shall apply to all private streets within the City ~~of Newport Beach~~.

**12.66.087 Application of Vehicle Code to Private Roads in the Newport North Villas Development.**

The provisions of the ~~Cal. Veh. California Vehicle~~ Code shall apply to the following private streets in the Newport North Villas residential development in the City ~~of Newport Beach~~:

**12.66.088 Application of Vehicle Code to Private Roads in the Villa Balboa Development.**

The provisions of the ~~Cal. Veh. California Vehicle~~ Code shall apply to the following private streets in the Villa Balboa Development in the City ~~of Newport Beach~~:

**12.66.090 Application of Vehicle Code to Private Roads in the Harbor Cove Development.**

The provisions of the ~~Cal. Veh. California Vehicle~~ Code shall apply to the following private streets in the Harbor Cove Development:

**12.66.092 Application of Vehicle Code to Private Roads in the Baypointe Apartments Development.**

The provisions of the ~~Cal. Veh. California Vehicle~~ Code shall apply to the following private streets in the Baypointe Apartments Development in the City ~~of Newport Beach~~:

**12.66.094 Application of Vehicle Code to Private Roads in the Jasmine Park Development.**

The provisions of the ~~Cal. Veh. California Vehicle~~ Code shall apply to the following private streets in the Jasmine Park Development in the City ~~of Newport Beach~~:

**12.66.096 Application of Vehicle Code to Private Roads in the One Ford Road Development.**

The provisions of the ~~Cal. Veh. California Vehicle~~ Code shall apply to the following private streets in the One Ford Road Development in the City ~~of Newport Beach~~:

**12.66.098 Application of Vehicle Code to Private Roads in the Newport Ridge North Community.**

The provisions of the ~~Cal. Veh. California Vehicle~~ Code shall apply to the following private streets in the Newport Ridge North residential development in the City ~~of Newport Beach~~:

## Chapter 12.68

### RESIDENT' PREFERENTIAL PARKING

#### 12.68.040 Preferential Parking Privileges—Issuance of Permits.

C. Duration of Permits. Permits issued pursuant to this section shall remain effective for one year, commencing January 1st and ending December 31st, or fraction thereof, or until the preferential parking zone for which such permit was issued ~~was~~ eliminated, whichever ~~period of time~~period is less. ~~Notwithstanding the foregoing, permits issued to residents for the year 1981 shall be valid during 1982 without additional cost.~~

## Chapter 13.01

### STREET CONSTRUCTION PERMITS

#### Sections:

**13.01.010 Findings and Purpose.**

**13.01.020 Permit Required.**

**13.01.030 Application.**

**13.01.040 Fees.**

**13.01.050 Standards for Issuance of Permit.**

**13.01.060 Conditions and Fair Share Fees.**

**13.01.070 Bonds and Insurance.**

**13.01.080 Appeal or Call for Review.**

**13.01.090 Datum Plane.**

**13.01.100 Duty of Property Owners to Repair and Maintain.**

#### **13.01.040 Fees.**

An application for permit shall be accompanied by a fee ~~of seventy-five dollars (\$75.00) as set forth in a resolution adopted by the City Council.~~ In addition to the application fee, the Public Works Director may charge a fee for all inspection, plan checking and engineering services performed in conjunction with the application. ~~These fees shall be calculated by reference to a schedule of charges, prepared by the Public Works Director, and based upon the estimated costs to the City for performing the services. Unless otherwise provided for, the fee schedule applicable to subdivision improvement plan checking and inspection shall be utilized.~~

#### **13.01.070 Bonds and Insurance.**

The following bonds shall be posted by the applicant prior to performing any work under a permit issued pursuant to this chapter:

- A. A labor and materials bond in an amount and form substantially identical to that which would be required of persons performing public works under contract to the City ~~of Newport Beach~~; and
- B. A performance bond in an amount and form substantially identical to that which would be required of persons performing public works under contract to the City ~~of Newport Beach~~; and
- C. ~~Public liability and workers' compensation insurance, which types and amounts in an amount and form substantially identical to that required of persons performing public works under contract to the City of Newport Beach shall be determined by the Risk Manager;~~ and

D. Such other bonds, policies of insurance or guarantees, as may be determined necessary or appropriate by the Public Works Director and Risk Manager, to ensure that City is fully protected from any loss, liability, claim or damage that may arise out of, or any way relate to, the performance of work pursuant to the permit.

#### **13.01.080 Appeal or Call for Review.**

Any applicant aggrieved by a decision of the Public Works Director shall have the right to appeal the decision to the City Council by filing written notice of appeal. The appeal must be filed with the City Clerk within ten (10) days from the date on which notice of the decision is deposited in the U.S. mail, postage prepaid and addressed to the parties as provided on the application for permit. A member of the City Council, in their official capacity, may call for review any decision of the Public Works Director under this chapter by filing written notice with the City Clerk within ten (10) days from the date on which notice of the decision is served in the manner provided in Section 1.08.080~~deposited in the U.S. mail, postage prepaid and addressed to the parties as provided on the application for permit~~. A call for review shall be for the purpose of bringing the matter in front of the entire body for review. The City Council shall, within thirty (30) days from the date on which an appeal is received or a call for review is filed, schedule a hearing on the appeal or call for review within a reasonable period of time. The City Council may preside over the hearing on appeal, or may designate a hearing officer to take evidence and submit a proposed decision, together with findings, to the City Council within fifteen (15) days from the date of the hearing. The City Council shall hear all decisions called for review. The City Council shall render its decision within thirty (30) days from the date of the hearing, and the decision of the City Council shall be final as to the City but subject to judicial review pursuant to Cal. Code Civ. Proc. Section 1094.5.

#### **13.01.090 Datum Plane.**

The North American Vertical Datum of 1988 (NAVD 88)~~The sea level datum of 1929, as established by the United States Coast and Geodetic Survey~~, is hereby established as the official datum plane of the City for the purpose of determining the grades and elevations of streets and sewers and for any other public works within the City, and for measuring all other grades, elevations, or surface points in the City, except that harbor work, dredging, and harbor structures may be referenced to mean lower low water, as established by the United States Coast and Geodetic Survey in and around Newport Harbor.

#### **13.01.100 Duty of Property Owners to Repair and Maintain.**

When any portion of any sidewalk constructed in the City shall be out of repair, and in a condition to endanger persons or property passing thereon, or in a condition to interfere with the public convenience in the use thereof, or when any condition shall exist on any sidewalk as is defined in Section 5600 of the Cal. Sts. and Highway Hy. Code of Section 5600 the State of California, then no owner or person liable shall neglect or refuse to make repairs when required to do so in the manner and as provided for in Section 5610-5618 of the California Streets and Highways Cal. Sts. & Hy. Code Sections 5610-5618.

## Chapter 13.06

### CURB CUTS AND OTHER ALTERATIONS TO PUBLIC STREETS

#### 13.06.070 Right of Appeal and Call for Review.

Any person who objects to or disagrees with any decision of the Public Works Director which is made pursuant to this chapter shall have the right to appeal to the City Council by filing written notice of appeal with the City Clerk within thirty (30) days after ~~receiving the~~ notice of the decision of the Public Works Director is served in the manner provided in Section 1.08.080. A member of the City Council, in their official capacity, may call for review any decision of the Public Works Director which is made pursuant to this chapter by filing written notice of appeal with the City Clerk within thirty (30) days after the decision of the Public Works Director. A call for review shall be for the purpose of bringing the matter in front of the entire body for review. Upon receiving such a notice of appeal or call for review, the City Clerk shall set the appeal or call for review for hearing by the City Council at a meeting not more than thirty (30) days thereafter, and shall advise the appellant, if any, of the date, time and place on which the appeal or call for review will be heard at least ten (10) days prior to such date. On the date of the hearing, the City Council shall proceed to hear and pass upon the appeal or call for review, and its decision thereon shall be final as to the City but subject to judicial review pursuant to Cal. Code Civ. Proc. Section 1094.5~~and~~ conclusive. The City Clerk shall notify the property owner ~~by mail~~ of the decision of the City Council in the manner provided in Section 1.08.080.

## Chapter 13.07

### REPLACEMENT OF CURB CUTS AND DRIVEWAY APPROACHES

#### 13.07.010 Establishment of Nuisance Abatement Procedure.

Any portion of a curb cut or driveway approach on any public street which is no longer needed or used for reasonable vehicular access to the property served is hereby declared a nuisance which may be abated pursuant to the procedure established by this chapter which is adopted under the authority contained in ~~Section 200 of the~~ City Charter Section 200 and ~~Section 38773.5 of the California Cal. Government~~ Code Section 38773.5.

## Chapter 13.08

### PLANTING

#### Sections:

**13.08.010 Jurisdiction and Authority.**

**13.08.020 Official Tree List.**

**13.08.030 Removal or Relocation of Plants by City.**

**13.08.040 Tampering with Planting Prohibited.**

**13.08.050 Prohibited Activities.**

**13.08.060 Owners of Premises Required to Trim Branches and Maintain Adjacent Parkway.**

**13.08.010 Jurisdiction and Authority.**

Subject to the administrative control established by the City Charter, any applicable City Council policy, and the provisions of this chapter, the ~~Municipal Operations~~Public Works Department shall exercise jurisdiction and control over the planting, maintenance, and removal of trees, shrubs, and plants in all public areas under the control of the City, and shall have the authority and duties prescribed in this chapter.

**13.08.020 Official Tree List.**

The City Council shall adopt an official tree list which shall set out the names of the streets in the City and the species of tree or trees that may be planted on each such street or portion thereof. The list shall be adopted by resolution and provided to the public by the Public Works Department upon request.~~three copies thereof shall be kept on file in the office of the City Clerk for inspection by the public, and copies shall be available in the Municipal Operations Department for information.~~

**13.08.050 Prohibited Activities.**

D. Attaching Electrical Apparatus. No person shall attach any electric wires or any device for holding electric wires to any tree, plant or shrub growing in any public street right-of-way or other public property under the control of the City without approval of the City Council. No person shall, without written permission from the ~~Municipal Operations~~Deputy Public Works Director ~~– Municipal Operations~~, trim, cut or break any part of such tree, shrub, or plant in order to make passage for electric wires.

**13.08.060 Owners of Premises Required to Trim Branches and Maintain Adjacent Parkway.**

The occupant in charge or, if there is no such occupant, the owner of every lot or parcel of land shall:

A. Maintain the area between their property line and the curb of the street including, but not limited to, all landscaping, plants and grass in the parkway; and

B. Trim the branches of any tree, shrub, or plant on his property; and ~~shall trim~~ all shrubs and plants in the ~~area between their property line and curb of the street, parkway adjacent to his property~~, so that same shall not encroach upon the sidewalk or street in such manner as to impede or interfere with traffic thereon or obstruct the passage of light from any streetlight to the street or sidewalk.

The City shall trim and prune all trees located in the public street right-of-way.

## Chapter 13.09

### PARKWAY TREES

#### 13.09.010 Parkway Trees Required.

Any person who constructs a new building, who causes a building to be moved onto vacant land, or who causes an increase in the original floor area of an existing main building by more than fifty (50) percent of its original size, shall be responsible for planting trees in the parkway abutting the building site in accordance with City rules, regulations and policies. The parkway tree shall be at least a thirty-six inch (36") box of the type, variety and/or species determined by the City in accordance with the City Street Tree Designation List. Automated irrigation shall be established for the newly planted tree from the property under construction. If the City determines that because of the location, terrain or condition of the property that required tree planting is impractical at the abutting parkway, the City shall plant the thirty-six inch (36") box tree at a location designated by the City.

## Chapter 13.18

### USE OF PUBLIC SIDEWALKS FOR OUTDOOR DINING

#### 13.18.010 Applicability.

Notwithstanding any other provisions of this Code, it is unlawful for any restaurant business to place furniture or equipment on a public sidewalk for outdoor dining without first obtaining a valid sidewalk cafe license encroachment permit which shall provide for indemnification of the City and the maintenance of liability and other insurance coverage as determined by the Risk Manager, and which shall conform to City Council Policy regarding sidewalk cafe standards and procedures.

**Chapter 13.20**  
**PUBLIC RIGHTS-OF-WAY**

**Sections:**

- 13.20.010 Purpose—Authority.**
- 13.20.020 Definitions.**
- 13.20.030 City Policies Regarding Use of the PROW.**
- 13.20.040 PROW Permit—Applicability.**
- 13.20.050 Exemption.**
- 13.20.060 PROW Permit Application.**
- 13.20.070 Issuance of a PROW Permit.**
- 13.20.080 Construction Plan.**
- 13.20.090 Conditions of Use of PROW.**
- 13.20.100 Excavations.**
- 13.20.110 Post-Excavation Repair and Maintenance.**
- 13.20.120 Coordination of Excavation.**
- 13.20.130 Financial Security and Fees.**
- 13.20.140 Duty to Remove Facilities from PROW and Public Property.**
- 13.20.150 Construction and Maintenance.**
- 13.20.160 Construction Default.**
- 13.20.170 City Vacation or Abandonment.**
- 13.20.180 Facilities Agreements.**
- 13.20.190 System Location Data.**
- 13.20.200 Indemnity.**
- 13.20.210 ~~Liability~~ Insurance.**
- 13.20.220 Failure of the City to Enforce this Chapter.**
- 13.20.230 Company or its Assignees Subject to Present and Future Ordinances and/or Resolutions.**
- 13.20.240 Notices.**
- ~~13.20.245 Severability.~~**
- 13.20.250 Administration—Declaration of Powers and Authority.**

**13.20.260 Revocation and Termination.**

**13.20.270 Appeals from Action of the Director.**

**13.20.275 Possessory Interest.**

**13.20.280 City's Obligation.**

**13.20.290 Opportunity to Cure and Correct.**

**13.20.020 Definitions.**

~~"Chapter" unless otherwise specified, means this Chapter 13.20 of the is Newport Beach Municipal Code.~~

~~"City" means the City of Newport Beach.~~

~~"Director" means the Director of the City's Department of Public Works or his or her designee.~~

~~"Person" means any natural person, business, firm, corporation, estate, trust, partnership, or other business entity, association, or any other legal entity.~~

~~"Street" or "streets" means any street, road, highway, alley, lane, court, boulevard, or other similar public way, including related facilities such as medians, parkways, sidewalks, traffic signals and signs.~~

**13.20.040 PROW Permit—Applicability.**

In addition to any agreement, license, permit or franchise required by this chapter or any other chapter of this Code, and in addition to any other permit or entitlement required by local, state or federal law, company shall obtain a PROW Permit prior to performing any work in the PROW and shall pay all fees required by this chapter.

**13.20.070 Issuance of a PROW Permit.**

B. 6 Compliance with the requirements of this chapter, thise Code and other federal, State and local requirements.

F. Duration and Validity. Permits shall be void if the work has not begun within ninety (90) ~~calendar~~ days of the start date specified in the permit, if the excavation is not prosecuted diligently to its conclusion, or if the excavation, including restoration, has not been completed within the specified duration; provided, however, that the Director may, upon good cause, issue extensions to the start date, the duration of excavation, or both upon request from company.

**13.20.100 Excavations.**

B 2. At least ten (10) ~~calendar~~ days prior to commencement of the excavation, company shall provide written notice delivered by United States mail to each property owner on the street affected by the excavation and each affected neighborhood and merchant organization that is listed in the latest Assessor's Roll for names and addresses of property owners shall be used for the mailed notice. This notice shall include the same information that is required for the posted notice pursuant to this subsection (B)(1) and the name, address and twenty-four (24) hour telephone number of a person who will be available to

provide information to and receive complaints from any member of the public concerning the excavation, or

3. At least ten ~~(10) calendar~~ days prior to commencement of the excavation, company also shall deliver a written notice to each dwelling unit on the block(s) affected by the excavation. This written notice shall include the same information that is required for the written notice pursuant to subsection (B)(2) of this section.

E. 4. Moratorium Streets. The Department may not issue any permit to excavate in any street that has been reconstructed or resurfaced by the Department or any other owner or person in the preceding five-year period. However, the Director may, in his or her discretion, grant a waiver of this subsection for good cause. Good cause shall include the fact that the need to excavate arose in spite of company's full compliance with the coordination of excavation provisions in Section 13.20.120. The Director is authorized to grant a waiver for an excavation that facilitates the deployment of new technology or new service as directed pursuant to official City policy. The Director shall issue his decision on a waiver within a reasonable period after receipt of a written request for a waiver. The Director may place additional conditions on a permit subject to a waiver. The Director's decision regarding a waiver shall be final subject to review in accordance with Section 13.20.270.

F 3. Storage of Materials. Materials and equipment used for the excavation within seven ~~(7) calendar~~ days may be stored at the site of the excavation, except that fill material, sand, aggregate, and asphalt-coated material may be stored at the site only if it is stored in covered, locked containers.

H 4. Incomplete Excavation—Completion by the City. In any case where an excavation is not completed or restored in the time and manner specified in the permit, this chapter, or the orders, regulations, and standard plans and specifications of the Department, the Director shall order company to complete the excavation as directed within twenty-four (24) hours. If company should fail, neglect, or refuse to comply with the order, the Director may complete or cause to be completed such excavation in such manner as the Director deems expedient and appropriate. The company shall compensate the City for any costs associated with the administration, construction, consultants, equipment, inspection, notification, remediation, repair, restoration, or any other actual costs incurred by the City or other agencies, boards, commissions, departments of the City that were made necessary by such excavation. The cost of such work also may be deducted from company's security fund pursuant to Section 13.20.130. The Director's determination as to the cost of any work done or repairs made shall be subject to review in accordance with Section 13.20.270:final.

#### **13.20.110 Post-Excavation Repair and Maintenance.**

C 1. In the event that any person(s) fails, neglects, or refuses to repair or restore any condition pursuant to the Director's notice, the Director may repair or restore, or cause to be repaired or restored, such condition in such manner as the Director deems expedient and appropriate. The person(s) identified by the Director as the responsible party shall compensate the Department for any costs associated with the administration, construction, consultants, equipment, inspection, notification, remediation, repair, restoration, or any other actual costs incurred by the City that were made necessary by reason of the repair or restoration undertaken by the Department. The cost of such work also may be deducted from company's security fund. The Director's determination as to the cost of the repair or restoration performed shall be subject to review in accordance with Section 13.20.270:final.

D 2. If the responsible party is inaccessible or fails, neglects, or refuses to take immediate action to remedy the condition as specified in the communication, the Director may remedy the condition or cause the condition to be remedied in such manner as the Director deems expedient and appropriate. The person(s) identified by the Director as the responsible party shall compensate the Department for any reasonable costs associated with the administration, construction, consultants, equipment, inspection, notification, remediation, repair, restoration, or any other actual costs incurred by the Department or other agencies, boards, commissions, departments of the City that were made necessary by reason of the emergency remediation undertaken by the Department. The cost of such work also may be deducted from company's security fund pursuant to Section 13.20.130. The Director's determination as to the cost of any remediation performed shall be ~~final~~ subject to review in accordance with Section 13.20.270.

#### **13.20.120 Coordination of Excavation.**

B 2. Except when waived by the Director, at least one hundred eighty (180) ~~calendar~~ days prior to undertaking the resurfacing and reconstruction of any street, the Department shall send a notice of the proposed repaving and reconstruction to each company.

#### **13.20.150 Construction and Maintenance.**

C. Company shall place all above-ground active and passive equipment in flush mounted or low profile waterproof pedestals whose design, size, location, color within manufacturer's specifications, appearance, and placement have been previously approved by the Director in writing and shall be in conformity with ~~this~~ the ~~code~~ and all applicable City ordinances, regulations, rules, and guidelines.

#### **13.20.210 ~~Liability~~ Insurance.**

~~A.—Except as provided in or as supplemented by any franchise agreement, license or permit, company shall secure and maintain, at all times, public liability, property damage insurance, which types and amounts shall be determined by the Risk Manager. and umbrella coverage in at least the following amounts:~~

- ~~1.—Public Liability. Two million dollars (\$2,000,000.00) per person/per occurrence;~~
- ~~2.—Property Damage. Two million dollars (\$2,000,000.00) per any one claim;~~
- ~~3.—Umbrella Liability. Five million dollars (\$5,000,000.00).~~

~~B.—The public and personal liability and property damage insurance policy shall specifically include the City, the City Council, its employees, and agents as additional insureds.~~

~~C.—The public and personal liability and property damage insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and which has one of the three highest or best ratings from the Alfred M. Best company.~~

~~D.—The public liability and property damage insurance policies shall contain an endorsement obligating the insurance company to furnish the Director with at least thirty (30) days written notice in advance of the cancellation of the policy.~~

~~E.—Renewal or replacement policies or certificates shall be delivered to the Director at least fifteen (15) days before the expiration of the required insurance under this chapter.~~

~~F.— Before company commences any construction in the PROW, company shall deliver the policies or certificates representing the insurance to the Director as required herein.~~

~~G.— The City's Risk Manager may in his/her discretion, adjust the coverage amounts specified in subsection A of this section or authorize company to self-insure provided that the Risk Manager deems that the adjustments result in company meeting or exceeding the coverage specified in this section.~~

#### ~~13.20.245 Severability.~~

~~If any word, phrase, sentence, part, section, subsection, or other portion of this chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof not having been declared void, unconstitutional or invalid, shall remain in full force and effect.~~

~~State laws, federal laws or franchise rights will prevail over any sentence, clause or phrase of this ordinance that is held to be unconstitutional or otherwise invalid because of such state law, federal law or franchise right. Such decision shall not affect the validity or applicability of the remaining provisions of the ordinance codified in this chapter.~~

#### **13.20.270 Appeals from Action of the Director.**

If company is aggrieved by any decision of the Director under this chapter, company may appeal the decision to the City Manager by filing with the City Clerk a statement addressed to the City Manager setting forth the facts and circumstances regarding the Director's decision and the basis for the appeal. The appeal shall be accompanied by a fee as established by resolution of the City Council. The City Manager, not less than ten (10) days from the date on which the appeal was filed with the City Clerk, shall hear the appeal and all relevant evidence, and shall determine the merits of the appeal. The City Clerk shall provide written notification of the time and place set for hearing the appeal. The City Manager may sustain, overrule or modify the action of the Director, and decision of the City Manager shall be final as to the City but subject to judicial review pursuant to Cal. Code Civ. Proc. Section 1094.5.

The right to appeal to the City Manager shall terminate upon the expiration of ten (10) days following personal delivery to company or the deposit of a letter in the United States mail advising company of the action of the Director and of the right to appeal such action to the City Manager.

#### **13.20.275 Possessory Interest.**

By accepting any PROW Permit granted pursuant to this chapter, company acknowledges that notice is and was hereby given to company pursuant to ~~Cal. ifornia Revenue & Taxation Tax.~~ Code Section 107.6 that the use or occupancy of any public property may cause certain taxes to be levied upon such interest. Company shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interest taxes or other taxes levied against its right to possession, occupancy or use of any PROW or public property pursuant to any right of possession, occupancy or use created by any PROW Permit.

## Chapter 14.04

### UTILITIES DEPARTMENT – GENERAL REGULATIONS\*

#### Sections:

~~14.04.010 Utilities Department Established.~~

~~14.04.020 Utilities Manager Defined.~~

14.04.040 Interference with Employees Prohibited.

14.04.050 Tampering with Pipes—Altering Water Flow.

14.04.060 Disclaimer of Liability.

14.04.070 Maintenance and Use of Fire Hydrants.

14.04.080 Permit to Use Fire Hydrants.

14.04.090 Cancellation of Fire Hydrant Use Permit.

14.04.100 Obstructing Fire Hydrants.

14.04.110 Water Shut-Off for Repairs or Extension.

14.04.120 Right of Inspection.

14.04.130 Enforcement—Report of Violations.

14.04.140 Sale of Water Outside City.

14.04.150 Contractual Agreement to Supply Water Outside City.

14.04.160 Sale of Excess Water Outside City.

14.04.170 Sale to Serve Area of Acquired Agency.

14.04.180 Conditions of Service.

14.04.190 City Relieved of Liability.

~~14.04.010 Utilities Department Established.~~

~~The Municipal Operations Department is hereby declared to embrace and include all property of every character, real, personal and mixed, now used in or incident to the production, storage, conveyance and delivery of water to the consumers thereof in the City, together with all other property of every character that may hereafter from time to time be added to it for such purposes. The Municipal Operations Director designates the Utilities Manager of the Utilities Department to administer all the provisions of this title.~~

#### **~~14.04.020 Utilities Manager Defined.~~**

~~The term “Utilities Manager” wherever used in this title shall be held and construed to mean the Utilities General Manager of the Utilities Department of the Municipal Operations Department of the City and any act in this chapter required or authorized to be done by the Utilities Manager may be done on behalf of the Utilities Manager by an authorized officer or employee of the Municipal Operations Department.~~

#### **14.04.040 Interference with Employees Prohibited.**

No person shall interfere with or obstruct the ~~Public Works Director or any of his or her duly appointed agents or employees, or the Municipal Operations~~Utilities Director or any of ~~his or her duly~~the Utility Director’s appointed agents or employees, in the execution of any lawful order or the provisions of this chapter in the maintenance and operation of the Utilities Department.

#### **14.04.050 Tampering with Pipes—Altering Water Flow.**

No person, other than the ~~Utilities Manager~~Utilities Director, or ~~the Utilities Director’s~~his duly appointed agents or employees, shall remove, change, disturb, or in any way tamper or interfere with any of the facilities, apparatus, appliances, or property used or maintained for the production, storage or supply of water by the City to consumers thereof, or without prior permission of the ~~Utilities Manager~~Utilities Director, turn the water on or off from the premises or place.

#### **14.04.070 Maintenance and Use of Fire Hydrants.**

Public fire hydrants shall be placed, maintained and repaired by the Utilities Department. Any damage thereto by persons or agency other than representatives of the Fire Department or Utilities Department shall be a claim against the person or agency committing such damage, and the ~~Utilities Manager~~Utilities Director shall take such action as may be necessary to collect the same.

Fire hydrants are provided for the sole purpose of extinguishing fires and shall be used otherwise only as herein provided for, and shall be opened and used only by the Utilities Department and Fire Department for such persons as may be authorized to do so by the Chief of the Fire Department, or the ~~Utilities Manager~~Utilities Director ~~of the Utilities Department~~ as herein provided.

#### **14.04.080 Permit to Use Fire Hydrants.**

All persons desiring to use water through fire hydrants, or other hydrants owned or controlled by the City, shall be required to obtain a permit, first, from the Chief of the Fire Department and second from the ~~Utilities Manager~~Utilities Director ~~of the Utilities Department~~, who shall issue no such permit to any person who has violated any of the provisions of this chapter or whose indebtedness to the City for water used or damage to hydrants or equipment is delinquent. All such persons having a permit for use of water from the fire hydrants must provide hydrant wrenches for the operation of such fire hydrants.

#### **14.04.090 Cancellation of Fire Hydrant Use Permit.**

Permit for the use of water through the fire hydrants of the City may be canceled at the will of the ~~Utilities Manager~~Utilities Director on evidence that the holder thereof is or has violated the privileges conveyed thereunder. Such notice of cancellation shall be in writing delivered or mailed to the persons to be notified and shall be immediately effective and enforced.

#### **14.04.130 Enforcement—Report of Violations.**

It shall be the duty of the employees of the City to give vigilant aid to the ~~Utilities Manager~~Utilities Director in the enforcement of the provisions of this chapter, and to this end they shall report all violations which come to their knowledge, to the Utilities Department; and it shall be the duty of the Chief of the Fire and Marine Department to report immediately to the ~~Utilities Manager~~Utilities Director in case of fire in premises having metered service for fire protection purposes that fire has occurred there.

#### **14.04.150 Contractual Agreement to Supply Water Outside City.**

Subject to all restrictions on the City's power to do so, water may be sold by the City for use outside the City within the boundaries of ~~either Coastal Municipal Water District or the~~ Municipal Water District of Orange County, ~~or both,~~ to persons or public agencies, or the assigns of either, who own contractual rights or interests in any City transmission main or mains or to whom the City has an obligation, pursuant to any contract heretofore or hereafter approved by the voters of the City, to supply water for such use. Except when the provision of contracts heretofore made require otherwise, such sales shall be made and subject to the same rules and regulations as sales of water are made to inhabitants of the City. A written contract authorized by the City Council setting out the terms and conditions of the sale and any special circumstances applicable thereto shall be required with each such person or agency who desires to purchase water for use outside the City.

#### **14.04.160 Sale of Excess Water Outside City.**

Subject to all restrictions on the City's power to do so, the City may sell water, to the extent it has a supply in excess of that required to adequately serve the inhabitants of the City and the persons and agencies described in Section 14.04.150, to other persons or agencies for use outside the City within the boundaries of ~~either the Coastal Municipal Water District or the~~ Municipal Water District of Orange County, ~~or both,~~ but only so long as the excess supply continues. The City may sell on a month-to-month basis or may require a contract with each purchaser where the City determines it to be in the best interests of the City to do so. Such sales shall be subject to the same rules and regulations as for water used inside the City. The City is under no obligation to continue any such service, and no purchaser receiving such service shall acquire any right to have the service continued.

#### **14.04.170 Sale to Serve Area of Acquired Agency.**

Water may be sold by the City for use outside the City within the boundaries of ~~either the Coastal Municipal Water District or the~~ Municipal Water District of Orange County, ~~or both,~~ and within the service area of any water distributing agency, the assets of which have been acquired by the City from such agency. Such sales shall be subject to the same rules and regulations as for water sold within the City.

## Chapter 14.08

### WATER CONNECTIONS\*

#### 14.08.010 Water Connection Authority.

No person is, or shall be authorized to, install any pipe, apparatus, appliance or connection ~~with to the Utilities Department the City's utilities system,~~ except the ~~Utilities Manager Utilities Director~~ or ~~his the Utilities Director's~~ duly appointed agents or employees.

#### 14.08.030 Connection Method.

Upon presentation at the office of the Utilities Department of the receipt for installation of fees and execution of the agreement hereinbefore provided for, the ~~Utilities Manager Utilities Director~~ shall cause the premises described in the application, if the same abut upon the street or alley upon which there is a City water main, to be connected with the City's water main by a service pipe extending from the main to the curb line on the front of the property or to the side or rear, and including a stop-cock placed, which service pipe and stop-cock shall thereafter be maintained by and kept within the exclusive control of the City. In cases of application for water service on premises not abutting upon a street or alley upon which there is a City water main, the City will lay its service pipe from the main toward the premises for a distance not to exceed one hundred (100) feet, and permit connection by means of a union and pipes laid at the expense of and maintained by the owner of the service, or may in the discretion of the ~~Utilities Manager Utilities Director~~, upon the payment of the actual costs thereof, extend the service to the premises of the applicant along and beneath any public street of the City, but not otherwise. No service connection less than one inch in size shall be installed.

#### 14.08.050 Flow Protection Devices Required.

An approved double-checked valve or other ~~approved~~ backflow protection devices approved in accordance with Chapter 14.10 shall be installed in all existing water systems of all consumers, at the expense of the consumer, before service will be continued or granted when any one of the following conditions apply:

- A. Where an unapproved fresh water supply is already available from a well, spring, reservoir or other source, the installation of backflow protective devices may not be required. If the consumer agrees to abandon this other supply and agrees to remove all pumps and piping necessary for the utilization of this supply, service may be granted.
- B. Where salt water, or water otherwise nonpotable, is available for industrial or fire protection purposes, or where fresh water hydrants are or may be installed on docks.
- C. Where the premises are or may be engaged in industrial processes using or producing process waters or liquid industrial wastes, or where the premises are or may be engaged in handling sewage or any other dangerous substance.
- D. Where the circumstances are such that there is special danger of backflow of sewage or other contaminated liquids through plumbing fixtures or water-using or treating equipment, or storage tanks and reservoirs.

E. Where an approved water supply line terminates as a pier head outlet which is used to supply vessels at piers or waterfronts. These installations shall be located where they will prevent the return of any water from a vessel or any other source into the City water supply system.

F. Where the premises are used for a trailer park.

## Chapter 14.10

### CROSS-CONNECTION CONTROL PROGRAM

#### Sections:

**14.10.005 Purpose.**

**14.10.010 Definitions.**

**14.10.015 Cross-Connection Protection Requirements.**

**14.10.020 Backflow Prevention Devices.**

**14.10.025 User Supervisor.**

**14.10.030 Administrative Procedures.**

**14.10.035 Water Service Termination.**

**14.10.040 Requirements for the Certification as a Backflow Prevention Device Tester.**

**14.10.045 Violations.**

~~**14.10.050 Severability.**~~

#### **14.10.005 Purpose.**

The purpose of this chapter is (1) to protect the public water supply against actual or potential cross-connection by isolating within the premises contamination that may occur because of some undiscovered or unauthorized cross-connection on the premises; (2) to eliminate existing connections between drinking water systems and other sources of water that are not approved as safe and potable for human consumption; (3) to eliminate cross-connections between drinking water systems and sources of contamination; (4) to prevent the making of future cross-connections in the future; (5) these regulations are adopted pursuant to the ~~State of California Administrative Code, 17 Title 17, public health, CCR Cal. Code Regs. Sections 7583 through 7605~~ entitled ~~“Regulations Relating to Cross-Connections.”~~

#### **14.10.010 Definitions**

~~Air-Gap Separation (referred to as AG).~~ The term “air-gap separation” ~~or {“AG”}~~ means a physical break between a supply pipe and a receiving vessel. The air-gap shall be at least double the diameter of the supply pipe measured vertically above the top rim of the vessel, in no case less than one inch.

~~Person. The term “person” means an individual, corporation, company, association, partnership, municipality, public utility or other public body or institution.~~

#### **14.10.015 Cross-Connection Protection Requirements.**

##### **A. Where Protection is Required.**

1. Each service connection from the City water system for supplying water to premises having an auxiliary water supply shall be protected against backflow of water from the premises into the

public water system unless the auxiliary water supply is accepted as an additional source by the City, and is approved by the public health agency.

2. Each service connection from the City water system on which any substance is handled in such fashion as may allow its entry into the water system shall be protected against backflow of the water from the premises into the public system. This shall include the handling of process waters and waters originating from the City water system which have been subjected to deterioration in sanitary quality.

3. Backflow prevention devices shall be installed on the service connection to any premises having (a) internal cross-connections that cannot be permanently corrected and controlled to the satisfaction of the state or local health department and the City, or (b) intricate plumbing and piping arrangements or where entry to all portions of the premises is not readily accessible for inspection purposes, making it impracticable or impossible to ascertain whether or not cross-connections exist.

B2 Two or more services supplying water from different street mains to the same building, structure or premises through which an interstreet main flow may occur, shall have ~~at least a standard check valve on each water service to be located adjacent to and on the property side of the respective meters. Such check valve shall not be considered~~ adequate if backflow protection is deemed necessary to protect the City's mains from pollution or contamination; in such cases the installation of approved backflow devices at such service connections shall be required.

#### **14.10.020 Backflow Prevention Devices.**

B 1. Backflow prevention devices shall be installed in a manner prescribed in ~~Section 7603, Title 17 CCR Section 7603 of the California Administrative Code~~. Location of the devices should be as close as practical to the user's connection. The City shall have the final authority in determining the required location of a backflow prevention device.

a. Air-Gap Separation (AG). The air-gap separation shall be located on the user's side of and as close to the service connection as is practical. All piping from the service connection to the receiving tank shall be above grade and be entirely visible. No water use shall be provided from any point between the service connection and the air-gap separation. The water inlet piping shall terminate a distance of at least two pipe diameters of the supply inlet, but in no case less than one inch above the overflow rim of the receiving tank.

b. Reduced Pressure Principle Backflow Prevention Device (RP). The approved reduced pressure principle backflow prevention device shall be installed on the user's side of and as close to the service connection as is practical. The device shall be installed a minimum of twelve (12) inches above grade and not more than thirty-six (36) inches above grade measured from the bottom of the device and with a minimum of twelve (12) inches side clearance. The device shall be installed so that it is readily accessible for maintenance and testing. Water supplied from any point between the service connection and the RP device shall be protected in a manner approved by the city.

c. Double Check Valve Assembly (DC). The approved double check valve assembly shall be located as close as practical to the user's connection and shall be installed above grade, if possible, and in a manner where it is readily accessible for testing and maintenance. ~~if a double check valve~~

~~assembly is put below grade it must be installed in a vault such that there is a minimum of six inches between the bottom of the vault and the bottom of the device, so that the top of the device is no more than a maximum of eight inches below grade, so there is a minimum of six inches of clearance between the side of the device with the test cocks and the side of the vault, and so there is a minimum of three inches clearance between the other side of the device and the side of the vault. Special consideration must be given to double check valve assemblies of the "Y" type. These devices must be installed on their "side" with the test cocks in a vertical position so that either check valve may be removed for service without removing the device. Vaults which do not have an integrated bottom must be placed on a three inch layer of gravel.~~

#### **14.10.040 Requirements for the Certification as a Backflow Prevention Device Tester.**

Each applicant for certification as a tester of backflow prevention devices shall file an application with the ~~Utilities Manager~~Utilities Director of the City of Newport Beach. The certification shall be granted if the applicant satisfies the following minimum requirements:

~~A. Applicants shall have had at least two (2) years' experience in plumbing or pipe fitting or equivalent qualifications.~~

~~BA.~~ Hold a valid certification from the American Water Works Association (AWWA), California-Nevada Section, from a County certification program, or have equivalent training in the opinion of the City and the Health Department.

~~BC.~~ Each applicant for certification as a tester of backflow prevention devices shall furnish evidence to show that he has available the necessary tools and equipment to properly test such devices. He shall be responsible for the competency and accuracy of all tests and reports prepared by him.

~~CD.~~ Competency in all phases of backflow prevention device testing and repair must be demonstrated by means of education and/or experience.

#### **~~14.10.050 Severability.~~**

~~If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this chapter, or any part thereof, is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this chapter or any part thereof. The Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared invalid.~~

## Chapter 14.12

### WATER RATES AND CHARGES\*

#### 14.12.090 Delinquent Water Service Discontinuance and Fees.

A 4. In situations other than as set forth in subsection (A)(5) of this section, for nonpayment of a bill for services previously rendered to the customer at any location served by the City provided such bill has been delinquent for at least sixty (60) ~~calendar~~ days and is not paid within seven (7) business days after mailing of a delinquent notice.

5. For failure to abide by the terms of an alternative payment arrangement entered into between the City and the customer, as provided in subsections (C)(3) or (4) of this section, by failing to do any of the following for sixty (60) ~~calendar~~ days or more:

F. The City Manager shall create and promulgate a written policy, to be available on the City's website, regarding the discontinuation of residential water services for nonpayment. Such policies shall be in conformance with the requirements of California Cal. Health & Safety Code Sections 116900 et seq., ~~or any successor statutes.~~

#### 14.12.095 Customer Requests.

Except for the discontinuation of water service for failure to abide by the terms of an alternative payment arrangement, as provided in Section 14.12.090(A)(5), any residential customer who has initiated a complaint or requested an investigation up to the calendar day prior to scheduled date of service discontinuation, as stated in the delinquent notice required by Section 14.12.110, or who has, before discontinuance of service, made a request for extension of the payment period of a bill asserted to be beyond the means of the customer to pay in full within the normal period for payment, shall be given an opportunity for review of the complaint, investigation, or request by the City. The review shall include consideration of whether the customer shall be permitted to defer payment on the bill for thirty (30) ~~calendar~~ days or participate in an alternative payment arrangement where the unpaid balance of the delinquent account is paid back monthly, over a period not to exceed twelve (12) months.

Any customer whose complaint or request for an investigation has resulted in an adverse determination by the City's Revenue Division may appeal the determination to the Finance Director ~~or his or her designee.~~

#### 14.12.100 Due Date.

All customers whose premises are connected to the municipal water system shall be billed on a regularly scheduled basis and all charges shall be received by the due date indicated on the municipal services statement, of which said due date shall be no less than nineteen (19) ~~calendar~~ days after the date of mailing.

#### 14.12.110 Delinquent Notice.

B 6. The procedure to request a deferment of the payment for thirty (30) ~~calendar~~ days, or a payment plan.

#### **14.12.125 Delinquent Water Service Restoration.**

A 3. For a residential customer who demonstrates that their household income is below two hundred (200) percent of the ~~f~~Federal poverty line, such restoration charge shall not exceed the lesser of fifty dollars (\$50.00) or the cost of services during regular work hours; or exceed the lesser of one hundred fifty dollars (\$150.00) or the cost of services during non-regular work hours. ~~Beginning January 1, 2021, Effective January 1, of each year,~~ such charges shall automatically adjust annually to reflect changes in the Consumer Price Index for the preceding twelve months, rounded down to the nearest dollar ~~shall be effective January 1. for All Urban Consumers in the selected local area of Los Angeles Long Beach Anaheim, California.~~

#### **14.12.150 Third-Party Notification.**

The City shall make available to its residential customers who are dependent adults as defined ~~in paragraph (1) of subdivision (b) of Section 15610 of the Cal. Welfare & Institutions Code Section 15610 (b)(1)~~, a third-party notification service, whereby the City will attempt to notify a person designated by the customer to receive notification when the customer's account is past due and subject to discontinuation. The notification shall include information on what is required to prevent discontinuance of service. The residential customer shall make a request for third-party notification on a form provided by the City, and shall include the written consent of the designated third party. The third-party notification does not obligate the third party to pay the overdue charges, nor shall it prevent or delay discontinuance of service.

#### **14.12.160 Landlord and Tenant.**

Whenever the City furnishes either individual metered or master metered water service to residential occupants in a single-family dwelling, multi-unit residential structure or mobile home park, where the owner, manager or operator is listed as the customer of record, the City shall make a good faith effort to inform the residential occupants, by means of a written notice, when the account is in arrears, that service will be terminated at least fifteen (15) ~~calendar~~ days prior to such discontinuance. Such notice shall further inform the residential occupants that they have the right to become customers to whom service will then be billed, without being required to pay any amount which may be due on the delinquent account.

## Chapter 14.16

### WATER CONSERVATION AND WATER SUPPLY SHORTAGE PROGRAM

#### 14.16.010 Findings and Purpose.

C 6. ~~California-Cal. Water-Wat.~~ Code Section 375 authorizes a water supplier to adopt and enforce a comprehensive water conservation program to reduce water consumption and conserve supplies.

#### 14.16.020 Definitions.

“Director” shall mean the Director of the City of Newport Beach’s Utilities Department ~~or his or her designee.~~

#### 14.16.040 Permanent Mandatory Water Conservation Requirements.

N. Use of Hydrants. No person shall use water from any fire hydrant for any purpose other than fire suppression or emergency aid without first obtaining a City hydrant meter account or written approval from the Director ~~or his or her designee.~~ Absent a meter account or Director approval, water theft and meter tampering fees shall be applied as appropriate.

#### 14.16.130 Relief from Compliance.

F. Appeal of Final Decision. A customer may appeal the decision of the Director by submitting a written request within fifteen (15) days of the date of the Director’s written decision. A written appeal request shall be submitted to the City Manager and include the reasons for the request and signature of the customer submitting the request. The City Manager may approve or disapprove the appeal within thirty (30) days from receipt of a request. The City Manager shall hear the appeal and the decision of the City Manager shall be final as to the City but subject to judicial review pursuant to Cal. Code Civ. Proc. Section 1094.5.

#### 14.16.050 Procedure for Declaration and Notification of Water Supply Shortage.

A. Upon the Director’s determination of the existence of a water supply shortage based on the criteria and stages defined in the City’s Water Shortage Contingency Plan, the City Council may declare a water supply shortage from Level One up to Level Six. In accordance with ~~California Water~~Cal. Wat. Code Sections 350 through 352, the City Council may also declare a Level Six catastrophic water supply shortage in response to a disaster or sudden event that has or threatens to significantly diminish the reliability or quality of the City’s water supply.

#### 14.16.140 Enforcement.

~~B. Violations. Violations of this chapter are subject to criminal, civil, and administrative fines and penalties and are enforceable under the procedures provided in Section 1.04.010 and Chapter 1.05.~~

BC. Additional Enforcement Options. In addition to the fines and penalties provided for in Chapters 1.04 and 1.05, ~~t~~The City may impose the following requirements on a customer in the event of a continuing or willful violation:

1. Water Flow Restrictors. The City may install a water flow restrictor of approximately one (1) gallon per minute for services up to one and one-half (1 ½) inches in size and comparatively sized

restrictors for larger services. Prior to doing so, the City shall first provide a minimum of forty-eight (48) hours' notice of its intent to install a water flow restrictor. In the event that a customer refuses to permit the installation of a water flow restrictor following the City's election to do so, the City may terminate the customer's water service.

## Chapter 14.17

### WATER-EFFICIENT LANDSCAPING

#### 14.17.010 Definitions.

N. “Licensed professional” means a licensed landscape architect, California licensed landscape contractor, civil engineer, architect, or any other person authorized to design or construct a landscape pursuant to ~~Sections 5500.1, 5615, 5641, 5641.1, 5641.2, 5641.3, 5641.4, 5641.5, 5641.6, 6701, and 7027.5 of the California Cal. Business & Professions Code, Sections 5500.1, 5615, 5641, 5641.1, 5641.2, 5641.3, 5641.4, 5641.5, 5641.6, 6701, and 7027.5, Section 832.27 of Title 16 CCR of the California Code of Regulations Section 832.27, and Section 6721 of the California Food & Agriculture Code Section 6721, or any successor statutes.~~

R. “MWELo” means the Water Efficient Landscape Ordinance as set forth in 23 ~~Cal. Code of Regulations, CCR Division 2, Chapter 2.7, Section 490 et seq.~~

## Chapter 14.20

### WATER METERS\*

#### 14.20.010 Property of City—Damaged or Lost Meters.

A. All meters, unless otherwise authorized by the ~~Utilities Manager~~Utilities Director, shall be and remain the property of the City and will not be removed unless the use of water on the premises is to be entirely stopped, or the service connection discontinued or abandoned.

#### 14.20.060 Meters Inside Premises.

When a water meter is placed inside the premises of a consumer, for the convenience of the consumer, provisions shall be made for a convenient meter reading and repairing by representatives of the City. Failure to make such provisions by the consumer shall be sufficient cause for removal of such meter at the option of the ~~Utilities Manager~~Utilities Director and the withholding of service until connection is made at the curb-line as herein provided.

## Chapter 14.24

### SEWER CONNECTION, PERMITS\*

#### Sections:

**14.24.010 Definitions.**

**14.24.020 Dwelling Unit and Business Structure Sewer Connection Required.**

**14.24.030 Application for Sewer Connection.**

**14.24.040 Contents of Application.**

**14.24.050 Sewer Connection Fee.**

**14.24.060 Sewer Connection Requisite to Occupancy.**

**14.24.065 Sewer Use Charge.**

**14.24.070 Owner Indebted for Expense.**

**14.24.080 Sewer Connections in the Orange County Sanitation District ~~No. 7~~.**

**14.24.090 Permit Required for Connection Outside of City.**

**14.24.100 Permit Conditions for Connection Outside of City.**

**14.24.110 Consent Discretionary for Connection Outside of City.**

#### **14.24.020 Dwelling Unit and Business Structure Sewer Connection Required.**

Every dwelling unit or business structure in the City shall be connected with the public sewer in the manner, at the place, under the supervision of and to the satisfaction of the Municipal Operations Utilities Director, if the dwelling unit or business structure is within two hundred (200) feet of the public sewer.

Each dwelling unit or business structure shall be individually connected to the City sewer system unless otherwise approved by the Municipal Operations Utilities Director. All sewer laterals shall be inspected by the Municipal Operations Utilities Department either at the time of demolition or before final approval of the building permit or granting of occupancy for all projects involving demolition, construction, reconstruction and/or substantial remodeling of any dwelling unit or business structure. Each sewer lateral connection shall be replaced and/or constructed in accordance with the City's standards for such construction and shall have a clean-out assembly installed at the property line whenever one or more of the following apply:

E. Wherever six (6) or more fixture units (per the Uniform Plumbing Code (UPC)) are added to an existing plumbing system; or

#### **14.24.050 Sewer Connection Fee.**

The applicant shall pay ~~two hundred fifty dollars (\$250.00)~~ a connection fee, as set by resolution adopted by the City for Council, for each connection to the public sewer.

**14.24.080 Sewer Connections in the Orange County Sanitation District ~~No. 7~~.**

No building permit shall be issued by the Community Development Department for any construction requiring a sewer connection which is located within the boundaries of the Orange County Sanitation District ~~No. 7 of Orange County~~ until the applicant has presented written evidence of payment of any connection charges required by said district.

## Chapter 14.30

### FATS, OILS AND GREASE (FOG) CONTROL\*

#### Sections:

14.30.010 Intent and Purpose.

14.30.015 Definitions.

14.30.020 Permit Required.

14.30.025 Requirements.

14.30.027 Prohibitions.

14.30.030 Grease Control Devices.

14.30.035 Exceptions.

14.30.040 Fees.

14.30.045 Sampling and Monitoring.

14.30.050 Sanitary System Overflows (SSOs) and Recovery of Costs and Fines.

14.30.053 Compliance Schedule Agreement.

14.30.055 Termination or Suspension of Service.

14.30.057 Notice of Non-compliance

14.30.060 Violations and Penalties.

\* Prior ordinance history: Ords. 97-3, 96-22 and 91-5.

#### 14.30.015 Definitions.

~~“Building Official” means the Building Manager/Chief Building Official of the City’s Community Development Department or his or her designee.~~

“Food service establishment (FSE)” means a food facility~~ies as defined in in California Uniform Retail Food Service Establishments Law (CURFFL) Cal. Health and Safety Code Section 1137895,~~ and any commercial entity within city, operating in a permanently constructed structure such as a room, building, or place, or portion thereof, maintained, used, or operated for the purpose of preparing, serving, or manufacturing, packaging, or otherwise handling food for sale to other entities, or for consumption by the public, its members or employees, and which has any process or device that uses or produces FOG, or grease vapors, steam, fumes, smoke or odors that are required to be removed by a Type I or Type II hood,~~as defined in CURFFL Section 113785.~~ A limited food preparation establishment is not considered a food service establishment when engaged only in reheating, hot holding or assembly of ready to eat food products and as a result, there is no wastewater discharge containing a significant amount of FOG. A limited food

preparation establishment does not include any operation that changes the form, flavor, or consistency of food.

“Grease control device” or “device” means any gravity grease interceptor, ~~grease trap~~ hydromechanical grease interceptor or other mechanism, the purpose of which is to trap or collect or treat FOG prior to it being discharged into the sewer system.

“Gravity gGrease interceptor” means a multi-compartment grease control device that is constructed in different sizes and is required by the City to be located, according to the Uniform Plumbing Code, underground between a FSE and the connection to the sewer system.

“Hydromechanical grease interceptors (HGIs)” (formerly named grease traps) means a device used to treat kitchen wastewater from food service establishments (FSEs) using gravity separation aided by vented flow control. They are typically installed indoors and connected to one to four (1-4) sinks in the kitchen.

“Limited Food Preparation Establishments (“LFPE”) means an FSE that engages only in beverage services and limited reheating of ready-to-eat food products and, as a result, generates no wastewater discharge containing FOG (e.g., specialty coffee houses). LFPE’s shall be determined by the City and are exempt from annual FOG BMP inspections.

~~“Municipal Operations Director” shall mean the Director of the Municipal Operations Department or his or her designee.~~

“Remodeling” means a physical change in an FSE causing an increased amount of FOG to the sewer system, as determined by the ~~Building Director~~Community Development Director; or exceeding a cost of fifty thousand dollars (\$50,000.00) to a FSE that requires a building permit, and involves any one or combination of the following: (1) under slab plumbing in the food processing area, (2) a thirty (30) percent ~~(30%)~~ increase in the net public seating area, (3) a thirty (30) percent ~~(30%)~~ increase in the size of the kitchen area, or (4) any change in the size or type of food preparation equipment.

“Regulatory agencies” means those agencies having regulatory jurisdiction over the operations of the City’s facilities, including, but not limited to:

4. South Coast Air Quality Management ~~District~~City (SCAQMD).
5. California Department of ~~Public Health~~Health Services (DPHHS).
6. Orange County Health Care Agency (OC HCA).

~~“Utilities Superintendent/Manager” means the Utilities Superintendent/General Manager of the City’s Municipal Operations/Utilities Department or his or her designee.~~

#### **14.30.025 Requirements.**

A 2. Authorize the ~~Municipal Operations~~Utilities Director to access and inspect an FSE to ensure compliance with this chapter during all times the FSE is open, operating, or any other reasonable time.

3. Require the FSE to immediately notify the City by telephone at the number specified by the ~~Municipal Operations~~Utilities Director in the event the FSE is unable to comply with any requirements of this chapter due to a breakdown of equipment, accidents, or human error, or when the FSE has reasonable opportunity to know that a discharge will exceed the provisions of this chapter. This notification shall not relieve the

FSE of any expense, loss, damage or other liability which may be incurred as a result of damage or loss to the City or any other damage or loss to person or property; nor shall such notification relieve the FSE of any fees, fines or other liability which may be imposed by this chapter or other applicable law.

4. Require the FSE's adherence to best management practices to minimize the discharge of FOG to the sewer system. These BMPs shall be developed by the Utilities ~~Manager~~Superintendent, updated annually, and distributed to each permit holder.

5. Require the FSE to maintain any grease control device in an efficient operating condition by removing the full content of the device which includes wastewater, accumulated FOG, floating materials, sludge and solids in a manner consistent with the maintenance frequency and maintenance practices approved by the ~~Municipal Operations-Utilities~~ Director.

6. Require all food service establishments to clean the sewer lateral from the grease control device to the sewer main, at least annually, or at a frequency that ensures proper flow within the sewer lateral and to maintain a record of the cleaning on file for review at the FSE.

76. The FSE shall keep all waste manifests, receipts and invoices of all cleaning, maintenance, grease removal of or from the grease control device, disposal carrier and disposal site location for no less than two (2) years. The FSE shall, upon request, make the waste manifests, receipts and invoices available to any City representative, or inspector.

~~B. Ninety (90) days following the effective date of this chapter, all FSEs shall have applied for and received a permit.~~

~~CB.~~ New FSEs or FSEs that are newly required to have a permit shall have received a grease disposal permit prior to the Building Official's issuance of a certificate of occupancy. An FSE may not open for business nor serve customers without receiving and maintaining a valid grease control permit.

#### **14.30.027 Prohibitions.**

~~B. No FSE shall have or install installation of a food grinders in the sewer system for a buildingsystem of all new FSEs in new or existing buildings, and in all existing FSEs undergoing remodeling or a change in operations.~~

C. No FSE shall have a gravity grease interceptor that is less than seven hundred fifty (750) gallons or more than two thousand (2,000) gallons, unless authorized by the City.

~~DC.~~ Introduction of any additives into an FSE's wastewater system for the purpose of emulsifying FOG, for grease remediation or as a supplement to interceptor maintenance unless a variance is obtained in accordance with Section 14.30.035.

~~ED.~~ Discharge of wastewater from dishwashers to any grease control device.

~~FE.~~ Discharge of wastewater with temperatures in excess of 140°F to any grease control device.

~~GF.~~ Discharge of wastes from toilets, urinals, wash basins, and other fixtures containing fecal materials to sewer lines intended for grease control device service, or vice-versa.

~~HG.~~ Discharge of any waste including FOG and solid materials removed from the grease control device to the sewer system.

~~I.H.~~ Tampering with or knowingly rendering inoperable any grease control device, monitoring device or method or access point.

~~J.I.~~ Interfering with, delaying, resisting or refusing entrance to City representatives attempting to inspect any facility involved directly or indirectly with a discharge of wastewater to the City's sewer system.

~~K.J.~~ Making any false statement or representation on any record, report, plan or other document that is filed with the City in accordance with this ~~c~~Chapter.

#### **14.30.030 Grease Control Devices.**

A. Any new FSE, any FSE undergoing remodeling, any FSE undergoing a change in operations or, as directed by the ~~Municipal Operations~~Utilities Director, any FSE that violates the provisions of this chapter, shall obtain a permit from the Building Official to install a grease control device.

~~B.~~ All grease control devices shall be installed per manufacturers specifications unless otherwise approved by the City. The Community Development Department will specify, size, style, location, orientation, and any other special conditions for the installation of the grease control device.

~~C.B.~~ Upon approval of the Building Official, grease control devices for FSEs may be "gang" devices which accept FOG from more than one FSE. Each FSE that contributes FOG to a gang device shall be responsible for the installation and maintenance of the grease control device. A written service agreement from the property management company detailing which party is responsible for maintenance may be required by the City.

~~D.C.~~ The Building Official shall not issue a certificate of occupancy for an FSE which is required to have a grease control device until the device has been installed, inspected and approved by the Utilities ~~Community Development~~ Department.

~~E.D.~~ Any decision of the Building Official pursuant to this chapter may be appealed by any interested party to the Building and Fire Board of Appeals, pursuant to Chapter 15.80 of ~~this~~ Newport Beach Municipal Code.

#### **14.30.035 Exceptions.**

A 1. Variance. If the ~~Utilities~~Municipal Operations Director finds that a treatment or pretreatment product, combined with best management practices, will limit or eliminate FOG discharges from a particular FSE, the Utilities Manager may exempt that FSE via a variance.

2. Waiver. The Building Official, in consultation with the ~~Municipal Operations~~Utilities Director, shall exempt an FSE from the requirements of Section 14.30.030 via a waiver; provided, that the FSE complies with all other provisions of this chapter; and provided, that any of the following conditions exist:

b. There is inadequate slope for gravity flow between kitchen plumbing fixtures and the grease control device and/or between the grease control device and the private collection lines or the public sewer; or

~~c. The FSE has been in operation prior to January 1, 2005, and has not had a change in operations or a remodel; or~~

~~cd.~~ The FSE conducts operations that do not produce FOG in a quantity that adversely affects the wastewater system. In this case, the waiver shall include conditions placed by the ~~Municipal Operations~~Utilities Director on the FSE's operations that provide for continued limits on FOG production.

#### **14.30.045 Sampling and Monitoring.**

- A. ~~In order to~~ meet the objectives and requirements of this ~~c~~Chapter, the Utilities Director may require a FSE to construct, maintain, and provide access to monitoring facilities at the FSE's expense.
- B. The location of the monitoring facilities shall be subject to approval by the Utilities Director.
- C. FSEs may be required by the Utilities Director to submit waste analysis plans, contingency plans, and meet other necessary requirements to ensure proper operation and maintenance of the grease control device and compliance with this ~~c~~Chapter.

D. In the event that inspection of the point of sewer lateral connection to the sewer system indicates that FOG discharge by an FSE is causing or contributing to build up of FOG inside the sewer lateral where it has discharged, or has the potential to discharge to the sewer system, or in the event that an FSE fails to comply with the prohibitions of this chapter, the Utilities Director, shall have the authority to modify the permit to require the installation of a City approved grease control device. Any person who is dissatisfied with a decision of the Utilities Director to modify a permit may appeal such decision to the City Manager by filing a written statement of appeal with the City Clerk within fifteen (15) days after service of the decision in the manner provided in Section 1.08.080. The City Manager shall fix a date for hearing the appeal and shall give notice thereof to the party appealing. The decisions of the City Manager on such appeals shall be final as to the City but subject to judicial review pursuant to Cal. Code Civ. Proc. Section 1094.5

#### **14.30.053 Compliance Schedule Agreement.**

In the event that non-compliance with the provisions of a discharge permit or this chapter has occurred or is continuing, the Utilities Director may request that the FSE or other party enter into a Compliance Schedule Agreement. The Compliance Schedule Agreement may state terms and conditions to allow the FSE or other party to come into compliance with a discharge permit or other provisions in this chapter. The Utilities Director shall not enter into a Compliance Schedule Agreement until all amounts due and owing to the City under applicable ordinances and policies have been paid, or until the City has approved a payment plan.

#### **14.30.055 Termination or Suspension of Service.**

- A. Termination. The Utilities Director may physically terminate ~~watersewer~~ service to any property upon order of any official from the Regulatory Agencies for illicit or illegal discharges due to public health.
- B. Suspension. The Utilities Director may suspend ~~watersewer~~ service when the ~~Utilities Superintendent~~Manager determines that the suspension is necessary to stop an actual or impending discharge which presents or may present an imminent or substantial endangerment to the health, safety and welfare of persons, or to the environment. Any discharger notified of and subject to a suspension order, shall immediately cease and desist the discharge of all wastewater ~~containing FOG~~ to the sewer system.

C. All costs for physical termination shall be paid by the owner or operator of the FSE as well as all costs for reinstating service.

#### **14.30.057 Notice of Non-compliance**

In the event an FSE is found to be non-compliant with the provisions of a discharge permit or this chapter, the Utilities Director may issue a written Notice of Non-compliance, whereby the FSE or receiving party shall comply with all directives, conditions, and requirements contained therein within the time prescribed. A Notice of Non-compliance may direct the receiving party to cease and desist from activities or actions that are prohibited by this chapter and it shall be a violation of this section for any person to fail to comply with the Notice of Non-Compliance. Each Notice of Non-compliance shall state a reasonable time period for the FSE or receiving party to come into compliance with the Notice of Non-compliance.

#### **14.30.060 Violations and Penalties.**

~~A. Any person who violates any provision of this Chapter is guilty of a misdemeanor, which upon conviction is punishable by a fine not to exceed one thousand dollars (\$1,000.00), or imprisonment for not more than six months, or both. Each violation and each day in which a violation occurs may constitute a new and separate violation of this Chapter and shall be subject to the penalties contained herein.~~

~~B.A. In addition to the fines and penalties provided for in Chapters 1.04 and 1.05, any persons violating the provisions of this Chapter may be subject to the following penalties:~~

~~1. Pursuant to the authority of the Clean Water Act, 33 U.S.C. Section 1251 et seq., which provides that any violator may be liable civilly for a sum not to exceed twenty-five thousand dollars (\$25,000.00) per violation for each day in which such violation occurs.~~

~~2. Pursuant to Chapter 1.05 of the Newport Beach Municipal Code, any person who violates any provision of this Chapter may be subject to administrative citation.~~

~~B.C. The amount of any civil penalty assessed shall be based on relevant circumstances, including but not limited to, the following:~~

~~C.D. The decision of the Utilities Director to levy penalties may be appealed to the City Manager within ten (10) days of the service of the decision as provided in Section 1.08.080. The City Manager shall fix a date for hearing the appeal and shall give notice thereof to the party appealing in the manner provided for in Section 1.08.080. The decisions of the City Manager on such appeals shall be final as to the City but subject to judicial review pursuant to Cal. Code Civ. Proc. Section 1094.5 or his or her designee.~~

## Chapter 14.33

### WATER CAPITAL IMPROVEMENT CHARGES

#### 14.33.020 Definitions

~~“Utilities Manager” or “Manager” shall mean the Utilities Manager of the City.~~

#### 14.33.040 Water Capital Improvement Charges.

A water capital improvement charge ~~in the amount of two thousand nine hundred fifty dollars (\$2,950.00)~~ per gross acre ~~is shall be set established by resolution of the City Council which and~~ shall be applicable to all benefitted lands, as shown upon the maps adopted by the City Council pursuant to Section 14.33.030 of this chapter. For fractional portions of an acre the charge shall be calculated in direct proportion to the actual area of the parcel of land. The fees shall be computed on the basis of gross acreage of the property, or portions thereof, to be served or benefitted, including abutting streets, rights of way and easements, both public and private.

#### 14.33.110 Administration and Appeals.

The Utilities ~~Manager-Director~~ shall be charged with the duty of administering the procedures set forth in this chapter and any rules and regulations adopted pursuant to ~~its-said~~ authority. Any person who is dissatisfied with a decision of the Utilities ~~Manager-Director~~ may appeal such decision to the City Manager by filing a written statement of appeal with the City Clerk within fifteen (15) days after he ~~service of the notice of decision in the manner provided in Section 1.08.080 has received notice of the decision.~~ The City Manager shall fix a date for hearing the appeal and shall give notice thereof to the party appealing. The decisions of the City Manager on such appeals shall be final ~~as to the City but subject to judicial review pursuant to Cal. Code Civ. Proc. Section 1094.5 and conclusive.~~

## Chapter 14.34

### WATER WELL STANDARDS

#### Sections:

**14.34.010 Intent and Purpose.**

**14.34.020 Definitions.**

**14.34.030 Well Standards Advisory Board.**

**14.34.040 Acts Prohibited—Permit Required.**

**14.34.050 Permits.**

**14.34.060 Completion of Work.**

**14.34.070 Notice—Cancellation or Denial of Permit.**

**14.34.080 Notice—Public Nuisance.**

**14.34.090 Immediate Abatement.**

**14.34.100 Board Hearing.**

**14.34.110 Abatement Costs a Special Assessment.**

**14.34.120 Standards.**

~~**14.34.130 Penalty.**~~

#### **14.34.020 Definitions**

~~Community Water Supply Well: means a water well used to supply water for domestic purposes. A water well used to supply water for domestic purposes in systems subject to Chapter 7 of Part 1 of Division 5 of the California Health and Safety Code.~~

~~Person. Any person, firm, corporation or governmental agency.~~

~~Health Officer. The Orange County Health Officer or his designee, acting as the City Health Officer.~~

#### **14.34.110 Abatement Costs a Special Assessment.**

Upon a finding by the Well Standards Advisory Board that a well constitutes a public nuisance, all cost of abatement carried out under the terms of this section shall constitute a charge and special assessment upon the parcel of land involved. If such costs are not paid within sixty (60) days, they shall then be declared a special assessment against that parcel as provided in Cal. Government Code Section 25845. Such special assessment shall be collected at the same time and in the same manner as ordinary County taxes are collected, and shall be subject to the same penalties and the same procedures and sale in case of delinquency as provided for ordinary County taxes. The County shall retain the additional and

independent right to recover its costs by way of civil action against the owner and person in possession or control, jointly or severally.

**14.34.120 Standards.**

Standards for the construction, reconstruction, destruction, or abandonment of wells shall be the standards recommended in the State Department of Water Resources Bulletin No. 74, ~~Chapter II and Appendices E, F and G, and future amendments thereto. Until such time as standards for cathodic protection wells and electrical grounding wells are recommended by the Department of Water Resources, such wells shall conform to the "Tentative Deep Anode Standards," Sheets A-497-S-1 and A-497-S-2, revised December 10, 1969, of the Southern California Cathodic Protection Committee.~~ Well Standards may be modified by the Health Officer, with the advice and concurrence of the Well Standards Advisory Board, where required to cope with local geological and ground water conditions.

**~~14.34.130 Penalty.~~**

~~Any person who violates the terms of this chapter or any permit issued hereunder shall be guilty of a misdemeanor, punishable pursuant to the provisions of Section 1.04.010 of this Code.~~

## Chapter 14.36

### WATER QUALITY

#### 14.36.010 Purpose and Intent.

The United States Congress passed the Clean Water Act (33 U.S.C. Section 1251 et seq., ~~as amended~~, including Section 402(p) therein, ~~being 33 U.S.C. Section 1342(p)~~) as a mandate, in part, that municipalities separate storm water runoff and sanitary sewer systems, in areas such as in Orange County, obtain permits to “effectively prohibit non-storm water discharges into the storm sewers” and “require controls to reduce the discharge of pollutants to the maximum extent practicable ....” This permitting authority has been delegated by the United States Environmental Protection Agency (“EPA”) to the State of California, which has authorized the State Water Resources Control Board and its local regulatory agencies, the Regional Water Quality Control Boards, to control non-point source discharges to California’s waterways.

The Santa Ana and San Diego Regional Water Quality Control Boards have addressed the obligation to implement the Clean Water Act by issuing Waste Discharge Requirements governing storm water runoff for the County of Orange. These permits shall be referred to collectively herein as the National Pollution Discharge Elimination System Permit or “NPDES Permits.”

The City ~~of Newport Beach~~ is participating as a “Co-permittee” under the NPDES Permits in the development and adoption of an ordinance to accomplish the requirements of the Clean Water Act.

#### 14.36.020 Definitions

~~“City” means the City of Newport Beach, Orange County, California.~~

~~“City Manager” means the City Manager of the City or his/her designee.~~

~~“Person” means any natural person as well as any corporation, partnership, government entity or subdivision, trust, estate, cooperative association, joint venture, business entity, or other similar entity, or the agent, employee or representative of any of the above.~~

“Enforcing Attorney” means the City Attorney or District Attorney acting as counsel to the City ~~of Newport Beach and his/her designee~~, which counsel is authorized to take enforcement action. For purposes of criminal prosecution, the District Attorney, ~~or his/her designee~~, shall act as the Enforcing Attorney.

#### 14.36.060 Enforcement

A 1. Notice of Noncompliance. In addition to any other remedy or means of enforcement authorized by law or this ~~C~~code, the Authorized Inspector may deliver to the owner or occupant of any property, or to any person responsible for an illicit connection or prohibited discharge a notice of noncompliance. The notice of noncompliance shall be delivered in accordance with this section.

10. Final Decision and Appeal. The final decision of the Hearing Officer shall issue within ten (10) business days of the conclusion of the hearing and shall be delivered by first-class mail, postage prepaid, to the appealing party. The final decision shall include notice that any legal challenge to the final decision shall be made pursuant to the provisions of ~~Code of Civil Procedure~~ Cal. Civ. Proc. Code Sections 1094.5 and 1094.6 and shall be commenced within ninety (90) days following issuance of the final decision. If the appellant is the prevailing party, the administrative hearing fee paid by Appellant shall be refunded.

Notwithstanding the foregoing, the final decision of the Hearing Officer in any proceeding determining the validity of a cease and desist order or following an emergency abatement action shall be mailed within five (5) business days following the conclusion of the hearing.

B 3 a. At the direction of the City Manager or the Authorized Inspector, the Enforcing Attorney is authorized to collect nuisance abatement costs or enforce a nuisance lien in an action brought for a money judgment or by delivery to the County Assessor of a special assessment against the property in accord with the conditions and requirements of ~~Government~~ Cal. Gov. Code 38773.5.

E. Citations. Pursuant to ~~Cal. Pen.~~ Cal. Pen. Code Section 836.5, the Authorized Inspector shall have the authority to cause the arrest of any person committing a violation of this chapter. The person shall be released and issued a citation to appear before a magistrate in accordance with ~~Cal. Pen.~~ Cal. Pen. Code Sections 853.5, 853.6 and 853.9, unless the person demands to be taken before a magistrate. Following issuance of any citation, the Authorized Inspector shall refer the matter to the Enforcing Attorney.

F. Violations of Other Laws. Any person acting in violation of this chapter also may be acting in violation of the Federal Clean Water Act, 33 U.S.C. §§ 1251 et seq., or the State Porter-Cologne Act, California. Wat. Code Section 7, and other laws and also may be subject to sanctions including civil liability. Accordingly, the Enforcing Attorney is authorized to file a citizen suit pursuant to Federal Clean Water Act Section 505(a), U.S.C. §§ 1365(a), seeking penalties, damages and orders compelling compliance, and other appropriate relief. The Enforcing Attorney may notify EPA Region IX, the Santa Ana or San Diego Regional Water Quality Control Boards, or any other appropriate state or local agency, of any alleged violation of this chapter.

#### **14.36.070 Permits.**

A 1. Permit. On application of the owner of property or the operator of any facility, which property or facility is not otherwise subject to the requirements of a State General Permit or a National Pollution Discharge Elimination System Permit regulating storm water discharges, the City Manager ~~or designee~~ may issue a permit authorizing the release of non-storm water discharges to the Storm Water Drainage System if:

## Chapter 15.02

### ADMINISTRATIVE CODE

#### **15.02.085 Addition of Section 105.3.1.1 –**

Section 105.3.1.1 is added as follows:

Section 105.3.1.1 Demolition permits. Prior to issuance of a demolition permit for complete demolition of a structure, the permittee shall certify that a City franchised solid waste enterprise shall be used for the handling, removal and disposal of all construction and demolition waste. A demolition permit deposit, set by Resolution of the City Council, shall be paid at the time of submitting the demolition permit application and the Demolition Contractor Certification and Deposit Form. Said deposit shall be returned to the permittee, minus administrative fees set by Resolution of the City Council, at the conclusion of the demolition project, upon the submittal of documentation that a franchised solid waste enterprise was used to handle, remove and dispose of all demolition wastes. The demolition permit deposit shall be forfeited in its entirety if a franchised solid waste enterprise is not used to handle, remove and dispose of all demolition wastes.

If the Building Official finds that the work described in an application for a demolition permit and the plans, specifications and other data filed therewith conform to the requirements of this Code and the technical codes and other pertinent laws and ordinances, and that the fees specified in Section 109 have been paid and that a franchised solid waste enterprise is being used, the building official shall issue a permit therefore to the applicant. Prior to any demolition activities authorized by the permit, the permittee shall notify the ~~Municipal Operations Division of~~ Public Works Department no less than twenty-four (24) hours or more than seventy-two (72) hours in advance of its intent to commence demolition and provide the name of the franchised solid waste enterprise that will conduct the demolition activities. Any hauling or disposal of demolition and construction wastes by other than the identified franchised solid waste enterprise shall subject the project to suspension of work as authorized in this code.

#### **15.02.095 Addition of Sections 105.3.3, 105.3.4, and 105.3.5.**

Section 105.3.3 is added to read as follows:

Section 105.3.3 Time limit on permitted construction.

For any one-unit or two-unit dwelling for which a tentative and final tract map is not required, the maximum allowable time to complete construction for any work that requires a building permit including, but not limited to, any construction, reconstruction, rehabilitation, renovation, addition(s), modification(s), improvement(s), or alteration(s), shall be limited to three (3) years, unless an extension is granted in accordance with Section 105.3.4.

For building permits issued on or after June 1, 2019, the time limit to complete construction shall begin on the date of issuance of the first or original building permit. For building permits issued prior to June 1, 2019, the time limit to complete construction shall be three (3) years from June 1, 2019.

Final inspection and approval of the construction work by the City shall mark the date of construction completion for purposes of Section 15.02.095. Time limits set forth herein shall not be extended by issuance of a subsequent building permit(s) for the same project.

Section 105.3.4 is added to read as follows:

Section 105.3.4 Extension of time limit to complete construction.

The maximum allowable time to complete construction, as set forth in Section 105.3.3, may be extended as follows:

1. Application for Extension to Building Official.

a) A property owner, or authorized agent of the property owner, may request an extension by filing with the Building Official, in writing and on a form provided by the Building Official, an application for extension which sets forth: (i) the address of the project site; (ii) the name of the applicant and property owner; (iii) when the first or original building permit was issued; (iv) the length of time extension requested, which shall not be greater than three hundred and sixty-five (365) ~~calendar~~-days; (v) how many previous extensions have been granted; (vi) the basis for the requested extension; (vii) the new end project date if the application is approved; (viii) a brief description of the improvements that are the subject of the application; and (ix) any other information requested by the City.

b) Unless authorized by the Building Official in writing, an application for extension shall be submitted no later than forty-five (45) ~~calendar~~-days prior to the expiration of the building permit. The application for extension to the Building Official shall be accompanied the fee set forth in the City's master fee schedule.

c) Within forty-five (45) days of a request for extension, the Building Official may ministerially grant, conditionally grant or deny a request for extension for a period not to exceed three hundred sixty-five (365) ~~calendar~~-days. The Building Official shall only grant an extension if he/she determines adequate progress has been made towards completion of construction and the request for extension is necessary for its completion. The decision of the Building Official shall be final as to the City but subject to judicial review pursuant to Cal. Code Civ. Proc. Section 1094.5.

2. Application for Additional Extension(s).

a) If construction of the project has not been completed within the timeframe authorized by the Building Official, a property owner, or authorized agent of the property owner, may request an additional extension by filing with the City Clerk, in writing and on a form provided by the City Clerk, an application for extension which sets forth: (i) the address of the project site; (ii) the name of the applicant and property owner; (iii) when the first or original building permit was issued; (iv) the length of time extension requested, which shall not be greater than one hundred and eighty (180) ~~calendar~~-days; (v) how many previous extensions have been granted; (vi) the basis for the requested extension; (vii) the new end project date if the application is approved; (viii) a brief description of the improvements that are the subject of the application; and (ix) any other information requested by the City.

b) Unless authorized by the Building Official in writing, an application for extension shall be submitted no later than forty-five (45) ~~calendar~~-days prior to the expiration of the building permit.

c) An application for extension filed with the City Clerk shall be accompanied by a hearing and noticing fee identified in the City's master fee schedule.

3. Scheduling and Noticing.

a) For an application for an additional extension set forth in subsection (2), a Hearing Officer, designated by the City Manager, shall hear and decide whether a second application for extension, or third application for extension, shall be granted, conditionally granted, or denied. The City Council shall hear and decide whether any additional application for extension shall be granted, conditionally granted, or denied. The applicable hearing body shall be referred to herein as the “review authority.”

b) For any application for extension to be heard by a Hearing Officer, the City Manager shall appoint a Hearing Officer with the requisite qualifications and experience to consider the application for extension. The Hearing Officer shall not be a City employee and the employment, performance evaluation, compensation, and benefits of the Hearing Officer, if any, shall not be conditioned, either directly or indirectly, upon the outcome of any decision by the Hearing Officer.

Within seven (7) ~~calendar~~ days of the City Clerk’s receipt of an application for extension, the City Manager ~~or his/her designee~~ shall notify the applicant of the name of the Hearing Officer in the manner provided in accordance with Section 1.08.080. If the applicant wishes to challenge the designated Hearing Officer, the applicant shall have seven (7) ~~calendar~~ days from the date of service of the notice to submit to the City Manager a request, in writing, to disqualify the Hearing Officer, which sets forth the basis for disqualification. A Hearing Officer may only be disqualified for: (i) bias; (ii) prejudice; (iii) a conflict of interest; or (iv) a reason for which a judge may be disqualified after a showing of good cause under the laws of the State of California.

The City Manager will review any request for disqualification and make a decision as to whether a Hearing Officer shall be disqualified. The City Manager’s decision shall be final. If the City Manager disqualifies a Hearing Officer, the City Manager shall designate a new Hearing Officer in accordance with the procedures in this subsection.

c) The applicant shall be notified of the time and place set for the hearing of the application, in the manner provided in accordance with Section 1.08.080, at least ten (10) ~~calendar~~ days prior to the date of the hearing. All hearings on an application to be heard by the review authority shall be noticed in the following manner:

(i) Mailed to property owners within three hundred (300) feet of the project site that is the subject of the application, at least ten (10) ~~calendar~~ days in advance of the hearing. The notice shall contain: the address of the project site; the length of time extension requested; the new end project date if the application is approved; the name of the applicant and property owner; a brief description of the improvements; the date, time, and place of the hearing; and a statement informing the person they have the ability to attend the hearing and provide comments; and

(ii) Posted by the applicant at the project site, that is the subject of the application, at least ten (10) ~~calendar~~ days before the scheduled hearing. The size, location and number of sign(s) shall be posted as determined by the City Manager ~~or his/her designee~~. The applicant shall be responsible for maintaining the sign(s) in a satisfactory condition and shall remove all sign(s) within twenty-four (24) hours following the conclusion of the hearing.

The failure of any person or entity to receive notice given in compliance with this subsection shall not invalidate the actions of the applicable review authority.

#### 4. Conduct of Hearing.

- a) A hearing shall be held at the date, time, and place for which notice was given.
- b) The review authority shall only consider evidence and testimony, presented by the applicant or any other interested person, relevant to whether: (i) special circumstances warrant an extension of time; (ii) the failure to meet the time limit was caused by circumstances beyond the property owner's, applicant's or their contractor's control; and (iii) any approval should contain conditions to ensure timely completion of the project in a manner that limits impacts on surrounding property owners. Any documents submitted by City staff shall constitute prima facie evidence of the respective facts contained in those documents.
- c) The review authority may grant, or conditionally grant, up to a one hundred and eighty (180) ~~calendar~~ day extension, per application for extension, if it finds special circumstances warrant an extension of time or the failure to meet the time limit was caused by circumstances beyond the property owner's, applicant's or their contractor's control. If the review authority makes the findings to grant an extension, the review authority shall consider whether conditions are necessary to ensure timely completion of the project in a manner that limits impacts on surrounding property owners. The review authority shall deny the application if it cannot make the findings set forth in this subsection.
- d) A hearing may be continued without further notice, provided the Hearing Officer or chair of the review authority announces the date, time, and place to which the hearing will be continued before the adjournment or recess of the hearing.
- e) The review authority may announce a tentative decision and defer its action on a final decision until appropriate findings and/or conditions of approval have been prepared.
- f) The review authority shall issue a written decision, setting forth its findings, and the decision shall be final and effective on the date the decision is made, unless otherwise specified by the review authority. The review authority shall provide the City Clerk with its final decision within three (3) ~~calendar~~-days of the date of decision and the City Clerk shall mail a copy of the final decision to the applicant within ten (10) ~~calendar~~-days of receipt of the final decision.

#### 5. Judicial Proceeding.

Nothing herein shall prohibit the Building Official from issuing a building permit or extending a building permit if the extension is a term of an enforceable settlement agreement between the City and the property owner or a term of a court order/judgment.

#### 6. Judicial Review.

The decision of the review authority shall not be appealable to any City body. A person shall not seek judicial review [pursuant to Cal. Code Civ. Proc. Section 1094.5](#) related to any application for extension until the person has first exhausted all administrative procedures set forth in Section 15.02.095.

Section 105.3.5 is added to read as follows:

#### Section 105.3.5 Correlation with Codes.

Sections 105.3.3 or 105.3.4 limit the total time to complete construction and shall not relieve any person or entity from complying with any other applicable provision of federal, state or local law including, but not limited to, construction related laws adopted by the City.

## Chapter 15.05

### RESIDENTIAL CODE

#### 15.05.070 Amendment to Section R301.1.3.

R301.1.3.1 California licensed architect or engineer. When any provision of any structure deviates from substantial compliance with conventional framing requirements for wood frame construction found in this code, the Chief Building Official shall require the construction documents to be approved and stamped by a California licensed architect or engineer for that irregular or nonconforming portion of work. Notwithstanding other sections of law, the law establishing these provisions is found in [Cal. Bus.iness & Prof.essions](#) Code Sections 5537 and 6737.1.

R301.1.3.2 Wood frame structures greater than two-stories. The Chief Building Official shall require construction documents to be approved and stamped by a California licensed architect or engineer for all dwellings of a wood frame construction more than two stories in height or having a basement. Notwithstanding other sections of law, the law establishing these provisions is found in [Cal. Bus.iness and& Prof.essions](#) Code Sections 5537 and 6737.1.

R301.1.3.3 Structures other than wood frame. The Chief Building Official shall require floor, wall or roof-ceiling structural elements in dwellings designed of cold formed steel, concrete, masonry prescribed by this code to be approved and stamped by a California licensed architect or engineer. Notwithstanding other sections of law, the law establishing these provisions is found in [Cal. Bus.iness and& Prof.essions](#) Code Section 5537 and 6737.1.

#### 15.05.100 Amendment to Section R301.2.4.

##### Section R301.2.4 is amended to read as follows:

Section R301.2.4 Floodplain construction. Buildings and structures constructed in whole or in part in flood hazard areas (including A or V Zones) as established in Table R301.2, and substantial improvement and restoration of substantial damage of buildings and structures in flood hazard areas, shall be designed and constructed in accordance with ~~the City of Newport Beach Municipal Code~~ Chapter 15.50, [Floodplain Management, FLOODPLAIN MANAGEMENT](#) and Section R322. Buildings and structures that are located in more than one flood hazard area shall comply with the provisions associated with the most restrictive flood hazard area. Buildings and structures located in whole or in part in identified floodways shall be designed and constructed in accordance with ASCE 24.

R301.2.4.1 Alternate provisions. As an alternate to the requirements in Section R322 and ~~the City of Newport Beach Municipal Code~~ Chapter 15.50, Floodplain Management, ASCE 24 is permitted subject to the limitations of this code and the limitations therein.

#### 15.05.110 Amendment to Section R309.3.

1. Elevated to or above the design flood elevation as determined in accordance with Section R322 and ~~the City of Newport Beach Municipal Code~~ Chapter 15.50, Floodplain Management.
2. Located below the design flood elevation provided that the floors are at or above grade on not less than one side, are used solely for parking, building access or storage, meet the requirements of Section

R322 and ~~the City of Newport Beach Municipal Code~~ Chapter 15.50, Floodplain Management, and are otherwise constructed in accordance with this Code.

**15.05.200 Amendment to Section R322 with the Addition of the City of Newport Beach Municipal Code Chapter 15.50, Floodplain Management.**

Section R322 is amended to include ~~the City of Newport Beach Municipal Code~~ Chapter 15.50, Floodplain Management.

## Chapter 15.06

### ELECTRICAL CODE

#### 15.06.010 Adoption of the California Electrical Code.

The various parts of this code shall constitute and be known as the Newport Beach Electrical Code. A copy of the 2022 California Electrical Code, printed in code book form, shall be kept on file in the office of the Building Official pursuant to Cal. Health & Safety Code Section 18942(e)(1) and made available for public inspection. All administrative provisions including enforcement, permit process, fees, and inspections for these chapters are contained in the Administrative Code under Chapter 15.02.

## Chapter 15.07

### MECHANICAL CODE

#### 15.07.010 Adoption of California Mechanical Code.

The various parts of this code shall constitute and be known as the Newport Beach Mechanical Code. A copy of the 2022 California Mechanical Code printed in code book form shall be kept on file in the office of the Building Official pursuant to Cal. Health ~~&and~~ Saf.ety Code Section 18942(e)(1) and made available for public inspection. All administrative provisions including enforcement, permit process, fees, and inspections for these chapters are contained in the Administrative Code under Chapter 15.02.

## Chapter 15.08

### PLUMBING CODE

#### **15.08.010 Adoption of California Plumbing Code.**

The various parts of this code shall constitute and be known as the Newport Beach Plumbing Code. A copy of the 2022 California Plumbing Code, printed in code book form, shall be kept on file in the office of the Building Official pursuant to Cal. Health ~~&and~~ Saf.ety Code Section 18942(e)(1) and made available for public inspection. All administrative provisions including enforcement, permit process, fees, and inspections for these chapters are contained in the Administrative Code under Chapter 15.02.

## Chapter 15.09

### RESIDENTIAL SWIMMING POOL AND SPA CODE

#### 15.09.010 Adoption of the International Swimming Pool and Spa Code.

The various parts of these codes and standards, along with the additions, amendments, and deletions adopted in this section, shall constitute and be known as the Newport Beach Residential Swimming Pool and Spa Code. A copy of the 2021 International Swimming Pool and Spa Code, printed in code book form, shall be kept on file in the office of the Building Official pursuant to Cal. Health ~~and~~ Saf.ety Code Section 18942(e)(1) and made available for public inspection.

## Chapter 15.10

### EXCAVATION AND GRADING CODE

#### 15.10.030 Exempt Work.

A. No person shall do any grading without first having obtained a grading permit from the Chief Building Official except for the following:

7. An excavation which (a) is less than two feet in depth; or (b) does not create a cut slope greater than four (4) feet in height and steeper than two (2) horizontal to one (1) vertical; and (c) is less than fifty (50) cubic yards on one site and does not create an adverse erosion, drainage, groundwater, or slope condition requiring remedial work covered by these regulations;

8. Unless preempted by other regulations, fill which does not exceed fifty (50) cubic yards on any one site which is not part of a regular maintenance procedure and which:

a. Is placed on natural undisturbed terrain with a slope flatter than five (5) horizontal to one (1) vertical; or

b. Less than three (3) feet in depth not intended to support structures provided that such fill will not create an adverse slope, erosion, drainage, groundwater or structural condition.

C. No person shall construct, reconstruct, alter, repair or install any structure in any natural drainage channel water course without a grading permit. Road or parking lot paving work shall be performed under permit, unless waived by the Chief Building Official, or when performed as part of maintenance work.

D. Whenever the Chief Building Official determines that (1) construction of any device or structure has resulted or may result in adverse drainage, groundwater, or slope conditions; or (2) existing drainage conditions have resulted or may result in adverse erosion conditions, he/she may require a drainage permit to be obtained and corrective work accomplished.

#### 15.10.040 Hazard Abatement.

A. Whenever the Chief Building Official determines by inspection, from information made available to him/her, that any existing drainage condition, excavation, fill, natural slope or subsurface condition has become a hazard to life and limb, or endangers property or adversely affects the safety, use or stability of a public way or any drainage channel, he/she shall make a determination of the level of hazard and the owner of the property upon which the drainage conditions, excavation, fill, natural slope or subsurface condition is located, or other person or agent in control of said property, upon receipt of notice in writing from the Chief Building Official shall, within the period specified, correct such conditions in accordance with the requirements and conditions set forth in such notice so as to eliminate the hazard and be in conformance of the hazards abatement section of the International Property Maintenance Code, as adopted by the City of Newport Beach.

B. The Chief Building Official shall require the permittee or contractor, before excavating any trench five (5) feet or more in depth, to submit a detailed plan to the Chief Building Official showing the design of shoring, bracing, sloping or other provisions (i.e., security fencing, etc.) to be made for workers' protection and public safety from the hazard of caving ground.

#### **15.10.050 Definitions.**

~~“Chief Building Official” is the officer or other designated authority charged with the enforcement of the building codes.~~

“Drainage plan” is a plan appended to a proposed building plan, depicting site drainage patterns prior and post development. Contours and/or spot elevations, flow lines, outlet structures, subdrains, etc. must clearly be shown, when a separate grading permit is not required by the Chief Building Official.

#### **15.10.060 Grading Permit Requirements.**

H5. A stop sign conforming to the requirements of Section 21400 of the California Vehicle Code shall be posted at the entrance of the access road to the public roadway;

## Chapter 15.11

### GREEN BUILDING STANDARDS CODE

#### 15.11.010 Adoption of the California Green Building Standards Code.

The various parts of this Code, along with the amendments and deletions adopted in this section, shall constitute and be known as the Newport Beach Green Standards Code. A copy of the 2022 California Green Standards Code shall be kept on file in the office of the Building Official pursuant to Cal. Health ~~and~~ Saf~~ety~~ Code Section 18942(e)(1) and made available for public inspection.

## Chapter 15.13

### HISTORICAL BUILDING CODE

#### 15.13.010 Adoption of the California Historical Building Code.

The City Council adopts and incorporates by reference, as though set forth in full in this section, the 2022 Edition of the California Historical Building Code, ~~24 CCR California Code of Regulations Title 24~~, Part 8 and all national codes and standards referenced therein to the prescribed extent of each such reference.

The various parts of these codes and standards shall constitute and be known as the Newport Beach Historical Building Code. A copy of the 2022 California Historical Building Code, printed in code book form, shall be kept on file in the office of the Building Official pursuant to Cal. Health ~~&and\_~~Saf.ety Code Section 18942(e)(1) and made available for public inspection.

## Chapter 15.14

### EXISTING BUILDING CODE

#### 15.14.010 Adoption of the California Existing Building Code.

The City Council adopts and incorporates by reference, as though set forth in full in this section, the 2022 Edition of the California Existing Building Code, ~~14 California Code of Regulations~~Cal Code Reg. Title 24CCR Part 10, Appendix A, Chapters A-1, A-2 and A-3, and all national codes and standards referenced therein to the prescribed extent of each such reference.

The various parts of these codes and standards shall constitute and be known as the Newport Beach Existing Building Code. A copy of the 2022 California Existing Building Code, printed in code book form, shall be kept on file in the office of the Building Official pursuant to Cal. Health ~~and~~ Saf.ety Code Section 18942(e)(1) and made available for public inspection.

## Chapter 15.15

### REPORT OF RESIDENTIAL BUILDING RECORDS

#### Sections:

15.15.010 Authorization and Findings.

15.15.020 Definitions.

15.15.030 ~~Obtaining a Report of Residential Building Records Required.~~

15.15.040 Application.

15.15.050~~45~~ Inspection.

15.15.060~~50~~ Delivery of Report.

~~15.15.060—Exceptions.~~

15.15.070~~65~~ Refunds/Cancellation Fees.

~~15.15.066—Expiration of Report.~~

~~15.15.070—Penalties.~~

~~15.15.075—Severability.~~

#### 15.15.010 Authorization and Findings.

The City Council is authorized to require a report of residential building records pursuant to the provisions of the Constitution of the State of California, the ~~Newport Beach~~ City Charter, and ~~Section 38780, et seq., of the~~ Government Code Section 38780, et seq of the State of California. While requiring these reports can help reduce and prevent violations of the Code, The City Council finds that imposing this requirement can disrupt the sale of residential property. Based thereon, the City Council finds that making a voluntary program available to people purchasing residential real property is warranted. requiring a report of residential building records will:

A. ~~Reduce and prevent violations of building and zoning ordinances by providing the owner of residential property with information as to permitted and illegal uses as well as permitted and illegal construction;~~

B. ~~Facilitate enforcement of building and zoning ordinances designed to protect the public health, safety and welfare; and~~

C. ~~Provide the City with an opportunity, assuming consent by the property owner, to inspect property in an effort to identify potentially hazardous conditions.~~

#### 15.15.030 ~~Obtaining a Report Required of Residential Building Records.~~

The owner of any residential building ~~shall~~ may obtain from the City a report of the residential building records upon entering into an agreement of sale. ~~Any The~~ owner seeking a report shall file an application

for such a report ~~on forms provided by not later than three days after entering into an agreement of sale~~ the City.

#### **15.15.040 Application.**

The report of residential building records shall be issued by the City within thirty (30) days after the owner submits a completed application on the form provided by the City and pays the fee established by resolution of the City Council. The owner shall indicate on the application whether the owner wants consent ~~is given for~~ an inspection of the residential building. If the owner does not want an consent ~~is not given by the owner for~~ inspection of the residential building, the report shall indicate that ~~the owner refused to consent to the residential building was not inspected by the City~~ inspection.

#### **15.15.0450 Inspection.**

~~Upon written consent of the property owner~~ If the owner requests an inspection of the residential building, ~~t~~he City shall cause a physical inspection of the residential building after research of the City records is completed. The report of residential building records shall include evidence of building permit or zoning Code violations observed during the inspection, and correction of those violations as determined by any re-inspections of the property.

#### **15.15.0650 Delivery of Report.**

~~If the owner refuses to consent to an inspection, a copy of the application noting such refusal shall be delivered by the owner to the other parties or party to the agreement within three days of filing the application with the City.~~

The completed report of residential building records shall be delivered by the owner or the owner's ~~his~~ representative ~~to all other parties to the agreement of sale prior to the completion of the transaction. It is the responsibility of the property owner to insure that the other party or parties to the agreement of sale execute the acknowledgment of receipt on the report of residential building records and file it with the City within thirty (30) days after completion of the transaction. The filed report shall be proof of compliance with the provisions of this chapter.~~ **15.15.060 Exceptions.**

The provisions of this chapter shall not apply to:

- ~~A. The first sale of a residential building which has never been occupied;~~
- ~~B. Transfers pursuant to Court order, including, but not limited to transfers ordered by a Probate Court in administration of an estate, transfers pursuant to a writ of execution, transfers by a trustee in bankruptcy, transfers by eminent domain, or transfers resulting from a decree for specific performance;~~
- ~~C. Transfers to a mortgagee by a mortgagor in default, transfers to a beneficiary to a deed of trust by a trustor in default, transfers by any foreclosure sale after default, transfers by any foreclosure sale under default in an obligation secured by a mortgage, or transfers by sale under a power of sale after a default in an obligation secured by a deed of trust or secured by any other instrument containing a power of sale; transfers by deed in lieu of foreclosure and a transfer by a beneficiary who has acquired the property by foreclosure or deed in lieu of foreclosure;~~
- ~~D. Transfers by a fiduciary in the course of the administration of a guardianship, conservatorship, or trust;~~

~~E.— Transfers from one co-owner to one or more co-owners;~~

~~F.— Transfers between spouses resulting from a decree of dissolution of a marriage, a decree of legal separation, or from a property settlement agreement incidental to such decree;~~

~~G.— Transfers by the State Controller in the course of administering the unclaimed property law;~~

~~H.— Transfers to a governmental entity;~~

~~I.— Transactions solely for the purposes of refinancing existing debt secured by the residential building;~~

~~J.— Transfers by an owner or owners into a family or living trust, where the owner(s) is a beneficiary or trustee of the trust.~~

#### **15.15.07065 Refunds/Cancellation Fees.**

A. City shall refund the fee accompanying an application for a report of residential building records if a written request for refund is made prior to staff review of City records necessary to prepare the report. An administrative charge of twenty (20) percent ~~(20%)~~ of the application fee shall be withheld from any refund granted pursuant to this section. No refunds will be made for a residential building report after the staff review or physical inspection of the property pursuant to Section 20.03.045 of this Code;

B. Owner shall pay an inspection or reinspection cancellation fee in the amount established by resolution of the City Council. This fee shall be charged when an inspection or reinspection appointment is made with the owner and the owner fails to appear at the time of the inspection or cancels the appointment. (Ord. 2002-20 § 7 (part), 2002: Ord. 96-35 § 1 (part), 1996)

#### **15.15.066 Expiration of Report.**

~~Report of Residential Building Records shall expire one year from the date of its issuance and may not be extended. No refund shall be made when the report is allowed to expire. Any outstanding violations at the time of expiration shall be followed until resolved by appropriate means.~~

#### **15.15.070 Penalties.**

~~A.— Any owner violating the provisions of this chapter shall be guilty of the offenses, and subject to the penalties, specified in Section 1.04.010 of this Code.~~

~~B.— No sale or exchange of any residential building shall be invalidated solely because of the failure of the owner to comply with the provisions of this chapter.~~

#### **15.15.075 Severability.**

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

## Chapter 15.16

### SIGN CODE

#### Sections:

- 15.16.010 Definitions.
- 15.16.020 Purpose and Scope.
- 15.16.030 Enforcement.
- 15.16.050 Interpretation and Exceptions.
- 15.16.060 Exception Permits Procedure.
- 15.16.070 Compliance Required.
- 15.16.100 Exceptions for Maintenance and Repair.
- 15.16.110 Permits.
- 15.16.120 Application for Sign Permit.
- 15.16.130 Exemptions.
- 15.16.140 Prohibitions.
- 15.16.150 Fees.
- 15.16.160 Proper Maintenance Required.
- 15.16.170 Inspections.
- 15.16.180 Design Standards.
- 15.16.190 Support Construction Requirements.
- 15.16.200 Materials.
- 15.16.210 Anchorage.
- 15.16.220 Table 8-5A—Limitation of Plastics in Signs.
- 15.16.230 Table 8-5B—Size, Thickness and Type of Glass Panels.
- 15.16.240 Ground and Pole Signs Design.
- 15.16.250 Combination Signs.
- 15.16.260 Display Surface Area and Height.
- 15.16.270 Roof Signs.
- 15.16.280 Wall Signs.
- 15.16.290 Projecting Signs.

**15.16.300 Signs on Marquees.**

**15.16.310 Electrical Sign Materials.**

**15.16.320 Illuminated Signs.**

**15.16.330 Electrical Installations.**

**15.16.340 Temporary Signs.**

**15.16.350 Cloth Signs.**

**15.16.360 Nonconforming Signs.**

~~**15.16.370 Separate Penalty Provisions.**~~

### **15.16.010 Definitions**

Designated High-Density Area. The term “designated high-density area” shall mean any shaded area on the following map. See Exhibit A\*. The geographical boundaries of a homeowners’ association, as defined in Section 10.28.040(~~FE~~), shall be excluded from the definition of a “designated high-density area” if the City Council adopts a resolution pursuant to Section 10.28.040(~~EF~~).

### **15.16.110 Permits.**

B. Issuance. In accordance with the provisions of and subject to the exceptions in ~~Section 3800 of the Labor Code of the State of California~~Cal. Lab. Code Section 3800 as the same now reads or may hereafter be amended, each applicant must show that he possesses the contractor’s license required by the State of California.

### **15.16.120 Application for Sign Permit.**

Application for a sign permit shall be made in writing upon forms furnished by the Building Official. Such application shall contain the location by street and number of the proposed sign structure, as well as the name and address of the owner and the sign contractor or erector. The Building Official may require the filing of plans or other pertinent information where in his opinion such information is necessary to ~~e~~insure compliance with this chapter.

No permit shall be issued for any sign and no person shall cause or permit a sign to be constructed, installed or erected which does not comply with all the provisions of this chapter or which has less horizontal or vertical clearance from energized electric power lines than prescribed by the ~~California Penal Code~~Cal Pen. Code Section 385, the regulations of the California Public Utilities Commission, and the orders of the Division of Industrial Safety, State of California.

~~**15.16.370 Separate Penalty Provisions.**~~

~~Any person violating any of the provisions of this chapter shall be deemed guilty of a separate offense for each and every day or portion thereof during which any such violation is committed, continued, or permitted.~~

## Chapter 15.17

### ENERGY CODE

#### 15.17.010 Adoption of the California Energy Code.

The City Council adopts and incorporates by reference, as though set forth in full in this section, the 2022 Edition of the California Energy Code, ~~California Code of Regulations 24 CRR Title 24, Part 6~~ and all national codes and standards referenced therein to the prescribed extent of each such reference.

The various parts of these codes and standards shall constitute and be known as the Newport Beach Energy Code. A copy of the 2022 California Energy Code, printed in code book form, shall be kept on file in the office of the Building Official pursuant to ~~Cal.~~ Health ~~&and~~ Saf~~ety~~ Code Section 18942(e)(1) and made available for public inspection.

## Chapter 15.18

### SOLAR SYSTEMS

#### 15.18.060 Duties of the Building Safety Division and Chief Building Official.

F. All fees prescribed for the permitting of small residential rooftop solar energy systems must comply with Cal Government Gov. Code Sections 65850.55, 66015, and 66016 and State-Cal. Health &and Safety Code Section 17951, ~~or any successor statutes.~~

#### 15.18.070 Permit Review and Inspection Requirements.

E. "A feasible method to satisfactorily mitigate or avoid the specific, adverse impact" includes, but is not limited to, any cost-effective method, condition, or mitigation imposed by the City on another similarly situated application in a prior successful application for a permit. The City shall use its best efforts to ensure that the selected method, condition, or mitigation meets the conditions of ~~subparagraphs (A) and (B) of paragraph (1) of subdivision (d) of Cal. Civ. Code~~ Section 714(d) (1) (A) (B) ~~of the Cal. Civil Code, or any successor statute,~~ defining restrictions that do not significantly increase the cost of the system or decrease its efficiency or specified performance.

F. The City shall not condition approval of an application on the approval of an association, as defined in ~~Section 4080 of the Cal. Civ. Code~~ Section 4080, ~~or any successor statute.~~

## Chapter 15.20

### HOUSE MOVING

#### 15.20.080 House Mover's Permit Required.

No person shall move any building or structure or any portion thereof over, upon, along or across any street until the ~~Superintendent of Streets~~Public Works Director has first issued a permit therefor. Such permit shall be called a "house mover's permit." A house mover's permit shall not be required for "relocatable buildings" subject to the provisions of Chapter 15.21 of this Code.

## Chapter 15.37

### APPROVAL IN CONCEPT PERMIT

#### 15.37.010 Intent.

~~In order to~~ To comply with the California Coastal Act ~~provisions of Division 18 of the California Public Resources Code, entitled "California Coastal Zone Conservation Commission,"~~ and the South Coast Regional Commission's operating regulations, it is necessary for the City of Newport Beach City to approve in concept all projects in the coastal zone permit area prior to any action by the South Coast Regional Commission.

## Chapter 15.38

### FAIR SHARE TRAFFIC CONTRIBUTION ORDINANCE

#### Sections:

- 15.38.010 Intent.
- 15.38.020 Purpose.
- 15.38.030 Specific Findings.
- 15.38.040 Terms and Definitions.
- 15.38.045 Applicability.
- 15.38.050 Establishment of Fair Share Traffic Contribution.
- 15.38.060 Payment of Contribution.
- 15.38.070 Use of funds.
- 15.38.075 Nontransferable.
- 15.38.080 In Lieu Contributions.
- 15.38.085 Fee Adjustments.
- 15.38.090 Exemptions.
- 15.38.100 Retroactivity.
- 15.38.110 Waiver for Affordable Housing.
- 15.38.120 Supplementary Provisions.

~~15.38.130 Severability.~~

#### 15.38.050 Establishment of Fair Share Traffic Contribution.

D. In the event no substantive changes to any of the provisions of this chapter or the fair share implementation resolution occur during the time between the mandatory City Council reviews as set forth herein, the dollar amount set forth in the fair share implementation resolution exhibits, shall be increased automatically, based upon any interim increase in the Consumer Price Index (~~the Los Angeles — Anaheim Riverside All Urban Consumers Index~~). This automatic increase shall be calculated and become effective on July 1 of any year that the City Council does not otherwise review the contents or provisions of this chapter and the fair share implementation resolution.

#### 15.38.110 Waiver for Affordable Housing.

Contributions, otherwise required pursuant to this chapter, shall be waived for all affordable residential housing as that term is defined in the housing element, and for any “granny” units or “second units” as defined in Section 65852.1 of the Cal. Government Code.

**~~15.38.130 Severability.~~**

~~If any section or portion of this chapter is declared invalid, the remaining sections or portions are to be considered valid and unaffected by the determination of invalidity.~~

## Chapter 15.40

### TRAFFIC PHASING ORDINANCE

#### Sections:

15.40.010 Findings.

15.40.020 Objectives.

15.40.030 Standards for Approval—Findings—Exemptions.

15.40.035 Expiration.

15.40.040 Definitions.

15.40.050 Procedures.

15.40.060 Hearings—Notice.

15.40.070 Appeal—Review.

15.40.075 Proportionality.

~~15.40.080 Severability.~~

#### 15.40.040 Definitions.

“Traffic Manager” means the person designated by the City Manager as the City Traffic Engineer pursuant to Section 2.32.010, ~~or his or her designee.~~

“Peak hour period” means the four consecutive fifteen (15) minute periods between ~~seven 7:00~~ a.m. and ~~nine 9:00~~ a.m. (morning) and the four consecutive fifteen (15) minute periods between ~~four 4:30~~ p.m. and ~~six 6:30~~ p.m. (evening) with the highest traffic volumes (for each primary intersection) as determined by the field counts required by Appendix A.

“Project” means “project” as defined in the California Environmental Quality Act (Cal. Pub. Resources Code § 21000 et seq.), the CEQA Guidelines (14 CCR Section 15000 et seq.), and relevant decisional law without regard to whether any environmental document is required for the project. The term “project” shall also mean any application for a building or grading permit for development that would generate more than three hundred (300) average daily trips.

#### ~~15.40.080 Severability.~~

~~If all or a portion of any section or subsection of this chapter is declared invalid, all of the provisions of this chapter that have not been declared invalid shall be considered valid and in full force and effect.~~

## APPENDIX A ADMINISTRATIVE PROCEDURES FOR IMPLEMENTING THE TRAFFIC PHASING ORDINANCE

(3) (i) (iii). The Traffic Manager and ~~Planning Director~~Community Development Director shall maintain a list of Committed Projects and, at least annually, update the list to reflect new Approvals pursuant to the TPO as well as completion of all or a portion of each Committed Project. A Committed Project shall not be removed from the Committed Project list until a final certificate of occupancy has been issued for all phases and the field counts required by sSubsection 3(d)(i) have been taken subsequent to issuance of the certificate of occupancy.

### ~~Appendix~~ APPENDIX B

#### PRIMARY INTERSECTIONS

##### Balboa and 21<sup>st</sup>

Bayview and Bristol

Birch and Bristol North

Birch and Bristol

Campus and Bristol

Campus and Bristol North

Campus and Von Karman

Coast Highway and Avocado

Coast Highway and Bayside

Coast Highway and Dover/Bayshore

Coast Highway and Goldenrod

Coast Highway and Jamboree

Coast Highway and MacArthur

Coast Highway and Marguerite

Coast Highway and Newport Center

##### Coast Hwy and Newport Coast

Coast Highway and Newport Ramp

Coast Highway and Orange

Coast Highway and Poppy

Coast Highway and Riverside

Coast Highway and Tustin

Coast Highway and Superior

Dover and 16th

Dover and Westcliff

Jamboree and Bayview

Jamboree and Birch

Jamboree and Bison

Jamboree and Bristol North

Jamboree and Bristol

Jamboree and Campus

Jamboree and Ford/Eastbluff

Jamboree and MacArthur

Jamboree and San Joaquin Hills

Jamboree and Santa Barbara

Jamboree and University/Eastbluff

MacArthur and Birch

MacArthur and Bison

MacArthur and Campus

MacArthur and Ford/Bonita Canyon

MacArthur and San Joaquin Hills

MacArthur and San Miguel

MacArthur and Von Karman

Marguerite and San Joaquin Hills

##### Newport and Balboa

Newport and Hospital

Newport and Via Lido

Newport and 32<sup>nd</sup>

##### Newport Coast and Ridge Park

Irvine and Dover/19th

Irvine and Highland/20th

Irvine and Mesa

Irvine and Santiago/22nd

Irvine and University

Irvine and Westcliff/17th

Newport Coast and San Joaquin Hills

Placentia and Superior

San Miguel and San Joaquin Hills

Santa Cruz and San Joaquin Hills

Santa Rosa and San Joaquin Hills

Superior and Hospital

## Chapter 15.42

### MAJOR THOROUGHFARE AND BRIDGE FEE PROGRAM

#### 15.42.040 Notice of Hearing.

- B. Notice shall be given at least ten (10) ~~calendar~~ days before the hearing by the following:
  2. Notices posted throughout the proposed area of benefit with at least three (3) notices posted at arterial highway intersections within the proposed area of benefit.

## Chapter 15.45

### DEVELOPMENT AGREEMENTS

#### 15.45.010 Purpose.

Assurance that an applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval, will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs of development. The ordinance codified in this chapter is adopted in part pursuant to the provisions of Section 65864 et seq. of the Cal. Government Code of the State of California.

#### 15.45.050 Public Hearing—Notice.

A public hearing on an application for a development agreement shall first be held by the Planning Commission and then by the City Council. Notice of intention to consider the adoption of a development agreement shall be given as provided in Sections 65090 and 65091 of the California Government Cal. Gov. Code in addition to such other notices that may be required by law or ordinance for actions considered concurrently with the development agreement.

#### 15.45.070 Amendment/Cancellation.

A development agreement may be amended, or canceled in whole or in part, by mutual consent of the parties to the agreement or their successors in interest. Notice of intention to amend or cancel any portion of the agreement shall be given in the manner provided inby Section 65867 of the Government Code Cal. Gov. Code. An amendment to a development agreement shall be subject to the provisions of Section 65867.5. In the event that State or fFederal laws or regulations, enacted after a development agreement has been entered into, prevent or preclude compliance with one or more provisions of the development agreement, such provisions of the agreement shall be modified or suspended as may be necessary to comply with such Sstate or federal laws or regulations.

#### 15.45.090 Local Coastal Programs.

A development agreement shall not be applicable to any development project located in an area for which a local coastal program is required to be prepared and certified pursuant to the requirements of Division 20 (commencing with Section 30000) of the Cal. Pub. Lic Resources Code, unless: (1) the required local coastal program has been certified as required by such provisions prior to the date on which the development agreement is entered into, or (2) in the event that the required local coastal program has not been certified, the California Coastal Commission approves such development agreement by formal commission action.

## Chapter 15.50

### FLOODPLAIN MANAGEMENT\*

#### Sections:

15.50.010 Statutory Authorization.

15.50.020 Findings of Fact.

15.50.030 Statement of Purpose.

15.50.040 Methods of Reducing Flood Losses.

15.50.050 Definitions.

15.50.060 Lands to Which This Chapter Applies.

15.50.070 Basis for Establishing the Areas of Special Flood Hazard.

15.50.080 Compliance.

15.50.090 Abrogation and Greater Restrictions.

15.50.100 Interpretation.

15.50.110 Warning and Disclaimer of Liability.

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15.50.200 Standards of Construction.

15.50.205 Recreational Vehicles.

15.50.210 Standards for Utilities.

15.50.220 Standards for Development and Subdivisions.

15.50.230 Coastal High Hazard Areas.

**15.50.240 Mudslide Prone Areas.**

**15.50.250 Flood-Related Erosion-Prone Areas.**

\* Prior ordinance history: Ords. 1779, 88-8 and 91-38.

**15.50.010 Statutory Authorization.**

The Legislature of the State of California has in Cal. Government Code Sections 65302, 65560 and 65800 conferred upon local government units' authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the City Council of the City of Newport Beach does ordain as set out in this chapter.

**~~15.50.120 Severability.~~**

~~This chapter and the various parts thereof are hereby declared to be severable. Should any section of this chapter be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the chapter as a whole, or any portion thereof other than the section so declared to be unconstitutional or invalid.~~

## Chapter 15.60

### CONSTRUCTION SITE FENCING AND SCREENING

#### 15.60.030 Temporary Project Information Sign.

When a property in a designated high-density area, as defined in Section 15.16.010, is required to be fenced in accordance with Section 15.60.020, a temporary project information sign shall be affixed to the fence that can be readily viewed by the public. The temporary project information sign shall be subject to prior approval by the Community Development Director, ~~or his or her designee~~. The temporary project information sign shall be two feet in height by three (3) feet in length with the following information printed legibly in seventy-two (72) point font:

The temporary project information sign shall be labeled with the words "PROJECT INFORMATION" at the center top and contain the most current contact information for the City's Code Enforcement, Parking Enforcement, and Building Inspection divisions located at the bottom and such other information as the Community Development Director, ~~or his or her designee~~, may specify and require.

The temporary project information sign shall be in substantial conformance to the following; however, the Community Development Director, ~~or his or her designee~~, may require inclusion of additional information:

#### 15.65.010 Intent and Purpose.

The Planning Commission of the County of Orange and the Orange County Development Agency have cooperated in the selection of a project area pursuant to ~~California-Cal~~ Health ~~& and~~ Saf~~ety~~ Code Sections 33322 and 33323. The project area selected by the Planning Commission and the Agency includes territory within the territorial limits of the ~~City of Newport Beach~~City. Such territory is contiguous to the unincorporated territory of the County of Orange which is also included within such project area. The subject project area and the territory within the ~~City of Newport Beach~~City are designated on the map attached as Exhibit A to the ordinance codified in this chapter.

~~California-Cal~~ Health ~~& and~~ Saf~~ety~~ Code Section 33213 provides that by ordinance, the legislative body of a community may authorize the redevelopment of an area within its territorial limits by another community if such area is contiguous to such other community.

## Chapter 15.65

### SANTA ANA HEIGHTS REDEVELOPMENT

#### 15.65.020 Authorization.

Pursuant to ~~California-Cal.~~ Health ~~and~~ ~~&~~ Saf.~~ety~~ Code Section 33213, the City Council of the ~~City of Newport Beach-City~~ hereby authorizes redevelopment by the County-~~of Orange~~ of that portion of the project area which is within the territorial limits of the City as shown on Exhibit A attached to the ordinance codified in this chapter. The County-~~of Orange~~ is hereby designated to undertake such redevelopment. Pursuant to ~~California-Cal.~~ Health ~~and~~ ~~&~~ Saf.~~ety~~ Code Section 33213, any redevelopment plan prepared by the Orange County Department Agency for that portion of the project area within the territorial limits of the City of Newport Beach shall be subject to the approval of the City Council of the City by ordinance prior to the implementation of any of the provisions of such redevelopment plan with respect to such area.

#### 15.65.030 Approval of Redevelopment Plan.

E. The redevelopment plan contains a provision that ~~California-Cal.~~ Health ~~&~~ Saf.~~ety~~ Code Section 33214 shall not serve to limit the provisions set forth in parts (A), (B), (C) and (D) above.

## Chapter 15.80

### BUILDING AND FIRE BOARD OF APPEALS

#### 15.80.010 Building and Fire Board of Appeals.

In order to hear and decide appeals of orders, decisions or determinations made by the Building Official or the Fire Marshal relative to the application and interpretation of the ~~B~~building ~~C~~code (Chapter 15.02 through Chapter 15.14) and ~~F~~fire ~~C~~code (Title 9), as adopted by the City, and any other matter specified in the ~~Newport Beach Municipal~~ Code, there shall be and is hereby created a Building and Fire Board of Appeals consisting of seven (7) members who are qualified by experience and training to pass upon matters pertaining to building construction, building service equipment, fire protection and fire protection equipment. The Building Official and the Fire Marshal shall be ex officio members and shall act as secretary to said Board but shall have no vote upon any matter before the Board. The Building and Fire Board of Appeals shall be appointed by the City Council and shall not include any employees of the City ~~of Newport Beach~~. The Board shall adopt rules of procedure for conducting its business and it may recommend to the City Council such new legislation as is consistent therewith.

#### 15.80.060 Procedures.

G. Final. The decision of the Building and Fire Board of Appeals shall be final as to the City but subject to judicial review pursuant to Cal. Code Civ. Proc. Section 1094.5 ~~with no appeal rights to the City Council.~~

## Chapter 17.01

### DEFINITIONS

#### 17.01.030 Definition of Terms.

~~B 7.— Building Official. The term “Building Official” shall mean the Building Manager/Chief Building Official of the City’s Community Development Department, or his or her designee.~~

78. Bulkhead or Seawall. The term “bulkhead” or “seawall” shall mean the retaining wall that separates dry land areas and water areas.

89. Bulkhead Line. The term “bulkhead line” shall mean the harbor land/water perimeter lines established in Newport Harbor by the ~~f~~Federal government which define the permitted limit of filling or solid structures that may be constructed in Newport Harbor. The establishment of bulkhead lines does not necessarily allow the property owner to build to the limits of the bulkhead line due to potential environmental considerations established by the State of California and/or the ~~f~~Federal government.

910. Business or Business Activity. The terms “business” and “business activity” shall mean all activities, whether the activity is nonprofit or for profit, engaged in for gain, benefit, advantage or livelihood to any person, directly or indirectly, including, but not limited to, any profession, trade, occupation, employment or calling engaged in trade, commerce, the exchange of goods, services, or property of any kind, transportation of persons as well as goods, communication, renting or leasing real or personal property or that provides any service.

~~C 6.— City. The term “City” shall mean the City of Newport Beach.~~

~~7.— City Council. The term “City Council” shall mean the City Council of the City.~~

~~8.— City Manager. The term “City Manager” shall mean the City Manager of the City or his or her designee.~~

69. City Tide and Submerged Land. The term “City tide and submerged land” shall mean that area within Newport Harbor granted to the City by the State of California.

710. Coastal Access. The term “coastal access” shall mean the ability of the public to reach, use or view the shoreline of coastal waters or inland coastal recreation areas and trails.

811. Coastal Commission. The term “Coastal Commission” shall mean the California Coastal Commission, the State agency established by State law responsible for carrying out the provisions of the California Coastal Act including review of coastal permits on appeal from local agencies.

912. Coastal-Dependent Development or Use. The terms “coastal-dependent development” or “coastal-dependent use” shall mean any development or use which requires a site on, or adjacent to, the sea to be able to function at all (from California Public Resources Code, Section 30101).

~~13.— Code. The term “Code” shall mean the Newport Beach Municipal Code.~~

104. Commercial. The term “commercial” shall mean any business activity whether the business activity is nonprofit or for profit. Commercial activities shall include, but are not limited to, marinas, charter facilities, yacht clubs, yacht sales, rental facilities, boat yards, pier rentals and any other business activity.

115. Commercial Fishing Vessel. The term “commercial fishing vessel” shall mean a vessel registered by the Department of Fish and Wildlife pursuant to ~~Section 7880 et seq., or successor provision,~~ of the Cal. Fish & Game Code Section 7880 et seq. of the State of California, when operating under the authority of a fish and game permit or license.

~~16.— Community Development Director. The term “Community Development Director” shall mean the Community Development Director of the City or his or her designee.~~

127. Current. The term “current” as applied to the flow of water shall mean a flow of water in a particular direction. Such flows can be driven by wind, temperature or density differences, tidal forces, and wave energy.

~~F 3.— Finance Director. The term “Finance Director” shall mean the Finance Director of the City or his or her respective designee.~~

34. Finger. The term “finger” shall mean a portion of a floating dock section that is perpendicular or at an angle to the walkways and is used for tying up and boarding vessels.

~~5.— Fire Chief. The term “Fire Chief” shall mean the Fire Chief of the City or his or her respective designee.~~

46. Freeboard.

57. Functional Capacity. In terms of wetlands and estuaries, the term “functional capacity” shall mean the ability of the wetland or estuary to be self-sustaining and to maintain natural species diversity.

~~H 2.— Harbor Commission. The term “Harbor Commission” shall mean the Harbor Commission of the City.~~

~~3.— Harbor Department. The term “Harbor Department” shall mean the Harbor Department of the City. Any provision within this Code or any uncodified ordinance or resolution referring to the Harbor Resources Division shall mean the Harbor Department.~~

24. Harbor Lines. The term “harbor lines” shall mean all established bulkhead, pierhead, and project lines as defined within Newport Harbor by the ~~f~~Federal, State, County and City. The harbor lines in Lower Newport Bay have been established by an act of the U.S. Congress and can only be modified by an act of Congress.

35. Harbor Maintenance Uses, Equipment and Facilities. The terms “harbor maintenance uses, equipment and facilities” shall mean all uses and their related equipment, vessels, docking, and land storage facilities and access which provide: dredging and beach replenishment; demolition, repair and new construction of docks, piers, bulkheads, and other in- and over-water structures; mooring maintenance and repair; and/or waterborne debris and pollution control, collection, and removal. This category also includes environmental, survey, or scientific vessels and related equipment based, or on assignment, in Newport Harbor.

~~6.— Harbormaster. The term “Harbormaster” shall mean the Harbormaster of the City, or his or her designee. Any provision within this Code or any uncodified ordinance or resolution referring to the Harbor Resources Manager shall mean the Harbormaster.~~

47. Harbor Structures. The term “harbor structures” refers to any pier, float, gangway, piling, bulkhead, seawall, reef, breakwater or any other structure excluding moorings or watercraft in, upon or over the

waters of Newport Harbor or the Pacific Ocean or any other water where the tide ebbs and flows within the City.

58. Headwalk. The term “headwalk” shall mean that portion of a dock that serves as a primary pedestrian access to mainwalks, fingers, and slips. Fingers may be attached directly to headwalks. Headwalks are generally parallel to the bulkhead.

69. Houseboat. The term “houseboat” shall mean any vessel or harbor structure, floating or non-floating, which is designed or fitted out as a place of habitation and is not principally used for transportation.

710. Human-Powered Vessel. The term “human-powered vessel” shall mean a vessel that is being propelled by the human body through the use of oars, paddles, or the like and without the use of wind, a motor, or other machinery.

I. Definitions: L.

1. Launching Facility. The term “launching facility” shall mean a generic term referring to any location, structure (ramps, docks), and equipment (cranes, lifts, hoists, etc.) where vessels may be placed into and retrieved from the harbor waters.

2. Licensee(s). The term “licensee(s)” shall mean the person(s) who holds a validly issued short-term mooring license pursuant to Section 17.60.045.

23. Live-Aboard. The term “live-aboard” shall mean the use or occupancy of a vessel for human habitation (a) while at its mooring for a period exceeding seventy-two (72) hours in any thirty (30) day consecutive period; or (b) at its dock or berth in a commercial marina for a period exceeding one hundred eighty (180) days or more, in any three hundred sixty-five (365) day period.

43. Live Bait and/or Sea Life Receiver. The term “live bait” or “sea life receiver” shall mean an object for confining live bait or sea life such as those receivers fostering growth of sea life under the water, which is afloat in the waters of Newport Harbor or the Pacific Ocean, either moored to a pier, bulkhead or sea wall, or moored by means of an anchor or other weight to the bottom of the harbor or ocean; provided, however, that a live bait receiver shall not be deemed to be a “structure” within the meaning of Chapter 17.50.

45. Live Load. The term “live load” refers to the weight of all temporary loads such as pedestrians and berthing loads.

65. Local Coastal Program (LCP). The term “Local Coastal Program” or “LCP” shall mean Title 21 and the City of Newport Beach Coastal Land Use Plan adopted by the City and certified by the Coastal Commission in order to implement the provisions and policies of the Coastal Act at the local level.

76. Longshore. The term “longshore” shall mean parallel to and near the shoreline.

87. Lower Newport Bay. The term “Lower Newport Bay” shall mean the area of Newport Bay south of the centerline of Coast Highway.

J 3. Marina. The term “marina” shall mean a commercial berthing facility (other than moorings, anchorage or noncommercial pier) in which five (5) or more vessels are wet-stored (in water) and/or dry-stored (on land/racks) for more than thirty (30) ~~calendar~~ days.

M. Definitions: P.

~~1. Pacific Ocean. The term "Pacific Ocean" shall mean the waters off of the City from the beach to a point three nautical miles seaward.~~

21. Passenger. The term "passenger" shall mean every person other than the operator and a member of the crew or other persons employed or engaged in any capacity on board a vessel in the business of that vessel.

32. Permittee(s). The term "permittee(s)" shall be the person or entity who holds a validly issued permit under any provision of this title. Permittee(s) shall also include licensee(s), except in cases where such definition would conflict with another provision of this title.

~~4. Person. The term "person" shall mean an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee or any other legally recognized entity.~~

35. Pier. The term "pier" shall mean any fixed or floating structure for securing vessels, loading or unloading persons or property, or providing access to or over the water. A pier includes wharf, dock, slip, gangway or float, or any other landing facility or floating dry dock.

46. Pierhead Line. The term "pierhead line" shall mean the harbor water area perimeter lines established in Newport Harbor by the ~~f~~Federal government or the City, in cooperation with private associations, that define the permitted limit of fixed pier, floating dock and other in-water structures which may be constructed in the harbor. The pierhead line typically shall define the limit of pier and floating dock structures and defines the limit of construction except as otherwise approved by the Harbor Commission.

~~7. Police Chief. The term "Police Chief" shall mean the Chief of Police of the City or his or her respective designee.~~

58. Project Line. The term "project line" shall mean the harbor water area channel lines of the improvements constructed by the Federal Government in 1935 through 1936.

69. Property Owner. The term "property owner," for purposes of Chapter 17.50, shall mean the owner of the abutting upland property who has obtained a permit to place a structure in Newport Harbor.

710. Public Trust Lands. The term "public trust lands" shall mean all lands subject to the common law public trust for commerce, navigation, fisheries, recreation, and other public purposes and includes all tidelands, submerged lands, the beds of navigable lakes and rivers, and historical tidelands and submerged lands that are presently filled or reclaimed and which were subject to the public trust at any time.

~~11. Public Works Director. The term "Public Works Director" shall mean the Public Works Director of the City or his or her designee.~~

N Definitions: R.

~~5. Risk Manager. The term "Risk Manager" shall mean the Risk Manager of the City or his or her designee.~~

## Chapter 17.05

### GENERAL PROVISIONS

#### 17.05.140 Public Hearings.

B. 2. a. Mailing. Notice shall be mailed or delivered at least ten (10) ~~calendar~~ days before the scheduled hearing to all the following:

b. Posting of a Sign and Notice. Notice shall be posted at a conspicuous place, easily readable by the public and placed as close as possible to the site of the proposed development at least ten (10) ~~calendar~~ days before the scheduled public hearing in the following manner:

## Chapter 17.10

### MARINE ACTIVITIES PERMIT

#### 17.10.060 Power to Impose Conditions—Hold Harmless.

B. 13 ~~All required insurance, which types and amounts shall be determined by the Risk Manager naming the City of Newport Beach as an additional insured~~ and a business license shall be maintained in full force and effect for the full term of the permit;

#### 17.10.070 Insurance.

Persons engaging in any commercial activity including, but not limited to, charters, rentals, commercial services or any other types of operations on the waters of Newport Harbor shall at all times ~~maintain and provide to the City proof of insurance covering its operation, naming the City as an additional insured~~ maintain insurance, which types and amounts shall be determined by the ~~with such policy limits and coverage as established by the City~~ Risk Manager. The Risk Manager shall issue a written notice of determination of the policy limits and coverage, which shall be served in the manner provided in accordance with Section 1.08.080. Proof of insurance must clearly identify the activities and/or vessels covered.

## Chapter 17.20

### VESSEL LAUNCHING AND OPERATION

#### 17.20.040 Abandoned or Unattended Vessels and Property.

All stray, unattended or abandoned vessels, timber or any other personal property found in the water or on the shore of Newport Harbor or the Pacific Ocean, not in the lawful possession or control of some person, shall be immediately reported to the Harbormaster. Any such vessel or property shall be dealt with as provided in the appropriate provisions of Chapters 1.20 and 17.70, ~~or Section 510 et seq. of the California Cal. Harb.ors & Nav.igation Code Section 510 et seq.~~, as the same now read or may hereafter be amended. For purposes of this section, any vessel on the Pacific Ocean shall be deemed to be stray, unattended and abandoned if the vessel is unoccupied by a person during:

#### 17.20.060 Vessel Races.

E3. Otherwise comply with this Code, ~~California Cal. Harb.ors & Nav.igation Code~~, and the Federal Inland Navigation Rules; and

## Chapter 17.25

### BERTHING, MOORING, AND STORAGE

#### 17.25.020 Anchorage, Berthing and Mooring Regulations.

1. b. Anchor a vessel in any of Newport Harbor's designated public anchorage areas or at any location on the open waters of the Pacific Ocean within five hundred (500) yards of a designated protected swimming area for a cumulative period of time that exceeds seventy-two (72) hours within any thirty (30) ~~calendar~~ day period. The Harbormaster may authorize, in writing, an extension to the seventy-two (72) hour time limit if the Harbormaster determines that given the particular circumstances an extension of time is reasonable and warranted.

H 2 a. Commence repairs within thirty (30) ~~calendar~~ days upon service of the written notice of such determination and complete repairs within ninety (90) ~~calendar~~ days of the commencement unless the Harbormaster, upon written request from the permittee specifying the reasons therefor, approves an extension of time to complete the repairs; or

b. Remove the vessel within thirty (30) ~~calendar~~ days of service of the written notice of such determination and request assignment of a different vessel that is safe, seaworthy and operable to the mooring within sixty (60) ~~calendar~~ days after the removal of the vessel. This section is not intended to apply to any brief period of repair common to most vessels. The Harbormaster may repeat his or her request to test operability and seaworthiness as needed.

H 4. If, based upon the appearance of the vessel, inspection by the City or Harbormaster or other facts, the Harbormaster determines that a sea lion has boarded a moored vessel, the Harbormaster shall issue and serve a notice of violation in accordance with Section 1.05.030 and the permittee shall take any and all necessary action to employ and maintain appropriate measures to deter sea lions from boarding the vessel within seven (7) ~~calendar~~ days of the notice of violation. If the Harbormaster determines that appropriate deterrent measures have not been taken within seven (7) ~~calendar~~ days of the notice of violation, the Harbormaster may issue an administrative citation or take any other enforcement action authorized by this Code. In the event the Harbormaster issues an administrative citation, the permittee shall:

"Appropriate deterrent measures" shall be defined as the latest methodology permitted by National Marine Fisheries Service to minimize sea lion boarding of vessels assigned to a mooring. If the City is unable to reach the permittee within the seven (7) ~~calendar~~ days, the Harbormaster may install temporary deterrent measures as needed and recover the City's cost of compliance.

## Chapter 17.30

### HARBOR USE REGULATIONS

#### 17.30.020 Loading or Unloading Hazardous Materials.

No person shall load or unload any hazardous materials to or from any vessel from or upon any pier or other vessel in Newport Harbor without first obtaining a permit from the Fire Marshal pursuant to Section 105.6 of the California Fire Code and Chapter 9.04 of Title 9 of this Code. An application for a permit to load or unload any hazardous materials shall be filed with the Harbormaster in accordance with Section 17.60.015. The Fire Marshal ~~or his or her designee~~ shall issue the permit if he or she finds that the hazardous materials and the associated maintenance, handling and/or storage activities conform to the California Fire Code and this Code. The Fire Marshal ~~or his or her designee~~ may impose any conditions on the issuance of the permit necessary to protect the health, safety and welfare of the public. The decision of the Fire Marshal may be appealed in accordance with Chapter 15.80.

#### 17.30.030 Live Bait and Sea Life.

B. Nonconforming Bait and/or Sea Life Receivers. Storage of live bait or sea life other than in a receiver conforming to the requirements hereof is prohibited. After three ~~(3) calendar~~ days' written notice, served in accordance with Section 1.05.030, to the owner of a nonconforming receiver, it may be removed by the Harbormaster and stored at the expense of the owner.

## Chapter 17.40

### LIVE-ABOARDS

#### 17.40.060 Term/Renewal.

A. Permits issued pursuant to this chapter shall be valid for a term of twelve (12) months. Applications for the renewal of any permit shall be submitted at least sixty (60) ~~calendar~~ days before expiration of the permit, on forms supplied by the City, shall include the fee established by resolution of the City Council and shall specify any changes to the information provided on the original application for a permit.

#### 17.40.070 Conditions/Regulations.

A 3. By obtaining a live-aboard permit, the permittee specifically authorizes the Harbormaster ~~or his or her designee~~ to board the subject vessel at any time to inspect the marine sanitation device and holding tank and install a dye tablet to determine whether there is any discharge from the same.

## Chapter 17.45

### SANITATION

#### 17.45.030 Waste and Refuse.

A. Discharge of Treated or Untreated Human or Animal Excreta. No person shall discharge, permit or allow any other person on a vessel under his or her control or command to discharge any treated or untreated human or animal excreta from any marine sanitation device on a vessel into the waters of Newport Harbor or the Pacific Ocean. In accordance with Cal. Harb. or Navigations Code Section 782 any vessel in the waters of Newport Harbor or on the waters of the Pacific Ocean within the jurisdiction of the City, with a marine sanitation device, is subject, at any time, to boarding by the Harbormaster to inspect the operation and condition of the same and shall be subject to the use of a dye tablet to determine whether or not the marine sanitation system is discharging overboard. Violations are subject to all available remedies, including immediate removal from Newport Harbor.

## Chapter 17.50

### HARBOR DEVELOPMENT PERMITS

#### 17.50.040 Rendering of Decision.

##### A. Approval.

##### 1. Approval by City Staff.

a. Except as provided in subsection (A)(2) of this section, the review authority shall approve and issue an approval in concept and/or harbor development permit if a public hearing is not expressly required, and the application conforms to the provisions of this title, the design criteria and all applicable standards and policies otherwise applicable to the property.

b. Before issuing an approval in concept or harbor development permit for:

i. Any development on oceanfront beaches;

ii. Development of a nonstandard structure; or

iii. Development of a structure for a use that is not in keeping with the surrounding area;

the review authority shall notify all real property owners within three hundred (300) feet of the proposed development, as shown on the last equalized assessment rolls, of the pending application. Notice will be sent at least ten (10) ~~calendar~~ days prior to a decision.

B. Notice of Decision. Notice of the decision shall be posted on the City website within one day of the date of the decision. The review authority shall provide notice of the decision to the applicant and publish notice of the decision on the City's website for fourteen (14) ~~calendar~~ days. If no appeal or call for review of the decision is filed within the fourteen (14) ~~calendar~~ days, the decision is final. No permit shall be issued until the appeal period or call for review, in accordance with Chapter 15.80 or 17.65, expires.

#### 17.50.100 Securing of Structures.

If, based upon an inspection by the City or other facts, the Harbormaster determines that a sea lion has boarded a permitted structure and/or any vessel or other appurtenances attached to the structure, the Harbormaster shall issue a notice of violation and the permittee shall take any and all necessary action to employ and maintain appropriate measures to deter sea lions from boarding the structure and/or any vessel or other appurtenances attached to the structure within seven (7) days of the notice of violation. If the Harbormaster determines that appropriate deterrent measures have not been taken within seven (7) ~~calendar~~ days of the notice of violation, the Harbormaster may take enforcement action in accordance with this Code and the permittee shall take any and all necessary action to employ and maintain appropriate sea lion deterrent measures. Appropriate deterrent measures shall be defined as the latest methodology permitted by the National Marine Fisheries Service to minimize sea lion boarding of a permitted structure and/or any vessel or other appurtenances attached to the structure.

## Chapter 17.55

### DREDGING PERMITS

#### 17.55.040 Limits on Uses.

Development involving diking, filling, or dredging of open coastal waters, wetlands, and estuaries shall be limited to uses consistent with ~~Section 30233 of the California Cal.~~ Public Resources Code Section 30233 (Coastal Act) and the certified Local Coastal Program.

## Chapter 17.60

### HARBOR PERMITS AND LEASES

#### 17.60.040 Mooring Permits.

B 2 j. Agree to move the vessel from the mooring to another location when deemed necessary by the Public Works Director and/or Harbormaster because the vessel has drifted from its assigned mooring location or to address safety or navigational concerns, and also to authorize the City ~~or its designee~~ to move the vessel upon the mooring permittee's failure to do so, at the permittee's expense;

B 3 a. A natural person(s) including, but not limited to, an immediate family member, which shall mean the mooring permittee's spouse and heirs at law to the second degree of consanguinity;

~~d.— Immediate family, which shall mean the mooring permittee's spouse and heirs at law to the second degree of consanguinity;~~

de. A marine contractor, or marine support service provider, holding a mooring permit used to provide current or ongoing harbor infrastructure and marine or fishing services (such as maintenance or dredging);

ef. Balboa Island Yacht Club for the purposes of youth education in boating and marine activities; Kerckhoff Marine Laboratories for the purpose of marine and oceanographic research; and American Legion Post 291 for the purpose of serving veterans and their families and supplying them with affordable access to boating and harbor activities; or similar marine educational entities; or

fg. The Balboa Yacht Club, Newport Harbor Yacht Club (collectively "yacht clubs") and the Lido Isle Community Association—only for those moorings assigned by the City within certain established mooring areas or locations, prior to January 13, 2011. These designated mooring areas may not be expanded. The boundaries of all mooring areas in Newport Harbor are graphically depicted by National Oceanographic and Atmospheric Administration (NOAA) Chart Number 18754. Yacht clubs shall be entitled to a maximum number of moorings identified in NOAA Chart Number 18754 that are located within the yacht club's established mooring fields and at a minimum the current number of moorings assigned to them as of January 13, 2011.

gk. Agree to allow the Harbormaster, ~~or his designee,~~ to board the permittee's vessel at any time to inspect the condition and operability of the marine sanitation device(s) and/or insert dye tablets to determine whether said devices are discharging overboard in accordance with applicable laws; and

H 2. The mooring sub-permittee agrees to be responsible for any damage to mooring equipment; to defend and indemnify the City of Newport Beach and the mooring permittee against any claims or losses arising out of, or related to, the mooring rental; to provide proof of insurance as may be determined by the City's Risk Manager; to provide registration or other proof of ownership; to provide an equipment damage deposit, all to the satisfaction of the Harbormaster; and authorize the City, ~~or its designee,~~ to move the vessel on the mooring to another location when deemed necessary by the Public Works Director and/or Harbormaster;

**17.60.060 Public Trust Lands.**

A 3. The City Manager, ~~or his or her designee,~~ is authorized to enter into leases or permits authorized by this section on behalf of the City in a form approved by the City Council pursuant to Resolution 2012-91 for large commercial marinas and Resolution 2012-97 for commercial use of tidelands (as the same may be subsequently amended from time to time by the City Council) or in such form as is substantially similar thereto; provided, however that the City Manager may instead refer the matter to the City Council for consideration and approval. Furthermore, the City Manager ~~or his or her designee,~~ is authorized to implement such leases or permits on behalf of the City and to issue interpretations, waive provisions, and enter into amendments thereof.

## Chapter 17.65

### APPEALS OR CALLS FOR REVIEW

#### 17.65.020 Time Limits.

Appeals or calls for review shall be initiated within fourteen (14) ~~calendar~~ days of the decision.

## Chapter 17.70

### ENFORCEMENT

#### 17.70.010 Declaration of Nuisance—Abatement.

Any building, structure, or vessel set up, erected, constructed, altered, enlarged, converted, moved or maintained in or over the waters of Newport Harbor or the Pacific Ocean contrary to the provisions of this Code, and any use of any land, water, building or premises established, conducted, operated or maintained contrary to the provisions of this Code, shall be and the same is declared to be unlawful and a public nuisance; and the City Attorney may commence action or proceedings for the abatement and removal and enjoinder thereof in the manner provided by law, and may take such other steps and apply to such courts as may have jurisdiction to grant such relief as will abate and remove such building, structure, or vessel and restrain and enjoin any person, firm or corporation from setting up, erecting, building, maintaining, or using any such building contrary to the provisions of this Code. Pursuant to Cal. Government Code Section 38773, all expenses incurred by the City in connection with any action to abate a public nuisance will be chargeable to the person(s) creating, causing, committing, or maintaining the public nuisance.

#### 17.70.015 Suspension of Marine Activities Permit.

B 1. The Harbormaster shall investigate whenever he or she has reason to believe that a marine activities permit holder has submitted an application that contains false information or committed a violation of a permit condition, this Code, State or ~~f~~Federal law related to a marine activities permit. Such investigation may include, but is not limited to, on-site or vessel inspections. Should the investigation reveal substantial evidence to support a finding that warrants a suspension of the marine activities permit, the Harbormaster shall issue written notice of intention to suspend the permit. The written notice shall be served on the owner in accordance with Section 1.05.030, directing the permittee to appear at the date, time and place for a hearing on the suspension of the marine activities permit. The notice shall specify the facts which, in the opinion of the Harbormaster, constitute substantial evidence to establish grounds for imposition of the suspension, and specify the proposed time the marine activities shall be suspended. At least fourteen (14) ~~calendar~~ days' notice of such hearing shall be given in accordance with Section 1.05.030 to the permittee shown on such permit, setting out the date, time and place of hearing.

2. The hearing shall be conducted according to the rules normally applicable to administrative hearings. At the hearing, a hearing officer will preside over the hearing, take evidence and then submit proposed findings and recommendations to the City Manager. The City Manager shall suspend the marine activities permit only upon a finding that a violation has been proven by a preponderance of the evidence, and that the suspension is consistent with the provisions of this section. If the City Manager determines there are grounds for suspension of a marine activities permit, he/she shall provide written notice of the suspension to the permittee shown on such permit, stating the grounds for the action, the length of suspension, and the effective date of the decision. The notice of decision shall be served in accordance with Section 1.05.030 within thirty (30) ~~calendar~~ days of the City Manager receiving recommendations from the hearing officer. The decision of the City Manager shall be final as to the City but subject to judicial review pursuant to Cal. Code Civ. Proc. Section 1094.5.

### **17.70.020 Grounds for Revocation of Permit.**

B 1 a. At least fourteen (14) ~~calendar~~-days' notice of such hearing shall be given in accordance with Section 1.05.030 to the permittee shown on such permit, setting out the date, time and place of hearing, and specifying the facts which constitute the grounds for revocation.

2. Procedure for Revocation of Live-Aboard Permits. If the Harbormaster determines there are grounds for revocation of a live-aboard permit as provided in subsection (A)(2) of this section, he or she shall provide written notice of revocation with service of the notice in accordance with Section 1.05.030, stating the grounds for the action, the effective date of the decision and the right of the permittee to appeal the decision to the Harbor Commission. The permittee shall have fourteen (14) ~~calendar~~-days from the date on which notice is deemed served to request a hearing.

If the permittee does not request a hearing within fourteen (14) ~~calendar~~-days of the date the notice is deemed served, the decision of the Harbormaster shall be final.

3. Procedure for Revocation of Mooring Permits. If the Harbormaster determines there are grounds for revocation of a mooring permit as provided in subsection (A)(3) of this section, he/she shall provide written notice of the revocation with service of the notice in accordance with Section 1.05.030 to the permittee shown on such permit, stating the grounds for the action, the effective date of the decision and the right of the permittee to appeal the decision to the Harbor Commission. The permittee shall have fourteen (14) ~~calendar~~-days from the date on which notice is deemed served to request a hearing.

If the permittee does not request a hearing within fourteen (14) ~~calendar~~-days of the date the notice is deemed served, the decision of the Harbormaster shall be final.

## Chapter 19.04

### GENERAL PROVISIONS

#### Sections:

**19.04.010 Short Title.**

**19.04.020 Purpose and Applicability ([Cal. Gov. Code Section 66411](#)).**

**19.04.030 Compliance Required ([Cal. Gov. Code Section 66499.30](#)).**

**19.04.035 Development Across Property Lines.**

**19.04.040 Exclusions Per Map Act ([Cal. Gov. Code Sections 66411, 66412 et seq., 66451.7](#)).**

**19.04.050 Advisory Agencies and Appeal Boards ([Cal. Gov. Code Sections 66415, 66416](#)).**

**19.04.060 Parcel Maps and Tract Maps ([Cal. Gov. Code Sections 66411.1, 66428](#)).**

**19.04.070 Interpretation of Code Provisions.**

**19.04.080 Enforcement ([Cal. Gov. Code Section 66499.32 et seq.](#)).**

**19.04.090 Definitions ([Cal. Gov. Code Section 66414 et seq.](#)).**

**19.04.010 Short Title.**

This title shall be known as the “Subdivision Code” of the City of Newport Beach. All references herein to chapters, sections, subsections and paragraphs shall, unless otherwise specified, mean text in ~~this Municipal Code~~ of which this title is a part. Similarly, all references herein to “this title” shall, unless otherwise specified, mean this Title 19.

**19.04.020 Purpose and Applicability ([Cal. Gov. Code Section 66411](#)).**

A. Consistency with Subdivision Map Act. It is intended that the provisions of this title shall be fully consistent and in full compliance with the Subdivision Map Act, ~~as defined in Section 19.04.090 (Division 2<sub>2</sub> of Title 7 of the California Government Code)~~ and that such provisions shall be so construed. In case of conflict between the provisions of this title and those of the Subdivision Map Act, the latter shall control.

**19.04.030 Compliance Required ([Cal. Gov. Code Section 66499.30](#)).**

A. No Sale, Lease or Financing Without Map. No person shall sell, lease or finance any parcel or parcels of real property or commence construction of any building for sale, lease or financing thereon, except for model homes, or allow occupancy thereof, for which a final tract map or final parcel map is required by this title, until the final tract or parcel map thereof in full compliance with this title has been recorded and the City has been provided proof of recordation.

B. No Conveyance Without Map. Conveyances of any part of a division of real property for which a final tract map or parcel map is required by this title shall not be made by parcel or block number, initial or other designation, unless and until such map has been recorded by the County Recorder.

C. Subdivisions Under Previous Law. In accordance with Cal. Gov. Code Section 66499.30 ~~of the Subdivision Map Act, subsections (A) and (B)~~ of this section do not apply to any parcel or parcels of a subdivision offered for sale or lease, contracted for sale or lease, or sold or leased in compliance with or exempt from any law (including a local ordinance), regulating the design and improvement of subdivisions in effect at the time the subdivision was established.

D. Sales Conditioned on Final Map Allowed. In accordance with Cal. Gov. Code Section 66499.30 ~~of the Subdivision Map Act~~, nothing in this section shall prohibit an offer or contract to sell, lease or finance real property, or to construct improvements thereon where the sale, lease or financing or the commencement of construction is expressly conditioned on the approval and filing of a final map as required by this title.

E. Compliance Required for Permit Issuance. Compliance with the provisions of this title is a condition precedent to the issuance of a building permit or occupancy certificate on any lot or parcel of land within the City.

**19.04.040 Exclusions Per Map Act (Cal. Gov. Code Sections 66411, 66412 et seq., 66451.7).**

A. Inapplicability. This title does not apply to leases, conversions, transactions, conveyances or other acts which are specifically designated as excluded by the ~~Subdivision Map Act~~Cal. Gov. Code, except that procedures for lot line adjustments shall be in accordance with Chapter 19.76.

B. Determinations of Exemption. In accordance with Cal. Gov. Code Section 66451.7 ~~of the Subdivision Map Act~~, determinations on whether a proposed action is exempt from review pursuant to Cal. Gov. Code Section 66412 ~~of the Subdivision Map Act~~ or whether a parcel map may be waived pursuant to Cal. Gov. Code Section 66428 ~~of the SMA~~ shall be made within sixty (60) days of an application being deemed complete.

**19.04.050 Advisory Agencies and Appeal Boards (Cal. Gov. Code Sections 66415, 66416).**

Pursuant to Cal. Gov. Code Section 66415 ~~of the Government Code~~, the Planning Commission is hereby designated as the City's Advisory Agency for review of tentative tract maps and the Zoning Administrator is designated as the City's Advisory Agency for review of tentative parcel maps, lot mergers, and lot line adjustments. The duties, responsibilities, and authority for tentative map review by the Planning Commission and Zoning Administrator shall be as specified in Chapter 19.12. Pursuant to Cal. Government Code Section 66416, the Appeal Board for decisions of the Planning Commission shall be the City Council and the Appeal Board for decisions of the Zoning Administrator shall be the Planning Commission.

**19.04.060 Parcel Maps and Tract Maps (Cal. Gov. Code Section 66411.1, 66428).**

A tentative parcel map and final parcel map shall be required for any division of land which does not require a tentative and final tract map pursuant to Cal. Gov. Code Section 66428 ~~of the Subdivision Map Act~~. Subject to the limitations on improvements associated with parcel maps set forth in Chapter 19.28, form, content, design and other requirements for parcel maps shall be the same as set forth in this title for tract maps. Further, as used in this title, the term "tentative map" shall encompass both tentative tract and tentative parcel maps, and the term "final map" shall encompass both final tract and final parcel maps.

**19.04.080 Enforcement (Cal. Gov. Code Section 66499.32 et seq.)**

~~A.—Misdemeanor Violation. Any person violating or causing the violation of any of the provisions of this title shall be guilty of a misdemeanor and shall be subject to penalties as provided by law. Such person shall be deemed guilty of a separate offense for each and every day during any portion of which any violation of this title is committed or continued.~~

~~AB.~~ Remedies for Violation. Any deed of conveyance, sale or contract to sell real property in violation of the provisions of this title is voidable to the extent and in the same manner as provided in Cal. Gov. Code Sections 66499.32 through 66499.36 ~~of the Subdivision Map Act~~. In addition, the City may elect other remedies for violation of this title, as provided in the Cal. Gov. Code SMA sections cited above.

~~BC.~~ Enforcement Responsibility. It shall be the duty of the Community Development Director or the director's authorized representative to enforce the provisions of this title.

**19.04.090 Definitions (Cal. Gov. Code Section 66414 et seq.)**

~~"City Engineer" means the City Engineer of the City of Newport Beach or the equivalent position designated by the City for the purposes of carrying out the duties and responsibilities of the City Engineer specified in this Subdivision Code, or the City Engineer's designee.~~

~~"Community Development Director" means the Community Development Director for the Community Development Department or his or her designee.~~

~~"Community Development Director" or "Director" means the Community Development Director for the Community Development Department or his or her designee.~~

~~"Condominium" means a condominium project community apartment project or stock cooperative, as defined in Cal. Civ. Code Sections 1351, 4105, 4125, and 4190 of the California Civil Code.~~

~~"Subdivision" means the division by any subdivider of any unit or units of improved or unimproved land, or any portion thereof, shown on the latest equalized county assessment roll as a unit or as contiguous units, for the purpose of sale, lease or financing, whether immediate or future. Property shall be considered as contiguous units even if it is separated by roads, streets, utility easement or railroad rights-of-way. Subdivision includes a condominium project, as defined in Cal. Civ. Code subdivision (F) of Section 4125 or 6542, 1351 of the Civil Code, (F), a community apartment project, as defined in subdivision (D) of Section 1351 of the Cal. Civ. Code Section 4105 or the conversion of five (5) or more existing dwelling units to a stock cooperative, as defined in subdivision (M) of Cal. Civ. Code Section 4190 or 6566, 1351 of the Civil Code. [Note: Same meaning as in the Subdivision Map Act.]~~

~~"Subdivision Map Act" or "SMA" means Cal. Gov. Code Title 7, Division 2, Section 66410 et seq. of the Government Code, State of California.~~

## Chapter 19.08

### TENTATIVE MAP FILING

#### Sections:

**19.08.010 When Tract Maps Required ([Cal. Gov. Code Section 66426](#)).**

**19.08.020 When Parcel Maps Required ([Cal. Gov. Code Sections 66412, 66426, 66428](#)).**

**19.08.030 Waiver of Parcel Map Requirement ([Cal. Gov. Code Section 66428](#)).**

**19.08.040 Tentative Map Application ([Cal. Gov. Code Sections 66451.2, 66452](#)).**

**19.08.050 Completeness of Application ([Cal. Gov. Code Section 65943](#)).**

**19.08.060 Soils Reports ([Cal. Gov. Code Sections 66490, 66491](#)).**

**19.08.010 When Tract Maps Required ([Cal. Gov. Code Section 66426](#)).**

Approval of a tentative and final tract map shall be required in accordance with this title for any subdivision creating five (5) or more parcels, five (5) or more condominiums as defined in [Cal. Civ Code Section 783](#) ~~of the California Civil Code~~, a community apartment project containing five (5) or more parcels or for the conversion of a dwelling to a stock cooperative containing five (5) or more dwelling units, except for those activities excluded by Section 19.04.040, or where:

~~E. — Until January 1, 2003, the land being subdivided is solely for the creation of an environmental subdivision pursuant to Section 66418.2 of the Subdivision Map Act.~~

**19.08.020 When Parcel Maps Required ([Cal. Gov. Code Sections 66412, 66426, 66428](#)).**

A1. Subdivisions of a portion of the operating right-of-way of a railroad corporation, defined by [Cal. Pub. Util. Code Section 230](#) ~~of the California Public Utilities Code~~, which are created by short-term leases terminable by either party on not more than thirty (30) days' notice in writing;

**19.08.030 Waiver of Parcel Map Requirement ([Cal. Gov. Code Section 66428](#)).**

A. Activities Eligible for Waiver. The ~~Zoning Administrator~~[Community Development Director](#) may waive all or part of the requirements for a tentative and final parcel map in the following cases:

4. A division requiring a parcel map imposed by [Cal. Gov. Code Section 66426](#) ~~of the Government Code~~

**19.08.040 Tentative Map Application ([Cal. Gov. Code Sections 66451.2, 66452](#)).**

A. Filing. Tentative maps shall be filed with the Community Development Department by a record owner or owners of the property to be divided or by their authorized agents. The required number of copies of the tentative map shall be as promulgated in writing by the Community Development Director.

B. Application Fee. The tentative map shall be accompanied by the required application fee(s), as established by resolution of the City Council. Such fees shall be in accordance with [Cal. Gov. Code Section](#)

66451.2 ~~of the Subdivision Map Act~~ and shall not exceed the amount reasonably required to administer the provisions of this title.

C. Form and Content. Tentative tract and tentative parcel maps shall be prepared by a civil engineer registered in the State of California in accordance with the ~~Subdivision Map Act~~Cal. Gov. Code and this Code. Tentative maps shall be in map form in size, scale and format as specified by the Community Development Director and shall be accompanied by other reports, exhibits, information and materials as required by the Director. The Director shall provide application forms and a list of required tentative map information on request.

D. Flood Hazard Areas. All tentative maps shall identify any flood hazard area and elevation of the base flood.

**19.08.050 Completeness of Application (Cal. Gov. Code Section 65943).**

A. Determination of Completeness. Not later than thirty (30) ~~calendar~~ days after receipt of a tentative map application, the Planning Department shall determine whether the application is complete and shall immediately transmit the determination in writing to the applicant. If the written determination of completeness is not made within thirty (30) days after receipt of the application and the application includes a statement that it is an application for a development permit, the application shall be deemed complete for purposes of this title.

B. Reasons for Incompleteness. If an application is determined to be not complete, the notification to the subdivider shall identify those parts of the application which are incomplete and shall indicate the manner in which they can be made complete. Other details regarding determination of completeness of subdivision applications shall be in accordance with Cal. Gov. Code Section 65943 ~~of the Government Code~~.

**19.08.060 Soils Reports (Cal. Gov. Code Sections 66490, 66491).**

A preliminary soils report prepared to the satisfaction of the City Engineer by a civil engineer registered in California shall be submitted with all tentative maps. However, the requirement for a soils report may be waived if the City Engineer determines that, due to existing information on the soil and geological qualities and topography of the property to be subdivided, no such report or reports are necessary. Conversely, if the preliminary soils report indicates the presence of critically expansive soils, the presence of deleterious chemicals or other soil problems, the City Engineer may require additional tests as indicated in Cal. Gov. Code Section 66491 ~~of the Subdivision Map Act~~.

## Chapter 19.12

### TENTATIVE MAP REVIEW

#### Sections:

19.12.010 Tentative Map Review Authority.

19.12.020 Prefiling Conference.

19.12.030 Review of Tentative Maps by Other Agencies ([Cal. Gov. Code Section 66453](#) et seq.).

19.12.040 Environmental Review ([Cal. Gov. Code Section 66452.1](#)).

19.12.050 Review of Tentative Tract Maps ([Cal. Gov. Code Sections 66451.1, 66452.1](#) et seq., [66474.9](#)).

19.12.060 Review of Tentative Parcel Maps.

19.12.070 Required Findings for Action on Tentative Maps ([Cal. Gov. Code Sections 66412.3, 66473](#) et seq.).

19.12.080 Use of Regulations in Effect at Time of Map Filing ([Cal. Gov. Code Section 66474.2](#)).

19.12.090 Amendments to Approved Tentative Maps.

**19.12.030 Review of Tentative Maps by Other Agencies ([Cal. Gov. Code Section 66453](#) et seq.).**

Within five days of a tentative map being determined to be complete pursuant to Section 19.08.050, copies of the map shall be sent to all local and State agencies prescribed by [Cal. Gov. Code Sections 66453](#) et seq. ~~of the Subdivision Map Act~~ for the opportunity to comment on the proposed tentative map. In addition, copies of the tentative map shall be sent for comment to all utilities and similar service entities which the Director deems may be affected by the proposed subdivision.

**19.12.040 Environmental Review ([Cal. Gov. Code Section 66452.1](#)).**

A. Subdivider's Responsibilities. The subdivider shall submit information as required by the Community Development Director sufficient to permit environmental review of the project in accordance with the ~~California Environmental Quality Act~~[CEQA](#), the Zoning Code and City procedures. The subdivider shall also pay all fees required for the completion of environmental review including, but not limited to, the preparation of an environmental impact report, if required.

B. Exemption for Parcel Maps. Upon submission of a tentative parcel map, the Community Development Director shall determine if the parcel map is categorically exempt from environmental review pursuant to ~~Section 15315 of the~~ California Environmental Quality Act Guidelines [Section 15315](#).

C. Mitigation Measures. In conjunction with adoption of an environmental impact report or negative declaration, the City may impose mitigation measures as conditions of approval on a tentative tract or parcel map ~~in order~~ to mitigate a project's environmental impacts.

**19.12.050 Review of Tentative Tract Maps (Cal. Gov. Code Sections 66451.1, 66452.1 et seq., 66474.9).**

C. Public Hearings. Public hearings shall be noticed and held in accordance with Cal. Gov. Code Sections 65090, 65091, and 66451.3 ~~of the Government Code~~ and City procedures.

E 2. Use of Outside Consultant to Meet Time Limits. At the time the subdivider makes an application pursuant to this title, the ~~Planning Director~~Community Development Director shall determine whether or not the City is able to meet the time limits specified in this chapter for reporting and action on maps. If the Director determines that such time limits cannot be met, the Director, upon request of the subdivider and for the purpose of meeting such limits, may contract or employ a private person or entity on a temporary basis to perform such services as necessary to permit the City to meet such time limits, subject to the provisions, requirements and limitations of Cal. Gov. Code Section 66451.1~~of the Government Code~~.

G. Approval by Inaction. If no action is taken upon a tentative tract map by the Planning Commission within the time limits specified in this section or within any authorized extension thereof per this section, the tentative tract map as filed shall be deemed to be approved insofar as it complies with other applicable requirements of the Cal. Gov. Code and ~~the City of Newport Beach Municipal~~this Code. It shall be the duty of the City Clerk to affirm said approval. Any tentative tract map deemed approved by Planning Commission inaction may in turn be appealed to the City Council in accordance with the procedures and time limits set forth in subsection (I) of this section.

H. Denial Action to Comply with Time Limits Prohibited. Pursuant to Cal. Gov. Code Section 66451.4~~of the Government Code~~, no tentative tract map shall be denied to comply with the time limits specified in this section unless there are reasons for disapproval other than the failure to timely act in accordance with the time limits specified in this section.

I3. Fees. Any appeal filed by an interested person shall be accompanied by a filing fee set by resolution of the City Council pursuant to Cal. Gov. Code Section 66451.2~~of the Government Code, or any successor statute~~. A call for review is exempt from the payment of a filing fee under Section 3.36.030,~~or any successor provision~~.

I4. Hearing and Action. A public hearing shall be noticed and held prior to action on a tentative tract map appeal or call for review. The appeal or review hearing shall be noticed in accordance with Cal. Gov. Code Sections 65090, 65091 and 66451.3~~of the Government Code, or any successor statutes~~, and shall be held within thirty (30) days after filing of the appeal or call for review. Within ten (10) days following the conclusion of the hearing, the City Council shall render its decision on the appeal or call for review.

J. Indemnification of City. Pursuant to Cal. Gov. Code Section 66474.9~~of the Government Code~~, as a condition of approval of a tentative tract map, the decision making body may require that the owner of the fee interest or designee defend, indemnify, and hold harmless the City and its agents, officers and employees from any claim, action or proceeding against the City, its agents, officers, or employees to attack, set aside, void, or annul the tentative tract map approval and any associated approvals when such claim, action, or proceeding is brought within the time period provided under Cal. Gov. Code Section 66499.37~~of the Government Code~~. The City shall notify the owner of the fee interest or designee of any claim, action or proceeding and the City shall cooperate fully in the defense.

### **19.12.060 Review of Tentative Parcel Maps.**

A 2. Procedures. ~~Except as provided in subsection (A)(5),~~ the provisions for tentative tract maps set forth in Sections 19.12.050(B) through (H) and (J) regarding staff reports, public hearings, time limits, required findings, approval by inaction, and indemnification shall apply to tentative parcel maps.

A 5. Review of Tentative Parcel Maps for Condominium Purposes. Tentative parcel maps involving the subdivision of airspace within two-unit or multi-unit dwellings for condominium purposes shall be exempt from the provisions set forth in Sections 19.12.050(B) and (C) regarding staff reports and public hearings. Public notice shall be provided in accordance with Cal. Gov. Code Sections 65090, 65091, and 66451.3 and City procedures, except that the notice shall include a statement that no local public hearing will be held; however, written comments on the proposed subdivision will be considered if submitted by no later than the date set forth in the notice.

B. 1 Initiation of Appeal or Call for Review. With the exception of a tentative parcel map for an urban lot split, any interested person may appeal any action of the Zoning Administrator regarding a tentative parcel map to the Planning Commission or any action of the Planning Commission regarding a tentative parcel map to the City Council. Only an applicant can appeal an action by the Zoning Administrator or the Planning Commission on a tentative parcel map for an urban lot split. With the exception of a tentative parcel map for an urban lot split, calls for review of any action of the Zoning Administrator regarding a tentative parcel map may be initiated by a member of the Planning Commission to the Planning Commission, in the member's official capacity, if the sole purpose for the call for review is to bring the matter in front of the entire body for review. With the exception of a tentative parcel map for an urban lot split, calls for review of any action of the Planning Commission regarding a tentative parcel map may be initiated by a member of the City Council to the City Council, in the member's official capacity, if the sole purpose for the call for review is to bring the matter in front of the entire body for review. In accordance with Cal. Gov. Government Code Section 66463.5, ~~or any successor statute,~~ an appeal of a denial of a tentative parcel map extension shall be heard by the City Council.

2. Time Limits for Filing. Appeals or calls for review to the Planning Commission shall be filed with the Director within ten (10) days after the action of the Zoning Administrator on a form provided by the Director. Appeals or calls for review to the City Council shall be filed with the City Clerk within ten (10) days after the action of the Planning Commission on a form provided by the City Clerk. An appeal of a denial of a tentative parcel map extension shall be filed with the City Clerk and heard by City Council in accordance with Cal. Gov. ernment Code Section 66463.5, ~~or any successor statute.~~ The time limit for filing appeals on denials of a tentative parcel map extension shall be fifteen (15) days after the action of the Zoning Administrator. Upon the filing of an appeal or call for review, the original decision shall be stayed and the matter shall be set for public hearing.

### **19.12.070 Required Findings for Action on Tentative Maps (Cal. Gov. Code Sections 66412.3, 66473 et seq.).**

A7. That, in the case of a "land project" as defined in Cal. Bus. & Prof. Code Section 11000.5 ~~of the California Business and Professions Code~~: (1) There is an adopted specific plan for the area to be included within the land project; and (2) the decision making body finds that the proposed land project is consistent with the specific plan for the area;

A9. That the subdivision is consistent with Cal. Gov. Code Sections 66412.3 ~~of the Subdivision Map Act~~ and ~~Section 65584 of the California Government Code~~ regarding the City's share of the regional housing need and that it balances the housing needs of the region against the public service needs of the City's residents and available fiscal and environmental resources;

**19.12.080 Use of Regulations in Effect at Time of Map Filing (Cal. Gov. Code Section 66474.2).**

B2 Published a public hearing notice in accordance with California Government Code Section 65090 containing a description sufficient to notify the public of the nature of the proposed change(s) to this Code, the General Plan, any applicable specific plan(s) or other City regulations.

**19.12.090 Amendments to Approved Tentative Maps.**

A. Minor Amendments. Minor amendments to approved tentative tract or tentative parcel maps or to any condition of approval thereon may be approved by the ~~Planning Director~~Community Development Director provided the Director determines that all of the following criteria are met:

4. The resulting tentative map remains in conformity with this Subdivision Code, other applicable provisions of ~~the Municipal Code~~this Code and the Subdivision Map Act.

B. Major Amendments. If the ~~Planning Director~~Community Development Director determines that a proposed amendment to an approved tentative map or to any condition of approval thereon does not meet the criteria for a minor amendment set forth in subsection (A) of this Section, the Director shall require the filing of a map amendment application and fee. Such major tentative map amendments shall thereupon be reviewed in the same manner as an original tentative map application. If such a major amendment is approved, the expiration date of the amended tentative map shall be determined from the date of approval of the amendment.

## Chapter 19.16

### TENTATIVE MAP EXPIRATION AND EXTENSION

#### Sections:

**19.16.010 Expiration of Tentative Maps** ([Cal. Gov. Code Sections 66452.6, 66463.5](#)).

**19.16.020 Extension of Tentative Maps** ([Cal. Gov. Code Sections 66452.6, 66463.5](#)).

**19.16.010 Expiration of Tentative Maps** ([Cal. Gov. Code Sections 66452.6, 66463.5](#)).

A. Expiration. An approved or conditionally approved tentative tract map or tentative parcel map shall expire twenty-four (24) months after the date of its approval or conditional approval.

B. Termination of Proceedings. The expiration of an approved tentative tract map or tentative parcel map shall terminate all proceedings and no final map or parcel map of all or any portion of the real property included within the tentative map shall be filed with the legislative body without first processing a new tentative map. Once a timely filing is made, subsequent actions of the City, including, but not limited to, processing, approving and recording, may lawfully occur after the date of expiration of the tentative map. Delivery of the final tract map or final parcel map to the City Engineer shall be deemed a timely filing for purposes of this Section.

**19.16.020 Extension of Tentative Maps** ([Cal. Gov. Code Sections 66452.6, 66463.5](#)).

A. Review of Extensions. Upon application by the subdivider filed before expiration of a tentative tract map or tentative parcel map, the original tentative map decision making body may extend the time at which the map expires for a period or periods not exceeding a total of five years from the initial expiration date. Prior to expiration of an approved tentative map, upon the application by the subdivider to extend the map, the map shall be automatically extended for sixty (60) days or until the application for the extension is approved, conditionally approved, or denied, whichever occurs first. If the decision making body denies a request to extend a tentative map, the subdivider may appeal the denial to the City Council (for both tentative tract maps and tentative parcel maps) within fifteen (15) days after the denial in accordance with the provisions of Sections 19.12.050 and 19.12.060.

B. Extensions Due to Public Improvement Obligations, Moratoriums and Lawsuits. In addition to the extensions provided for in subsection (A) of this Section, the expiration of tentative maps shall be deferred in the following cases pursuant to the detailed provisions of [Cal. Gov. Code Section 66452.6 of the Subdivision Map Act](#):

1. Public Improvements and Development Agreements. The tentative map shall be automatically extended pursuant to [Cal. Gov. Code Section 66452.6 of the SMA](#) if the subdivider is required to provide off-site public improvement requirements above the dollar amount specified in [Cal. Gov. Code SMA Section 66452.6](#). Extensions of tentative maps on property subject to a development agreement shall also be administered pursuant to that [SMA](#)-section.

2. Moratoriums. The period of time specified in subsection (A) of this Section, including any extensions granted pursuant to subsection (B)(1), shall not include any period of time during which a development

moratorium, imposed after approval of the tentative map, is in existence. However, the length of the moratorium shall not exceed five years.

3. Lawsuits. The period of time specified in subsection (A) of this Section, including any extensions granted pursuant to subsection (B)(1), shall not include any period of time during which a lawsuit, involving the approval of the tentative map, is or was pending in a court of competent jurisdiction, if the stay of the time period is approved by the City pursuant to Cal. Gov. Code Section 66452.6 ~~of the SMA~~.

## Chapter 19.20

### VESTING TENTATIVE MAPS

#### Sections:

**19.20.010 Purpose** ([Cal. Gov. Code Section 66498.1](#)).

**19.20.020 Vested Right to Proceed** ([Cal. Gov. Code Sections 66498.1, 66498.5, 66474.2](#)).

**19.20.030 Consistency of Vesting Map with Zoning** ([Cal. Gov. Code Section 66498.3](#)).

**19.20.040 Filing and Review.**

**19.20.050 Vesting Tentative Maps and Conditions Imposed** ([Cal. Gov. Code Sections 66498.1, 66498.6](#)).

**19.20.060 Expiration of Map and Right to Proceed** ([Cal. Gov. Code Section 66498.5](#)).

**19.20.070 Amendments To Vesting Tentative Maps** ([Cal. Gov. Code Section 66498.2](#)).

**19.20.010 Purpose** ([Cal. Gov. Code Section 66498.1](#)).

This Chapter is enacted to implement ~~Chapter 4.5 of the Subdivision Map Act~~ ([Cal. Gov. Code Sections 66498.1 et seq.](#)). Whenever a provision of this Title 19 requires that a tentative tract map or tentative parcel map be filed, a vesting tentative tract map or tentative parcel map may be filed instead.

**19.20.020 Vested Right to Proceed** ([Cal. Gov. Code Sections 66498.1, 66498.5, 66474.2](#)).

A. Right to Proceed with Development. The approval or conditional approval of a vesting tentative map shall confer a vested right to proceed with development in substantial compliance with the ordinances, policies and standards described in [Cal. Gov. Code Section 66474.2](#) ~~of the Subdivision Map Act~~. However, if [Cal. Gov. Code Section 66474.2](#) is repealed, the approval or conditional approval of a vesting tentative map shall confer a vested right to proceed with development in substantial compliance with the ordinances, policies and standards in effect at the time the vesting tentative map is approved or conditionally approved.

B. City Retains Right to Condition or Deny. Notwithstanding subsection (A) of this Section, the

City may condition or deny a permit, approval, extension or entitlement if it determines any of the following: (1) A failure to do so would place the residents of the subdivision or the immediate community, or both, in a condition dangerous to their health or safety, or both; or (2) the condition or denial is required in order to comply with State or Federal law.

C. Expiration of Rights. The rights conferred by this section shall expire if a final map is not approved prior to the expiration of the vesting tentative map. If the final map is approved, the rights conferred by this section shall be subject to the periods of time set forth in Section 19.20.060.

D. Vesting Map Filing Not a Prerequisite to Development Approval. If a subdivider does not seek the rights conferred by this section, the filing of a vesting tentative map shall not be a prerequisite to any approval for any proposed subdivision, permit for construction or work preparatory to construction.

**19.20.030 Consistency of Vesting Map with Zoning ([Cal. Gov. Code Section 66498.3](#)).**

Whenever a subdivider files a vesting tentative map for a subdivision whose intended development is inconsistent with the Zoning Code or Districting Maps in existence at that time, that inconsistency shall be noted on the vesting tentative map. The City may deny a vesting tentative map or approve it conditioned on the subdivider, or his or her designee, obtaining the necessary change in the Zoning Code or Districting Maps to eliminate the inconsistency. If the change in the Zoning Code is obtained, the approved or conditionally approved vesting tentative map shall, notwithstanding subsection (A) of Section 19.20.020, confer the vested right to proceed with the development in substantial compliance with the change in the Zoning Code or Districting Maps, as approved. The rights conferred by this section shall be subject to the periods of time set forth in Section 19.20.060.

**19.20.050 Vesting Tentative Maps and Conditions Imposed ([Cal. Gov. Code Sections 66498.1, 66498.6](#)).**

**19.20.060 Expiration of Map and Right to Proceed ([Cal. Gov. Code Section 66498.5](#)).**

**19.20.070 Amendments ~~T~~o Vesting Tentative Maps ([Cal. Gov. Code Section 66498.2](#)).**

**Chapter 19.24**  
**SUBDIVISION DESIGN**

**Sections:**

**19.24.010 Streets and Highways.**

**19.24.020 Access to Arterials.**

**19.24.030 Sidewalks and Pedestrianways.**

**19.24.040 Bikeways and Equestrian Trails.**

**19.24.050 Lot Design.**

**19.24.060 Coastal Zone Subdivisions.**

**19.24.070 Landscaping.**

**19.24.080 Slopes and Grading.**

**19.24.090 Drainage and Flood Protection.**

**19.24.100 Subdivision Boundaries.**

**19.24.110 Energy Conservation ([Cal. Gov. Code Section 66473.1](#)).**

**19.24.120 Design of Other Improvements.**

**19.24.130 Deviation from Design Standards.**

**19.24.110 Energy Conservation ([Cal. Gove. Code Section 66473.1](#)).**

In accordance with [Cal. Gov. Code](#) Section 66473.1 ~~of the Subdivision Map Act~~, subdivisions of five or more lots, other than condominium conversions, shall provide for, to the extent feasible, future passive or natural heating or cooling opportunities in the subdivision.

## Chapter 19.28

### SUBDIVISION IMPROVEMENTS

#### Sections:

- 19.28.010 General Improvement Requirements.
- 19.28.020 Compliance with City Traffic Ordinances.
- 19.28.030 Limitations on Parcel Map Improvements ([Cal. Gov. Code Section 66411.1](#)).
- 19.28.040 Streets, Highways and Related Improvements.
- 19.28.050 Street Lighting.
- 19.28.060 Water Supply.
- 19.28.070 Sanitary Sewers.
- 19.28.080 Storm Drains.
- 19.28.090 Utility Undergrounding.
- 19.28.100 Walls and Fences.
- 19.28.110 Other Improvements.
- 19.28.120 Improvement Oversizing ([Cal. Gov. Code Section 66485 et seq.](#)).
- 19.28.130 Waiver of Improvement Requirements.

#### 19.28.030 Limitations on Parcel Map Improvements ([Cal. Gov. Code Section 66411.1](#)).

A. Limitation. In accordance with [Cal. Gov. Code Section 66411.1](#) ~~of the Subdivision Map Act~~, improvement requirements for parcel maps creating four or fewer lots shall be limited to the dedication of rights-of-way and easements and the construction of off-site and on-site improvements for the parcels being created. Requirements for the construction of such off-site and on-site improvements shall be noticed by a statement on the parcel map, on the instrument evidencing the waiver of the parcel map or by a separate instrument. Such improvement requirements shall be recorded on, concurrently with or prior to the parcel map or instrument of waiver of a parcel map being filed for record.

#### 19.28.060 Water Supply.

Each unit or lot within the subdivision shall be served by a domestic water system approved by the City Engineer. On-site water facilities shall be designed and constructed in accordance with the latest City-adopted revision of the ~~Newport Beach Uniform~~ Plumbing Code [set forth in Chapter 15.08](#). Fire hydrants and fire flow capacity shall be approved by the Fire Chief. Water facilities and connections shall be in accordance with Title 14 ~~(Water and Sewers)~~.

**19.28.070 Sanitary Sewers.**

A. Public Sewer Connection Required. All lots intended for building development shall be connected to a public sewer system. No septic tank or cesspools will be permitted. Sewer facilities shall be designed and constructed in accordance with City standards, the applicable provisions of Chapter 14.24 (~~Sewer Connection, Permits~~), and the latest revision of the ~~Newport Beach Uniform~~ Plumbing Code set forth in Chapter 15.08. Sewer cleanouts shall be provided to the satisfaction of the City Engineer.

**19.28.120 Improvement Oversizing (Cal. Gov. Code Section 66485 et seq.).**

A. Oversizing. In accordance with Cal. Gov. Code Section 66485 ~~of the Subdivision Map Act~~, the subdivider may be required to install improvements for the benefit of the subdivision which may be of supplemental size, capacity or number as will benefit property not within the subdivision, such improvements to be a condition precedent to the approval of a tentative tract or tentative parcel map and, thereafter, to dedicate such improvements to the public. Supplemental length may include minimum sized off-site sewer lines necessary to reach a sewer outlet in existence at that time.

B. Reimbursement. In accordance with Cal. Gov. Code Sections 66486 and 66487 ~~of the Subdivision Map Act~~, in the event of the installation of oversized improvements pursuant to this Section, the City shall enter into an agreement with the subdivider to reimburse the subdivider for that portion of the cost of those improvements, including an amount attributable to interest, in excess of the construction required for the subdivision.

## Chapter 19.32

### IMPROVEMENT PLANS

#### Sections:

**19.32.010 Preparation and Submission of Improvement Plans.**

**19.32.020 Review and Approval of Improvement Plans ([Cal. Gov. Code 66456.2](#)).**

**19.32.030 Subdivider's Responsibility.**

#### **19.32.010 Preparation and Submission of Improvement Plans.**

A. Plan Preparation. Plans, profiles and details for proposed subdivision improvements shall be prepared under the direction of and signed by a civil engineer registered in the State ~~of California~~. Such improvement plans shall contain information and shall be in a format as specified by the City Engineer. A written listing of required improvement plan information and format shall be provided by the City Engineer on request.

B. Plan Submission. Improvement plans shall be submitted to the City Engineer prior to submission of a final map. Plan check, inspection and other improvement plan fees shall be paid as required by resolution of the City Council.

#### **19.32.020 Review and Approval of Improvement Plans ([Cal. Gov. Code Section 66456.2](#)).**

The City Engineer shall review and act upon improvement plans in accordance with the time limits specified in [Cal. Gov. Code](#) Section 66456.2 ~~of the Subdivision Map Act~~. After review of submitted improvement plans, the City Engineer shall indicate any required revisions to the plans. Subsequently, upon finding that all required revisions have been completed and that the improvement plans are consistent with all tentative map conditions of approval, the General Plan, any applicable specific plans and this Subdivision Code, the City Engineer shall sign and date the plans. Upon such signing, improvement plans shall become property of the City.

## Chapter 19.36

### COMPLETION OF IMPROVEMENTS

#### Sections:

- 19.36.010 Improvement Agreements ([Cal. Gov. Code Section 66462](#)).
- 19.36.020 Acquisition of Land for Off-site Improvements ([Cal. Gov. Code Section 66462.5](#)).
- 19.36.030 Improvement Security ([Cal. Gov. Code Section 66499](#) et seq.).
- 19.36.040 Reduction of Security With Special Assessments ([Cal. Gov. Code Section 66499.5](#)).
- 19.36.050 Inspection and Acceptance of Improvements.
- 19.36.060 Release of Security ([Cal. Gov. Code Section 66499.7](#)).
- 19.36.070 Forfeiture of Security.

#### 19.36.010 Improvement Agreements ([Cal. Gov. Code Section 66462](#)).

No final map shall be signed by the City Engineer or recorded until required improvements are completed or an improvement agreement is executed and all required securities are received and approved by the City Council in accordance with this chapter.

#### 19.36.020 Acquisition of Land for Off-site Improvements ([Cal. Gov. Code Section 66462.5](#)).

If a subdivider is required to construct off-site improvements on land in which neither the subdivider nor the City has sufficient title or interest to allow construction, acquisition of land or right-of-way for such improvements shall be carried out in accordance with [Cal. Gov. Code Section 66462.5](#) ~~of the Subdivision Map Act~~.

#### 19.36.030 Improvement Security ([Cal. Gov. Code Section 66499](#) et seq.).

Improvement security shall be in a form as prescribed by [Cal. Gov. Code Section 66499](#) ~~of the Subdivision Map Act~~. The amount of security shall include all of the following:

#### 19.36.040 Reduction of Security With Special Assessments ([Cal. Gov. Code Section 66499.5](#)).

#### 19.36.060 Release of Security ([Cal. Gov. Code Section 66499.7](#)).

Security provided in accordance with this chapter shall be released pursuant to the provisions of [Cal. Gov. Code Section 66499.7](#) ~~of the Subdivision Map Act~~.

## Chapter 19.40

### GENERAL DEDICATION REQUIREMENTS

#### Sections:

**19.40.010 Dedication of Streets and Other Facilities** ([Cal. Gov. Code Sections 66475, 66475.1, 66475.2](#)).

**19.40.020 Coastal Access and Open Space Dedications.**

**19.40.030 Waiver of Access Rights** ([Cal. Gov. Code Section 66476](#)).

**19.40.040 Acceptance of Offers of Dedication** ([Cal. Gov. Code Sections 66477.1, 66477.2, 66477.3](#)).

**19.40.050 Certificates of Dedication and Reconveyance** ([Cal. Gov. Code Section 66477.5](#)).

**19.40.010 Dedication of Streets and Other Facilities** ([Cal. Gov. Code Sections 66475, 66475.1, 66475.2](#)).

C. Transit Facilities. The City may require dedication of transit facilities, such as bus turnouts, benches, shelters and similar facilities, for subdivisions identified in [Cal. Gov. Code Section 66475.2](#) ~~of the Subdivision Map Act~~.

**19.40.020 Coastal Access and Open Space Dedications.**

When the Local Coastal Program Land Use Plan, adopted pursuant to [Cal. Pub. Resources Code Division 20 of the State Public Resources Code](#) (California Coastal Act), indicates the location of a public accessway or any permanent open space or conservation area within the boundaries of a proposed subdivision, such accessway, open space or conservation area shall be shown on the tentative map and offered for dedication to the City. When an accessway, open space or conservation area is already in existence at the time a tentative map is filed, the status of such accessway, open space or conservation area, whether public or private, shall be identified on the map.

**19.40.040 Acceptance of Offers of Dedication** ([Cal. Gov. Code Sections 66477.1, 66477.2, 66477.3](#)).

Acceptance, rejection and termination of offers of dedication shall be in accordance [with Cal. Gov. Code Sections 66477.1 through 66477.3](#) ~~with Section 66477.1 et seq. of the Subdivision Map Act sections 66477.1 through 66477.3~~.

**19.40.050 Certificates of Dedication and Reconveyance** ([Cal. Gov. Code Section 66477.5](#)).

A. Certificate to be Recorded. The City shall record a certificate with the County Recorder regarding property to be dedicated in fee for public purposes or for making public improvements or for construction of public facilities, other than for open space, parks or schools. The certificate shall be attached to the final map and shall contain the information specified in [Cal. Gov. Code Section 66477.5](#) ~~of the Subdivision Map Act~~.

~~D. Applicability. This section is applicable only to property required to be dedicated on or after January 1, 1990.~~

## Chapter 19.48

### SCHOOL SITES AND FEES

#### Sections:

**19.48.010** Dedication of Elementary School Sites ([Cal. Gov. Code Section 66478](#)).

**19.48.020** Fees for Interim Classroom Facilities ([Cal. Gov. Code Sections 65974, 65995](#)).

**19.48.030** High School Sites.

**19.48.010** Dedication of Elementary School Sites ([Cal. Gov. Code Section 66478](#)).

**19.48.020** Fees for Interim Classroom Facilities ([Cal. Gov. Code Sections 65974, 65995](#)).

Pursuant to [Cal. Gov. Code](#) Section 65974 ~~of the Subdivision Map Act~~, the City may impose fees or dedication requirements on new residential subdivisions for the purpose of providing interim school classroom facilities to alleviate conditions of overcrowding which may be caused by new residential development. Fee and dedication procedures shall be in accordance with [Cal. Gov. Code, Chapters 4.7 and 4.9 of the Government Code](#) Sections 65970-65981 and 65995-65998, respectively.

## Chapter 19.52

### PARK DEDICATIONS AND FEES

#### Sections:

- 19.52.010 Purpose and Intent ([Cal. Gov. Code Section 66477](#)).
- 19.52.020 Applicability ([Cal. Gov. Code Section 66477](#)).
- 19.52.030 Use of Park Dedications and Fees ([Cal. Gov. Code Section 66477](#)).
- 19.52.040 Parkland Standard ([Cal. Gov. Code Section 66477](#)).
- 19.52.050 Determination of Land or Fee.
- 19.52.060 Dedication of Land ([Cal. Gov. Code Section 66477](#)).
- 19.52.070 Fee in Lieu of Dedication ([Cal. Gov. Code Section 66477](#)).
- 19.52.080 Credit for Private Recreational Facilities ([Cal. Gov. Code Section 66477](#)).
- 19.52.090 Timing of Dedications ([Cal. Gov. Code Section 66477.1](#)).
  
- 19.52.010 Purpose and Intent ([Cal. Gov. Code Section 66477](#)).

This Chapter is intended to provide for the dedication of land, the payment of fees in lieu thereof or a combination of both, for park or recreational purposes in conjunction with the approval of residential development. These provisions are in accordance with the Recreation and Open Space Element of the General Plan and with [Cal. Gov. Code Section 66477](#) ~~of the Subdivision Map Act~~ (known as the Quimby Act).

- 19.52.020 Applicability ([Cal. Gov. Code Section 66477](#)).
- 19.52.030 Use of Park Dedications and Fees ([Cal. Gov. Code Section 66477](#)).
- 19.52.040 Parkland Standard ([Cal. Gov. Code Section 66477](#)).

Per figures from the 2000 Federal census and the City's Recreation and Open Space Element, the amount of neighborhood and community park acreage in the City is five and one-tenth (5 1/10) acres per one thousand (1000) population. Per [Cal. Gov. Code Section 66477](#) ~~of the Subdivision Map Act~~, the City may use its existing parkland ratio, based on data from the most recent available Federal census, as its park dedication standard for new subdivisions, provided required dedications do not exceed five acres per thousand persons residing within a subdivision. Therefore, the City's park dedication standard shall be five acres per thousand population.

- 19.52.060 Dedication of Land ([Cal. Gov. Code Section 66477](#)).
- 19.52.070 Fee in Lieu of Dedication ([Cal. Gov. Code Section 66477](#)).

**19.52.080 Credit for Private Recreational Facilities ([Cal. Gov. Code Section 66477](#)).**

A. Authority to Grant Credit. The tentative map decision making body may grant credit for private recreational facilities provided within common interest developments, as defined in [Cal. Civ. Code Section ~~41001351~~ of the Civil Code](#), against required land dedications or in lieu fees in accordance with the provisions of this Section.

**19.52.090 Timing of Dedications ([Cal. Gov. Code Section 66477.1](#)).**

## Chapter 19.56

### FINAL MAP FILING

#### Sections:

**19.56.010 Preparation of Final Maps ([Cal. Gov. Code Sections 66456, 66457, 66463](#)).**

**19.56.020 Final Map Application ([Cal. Gov. Code Sections 66433 – 66450](#)).**

**19.56.030 Completeness of Application ([Cal. Gov. Code Section 65943](#)).**

**19.56.040 Dedications ([Cal. Gov. Code Sections 66439, 66447](#)).**

**19.56.050 Survey and Monumentation ([Cal. Gov. Code Sections 66434, 66495 et seq.](#)).**

**19.56.060 Multiple Final Maps ([Cal. Gov. Code Sections 66456.1, 66463.1](#))**

**19.56.010 Preparation of Final Maps ([Cal. Gov. Code Sections 66456, 66457, 66463](#)).**

A. Definition. For purposes of this Code, the term “final map” shall encompass both final tract maps and final parcel maps. The procedures for filing and processing of final parcel maps shall be the same as those set forth in this chapter for a final tract map.

B. Final Maps. After the approval or conditional approval of a tentative tract or tentative parcel map, the subdivider may cause the real property included within the map, or any part thereof, to be surveyed and a final map prepared and filed with the City Engineer in accordance with the approved or conditionally approved tentative map. Final maps shall be filed prior to expiration of the applicable tentative map, as required in Chapter 19.16 (Tentative Map Expiration and Extension).

C. Form and Content. The form and content of final maps shall be as specified in [Cal. Gov. Code Sections 66433 through 66450](#) ~~of the Subdivision Map Act~~, as administered and interpreted by the City Engineer.

**19.56.020 Final Map Application ([Cal. Gov. Code Sections 66433 – 66450](#)).**

**19.56.030 Completeness of Application ([Cal. Gov. Code Section 65943](#)).**

A. Determination of Completeness. Not later than thirty (30) ~~calendar~~ days after receipt of a final map application, the City Engineer shall determine whether the application is complete and shall immediately transmit the determination in writing to the applicant. If the written determination of completeness is not made within thirty (30) days after receipt of the application and the application includes a statement that it is an application for a development permit, the application shall be deemed complete for purposes of this title.

B. Reasons for Incompleteness. If an application is determined to be not complete, the notification to the subdivider shall identify those parts of the application which are incomplete and shall indicate the manner in which they can be made complete. Other details regarding determination of completeness of subdivision applications shall be in accordance with [Cal. Gov. Code Section 65943](#) ~~of the Government Code~~.

**19.56.040 Dedications (Cal. Gov. Code Sections 66439, 66447).**

**19.56.050 Survey and Monumentation (Cal. Gov. Code Sections 66434, 66495 et seq.).**

Survey and monumentation for final maps shall be carried out in accordance with Cal. Gov. Code Sections 66434 and 66495 et seq. ~~of the Subdivision Map Act~~ and the requirements of City Design Criteria to the satisfaction of the City Engineer. In addition, all surveys shall tie into the County ~~of Orange~~'s grid system and Geographic Information System monuments.

**19.56.060 Multiple Final Maps (Cal. Gov. Code Sections 66456.1, 66463.1)**

## Chapter 19.60

### FINAL MAP REVIEW

#### Sections:

**19.60.010 City Council Review ([Cal. Gov. Code Sections 66458, 66463, 66474.1](#)).**

**19.60.020 Acceptance or Rejection of Dedications ([Cal. Gov. Code Sections 66477.1, 66477.2](#)).**

**19.60.030 Payment of Taxes and Assessments ([Cal. Gov. Code Sections 66493, 66494](#)).**

**19.60.040 Recordation of Final Maps ([Cal. Gov. Code Sections 66464, 66493](#)).**

**19.60.050 Additional Information to be Recorded ([Cal. Gov. Code Section 66434.2](#)).**

**19.60.010 City Council Review ([Cal. Gov. Code Sections 66458, 66463, 66474.1](#)).**

**19.60.020 Acceptance or Rejection of Dedications ([Cal. Gov. Code Sections 66477.1, 66477.2](#)).**

At the time of approval of a final map, the City Council shall accept, accept subject to improvement or reject any offers of dedication at the time of final map approval. The City Clerk shall certify or state on the map the action by the City Council. If an offer of dedication which directly benefits the residents of a subdivision is rejected, the offer shall remain open and the City Council may by resolution at any later date, and without further action by the subdivider, rescind its action and accept the offer of dedication. Other provisions regulating rejection of offers of dedication shall be as set forth in [Cal. Gov. Code Section 66477.2 of the Subdivision Map Act](#).

**19.60.030 Payment of Taxes and Assessments ([Cal. Gov. Code Sections 66493, 66494](#)).**

Whenever any part of a subdivision is subject to a lien for taxes or special assessments collected as taxes which are not yet payable, the final tract or parcel map shall not be recorded until the owner or subdivider complies with [Cal. Gov. Code Section 66493 of the Subdivision Map Act \(SMA\)](#). If such taxes or special assessments are allowed to become delinquent, the County shall recover from the security required under [Cal. Gov. Code Section 66493](#) in accordance with the provisions of [Cal. Gov. Code Section 66494 of the](#).

**19.60.040 Recordation of Final Maps ([Cal. Gov. Code Sections 66464, 66493](#)).**

**19.60.050 Additional Information to be Recorded ([Cal. Gov. Code Section 66434.2](#)).**

## Chapter 19.64

### CONVERSION OF RENTAL UNITS TO OWNERSHIP

#### Sections:

**19.64.010 Purpose and Intent.**

**19.64.020 Definitions.**

**19.64.030 General Requirements.**

**19.64.040 Tenant Notification ([Cal. Gov. Code Sections 66427.1, 66452.8, 66452.9](#)).**

**19.64.050 Tenant Purchase Option ([Cal. Gov. Code Section 66427.1](#)).**

**19.64.060 Review Procedures ([Cal. Gov. Code Section 66427.1, 66427.2](#)).**

**19.64.070 Standards for Condominium Conversions.**

**19.64.080 Modification or Waiver of Conversion Standards.**

**19.64.090 Condominium Conversion Fees.**

**19.64.100 Exemptions.**

**19.64.110 Agreement to Retain Rental Housing ([Cal. Gov. Code Section 66452.50](#)).**

#### **19.64.010 Purpose and Intent.**

B 1. Residential Conversions. The City Council finds that residential condominiums, community apartment and stock cooperative types of ownership, as defined in [Cal. Civ. Code Sections 4105, 4125 and 4190](#), differ from rental apartments with respect to design, type of construction and maintenance controls, and therefore that the development standards in this chapter are necessary for the protection of the community, existing rental tenants and the purchasers of the converted units. It is also the intent of these regulations to maintain a balanced mix between ownership and rental housing in order to assure the development of a variety of housing types to serve the needs of the community.

2. Nonresidential Conversions. The City Council also finds that nonresidential condominiums, community apartment and stock cooperative types of ownership, as defined in [Cal. Civ. Code Sections ~~1351~~4105, 4125 and 4190 of the Civil Code](#), differ from rental units with respect to design, type of construction and maintenance controls, and therefore that the development standards in this chapter are necessary for the protection of the community, existing rental tenants and the purchasers of the converted units.

#### **19.64.020 Definitions.**

A. Condominium, Community Apartments and Stock Cooperatives. The term “condominium” shall encompass condominium projects, community apartment projects and stock cooperatives, as defined in [Cal. Civ. Code Sections 4105, 4125 and 4190-1351 of the California Civil Code](#).

### **19.64.030 General Requirements.**

A. Where Permitted. If approved under the provisions of this chapter and Title 20 (Zoning Code), residential condominium conversions may be allowed in any district in which residential uses are permitted, including planned communities, except within the R-B1.5 District (Balboa Island). Nonresidential condominium conversions may be allowed in any district in which such uses are permitted.

B. Intent. The intent of this chapter is as follows:

1. Residential Conversions. The City Council finds that residential condominiums, community apartment and stock cooperative types of ownership, as defined in ~~Section 1351 of the Cal. Civ. Code~~ Section 1351, differ from rental apartments with respect to design, type of construction and maintenance controls, and therefore that the development standards in this chapter are necessary for the protection of the community, existing rental tenants and the purchasers of the converted units. It is also the intent of these regulations to maintain a balanced mix between ownership and rental housing in order to assure the development of a variety of housing types to serve the needs of the community.

2. Nonresidential Conversions. The City Council also finds that nonresidential condominiums, community apartment and stock cooperative types of ownership, as defined in ~~Section 1351 of the Cal. Civ. Code~~ Section 1351, differ from rental units with respect to design, type of construction and maintenance controls, and therefore that the development standards in this chapter are necessary for the protection of the community, existing rental tenants and the purchasers of the converted units.

C. Applicability of Sections. All sections in this chapter apply to the conversion of residential units. All sections except 19.64.040, 19.64.050 and 19.64.110 apply to the conversion of nonresidential units.

### **19.64.020 Definitions.**

A. Condominium, Community Apartments and Stock Cooperatives. The term “condominium” shall encompass condominium projects, community apartment projects and stock cooperatives, as defined in Cal. Civ. Code ~~Section 1351 of the California Civil Code~~.

### **19.64.040 Tenant Notification (Cal. Gov. Code Sections 66427.1, 66452.178, 66452.189).**

A. Existing Tenants. At least sixty (60) days prior to the filing of an application for conversion of rental or lease property, the applicant or the applicant’s agent shall give notice of such filing in the form set forth in Cal. Gov. Code ~~Section 66452.189 of the Subdivision Map Act~~ to each tenant of the subject property. Further, if the conversion project is approved, the applicant shall give all tenants a minimum of one hundred eighty (180) days’ advance notice of the termination of their tenancy.

B. Prospective Tenants. At least sixty (60) days prior to the filing of an application for conversion of rental or lease property, the applicant or the applicant’s agent shall give notice of such filing in the form set forth in Cal. Gov. Code ~~Section 66452.178 of the Subdivision Map Act~~ to each person applying after such date for rental or lease of a unit of the subject property. Pursuant to the Subdivision Map Act, failure of an applicant to provide such notice shall not be grounds to deny the conversion but shall make the applicant subject to the penalties specified in Cal. Gov. Code ~~Section 66452.178 of the SMA~~.

**19.64.050 Tenant Purchase Option (Cal. Gov. Code Section 66427.1).**

The property owner shall provide tenants with an exclusive right to purchase his or her respective unit upon the same or more favorable terms and conditions than those on which such unit will be initially offered to the general public. Such right shall run for a period of not less than ninety (90) days from the date of issuance of the subdivision public report pursuant to Cal. Bus. & Prof. Code Section 11018.2 ~~of the Business and Professions Code~~, unless the tenant gives prior written notice of his or her intention not to exercise the right.

**19.64.060 Review Procedures (Cal. Gov. Code Sections 66427.1, 66427.2).**

B. Tentative Map Review. Tentative maps shall be approved or denied by the tentative map decision making body. Decisions on the conversion of existing buildings into condominiums or stock cooperatives shall be governed by the provisions and limitations of Cal. Gov. Code Section 66427.2 ~~of the Subdivision Map Act~~.

C. Council Findings for Residential Conversions. For residential conversions, no final map for a condominium conversion shall be approved unless the City Council makes all of the findings set forth in Cal. Gov. Code Section 66427.1 ~~of the Subdivision Map Act~~ regarding tenant notification, right to purchase and other requirements.

**19.64.110 Agreement to Retain Rental Housing (Cal. Gov. Code Section 66452.50).**

In addition to the provisions in this chapter regarding condominium conversions, the City may, in connection with the approval of a tentative or final map for a new residential condominium project requiring approval of a tentative or final map pursuant to this Code, enter into a binding agreement with the subdivider mandating that the units be first made available for rental housing for a period of not less than ten (10) years from the date a certificate of occupancy has been issued for the units within the development subject to the provisions of Cal. Gov. Code Section 66452.50 ~~of the Subdivision Map Act~~.

## Chapter 19.68

### MERGER OF CONTIGUOUS LOTS

#### 19.68.010 Purpose and Intent.

The provisions of this chapter are intended to provide for the merger of parcels as authorized by Cal. Gov. Code Section 66499.20.34 of the ~~Government Code~~. These provisions are intended to be consistent with the ~~State~~ Subdivision Map Act and shall be so construed.

#### 19.68.020 Exemptions.

B. Lots in R-~~BI1-5~~ District. On any site of less than five thousand (5,000) square feet which existed prior to March 10, 1976, a two-family dwelling may be constructed; provided, that there shall be not less than one thousand (1,000) square feet of land area for each family unit.

## Chapter 19.72

### REVERSIONS TO ACREAGE

#### Sections:

**19.72.010 Purpose and Intent ([Cal. Gov. Code Section 66499.11](#)).**

**19.72.020 Initiation and Filing ([Cal. Gov. Code Sections 66499.12, 66499.13, 66499.14](#)).**

**19.72.030 Review Process and Findings ([Cal. Gov. Code Sections 66499.15, 66499.16](#)).**

**19.72.040 Conditions Imposed on Reversions ([Cal. Gov. Code Section 66499.17](#)).**

**19.72.050 Recordation of Reversions ([Cal. Gov. Code Section 66499.18 et seq.](#)).**

**19.72.010 Purpose and Intent ([Cal. Gov. Code Section 66499.11](#)).**

**19.72.020 Initiation and Filing ([Cal. Gov. Code Sections 66499.12, 66499.13, 66499.14](#)).**

A. Initiation. Reversions to acreage may be initiated by motion of the City Council or by petition of all of the parcel owners within the subdivision.

B. Filing. Application for a reversion to acreage shall be made on forms provided by the Community Development Department and shall include the information and materials specified in [Cal. Gov. Code Section 66499.13](#) ~~of the Subdivision Map Act~~. A filing fee may be required as established by resolution of the City Council.

**19.72.030 Review Process and Findings ([Cal. Gov. Code Sections 66499.15, 66499.16](#)).**

The City Council shall review reversions to acreage at a noticed public hearing. In approving a reversion to acreage, the Council shall make all findings set forth in [Cal. Gov. Code Section 66499.16](#) ~~of the Subdivision Map Act~~.

**19.72.040 Conditions Imposed on Reversions ([Cal. Gov. Code Section 66499.17](#)).**

As conditions of approval of a reversion to acreage, the City Council shall require all conditions set forth in [Cal. Gov. Code Section 66499.17](#) ~~of the Subdivision Map Act~~.

**19.72.050 Recordation of Reversions ([Cal. Gov. Code Section 66499.18 et seq.](#)).**

Recordation and release of security shall be in accordance with [Cal. Gov. Code Section 66499.18 et seq.](#) ~~of the Subdivision Map Act~~.

## Chapter 19.80

### CERTIFICATES OF COMPLIANCE

#### Sections:

19.80.010 Description ([Cal. Gov. Code Section 66499.35](#)).

19.80.020 Review Per Map Act (66499.35).

19.80.010 Description ([Cal. Gov. Code Section 66499.35](#)).

19.80.020 Review Per Map Act ([Cal. Gov. Code Section 66499.35](#)).

The Community Development Director shall process certificates of compliance in accordance with the provisions of [Cal. Gov. Code](#) Section 66499.35 ~~of the Subdivision Map Act.~~

## Chapter 19.90

### PARCEL MAPS FOR URBAN LOTS SPLITS

#### Sections:

**19.90.010 Purpose and Scope.**

**19.90.020 Application and Review of Tentative Parcel Maps for Urban Lot Splits.**

**19.90.030 Design and Improvement Requirements.**

**19.90.040 Concurrent Processing With Other Ministerial Permits for Housing Development.**

**19.90.050 Prohibition of Further Subdivision.**

**19.90.060 Amendments to Approved Tentative Parcel Maps for Urban Lot Splits.**

**19.90.070 Expiration and Extension of Tentative Parcel Map for Urban Lot Splits.**

**19.90.080 Final Parcel Map Filing and Review for Urban Lot Splits.**

#### **19.90.010 Purpose and Scope.**

This chapter serves to implement [Cal. Government Code](#) Section 66411.7 to provide an owner an alternative method to subdivide a lot for residential development. For purposes of this chapter, “urban lot split” means the subdivision of an existing legal lot to create one additional lot in R-A and R-1 zoning districts or areas designated for single-unit residential within a planned community development plan or specific single-family residential use zone.

#### **19.90.020 Application and Review of Tentative Parcel Maps for Urban Lot Splits.**

A. Filing. An application for a tentative parcel map for an urban lot split shall be filed with the Community Development Department by a record owner or owners of the property to be divided or their authorized agents. The required number of copies of the map shall be established by the Community Development Director through an application form.

B. Application Fee. The application shall be accompanied by the required application fee(s), as established by resolution of the City Council. Such fees shall be in accordance with [Cal. Gov. Code](#) Section 66451.2 ~~of the Subdivision Map Act~~ and shall not exceed the amount reasonably required to administer provisions of this title.

D. Supplemental Information. In addition to the items identified in subsection (C) of this section, the following supplemental information shall be submitted with a tentative parcel map application to establish compliance with the construction plans and all provisions of this Code and applicable state law:

2. iii A lot or lots on which an owner of residential real property has exercised the owner’s rights [Cal. Gov. Code Section 7060 et seq. Chapter 12.75 \(commencing with Section 7060\) of Division 7 of Title 1 of the Government Code](#) to withdraw accommodations from rent or lease within fifteen (15) years prior to the date that the development proponent submits an application;

E. Review Authority and Approval. If the Zoning Administrator determines, after consultation with the City Engineer, that a tentative parcel map for an urban lot split meets all requirements of this chapter and Section 20.48.205(B) (Permit and Review Procedures), the Zoning Administrator shall approve the tentative parcel map. This action is a ministerial action in compliance with the provisions of this chapter only. The findings under Section 19.12.070 (Required Findings for Action on Tentative Maps) do not apply.

F. Findings for Denial. The Zoning Administrator shall deny any application for a tentative parcel map for urban lot split if the Zoning Administrator makes written finding(s), based upon a preponderance of the evidence, that it would have a specific, adverse impact, as defined and determined in Cal. Gov. Code Section 65589.5(d)(2), ~~in paragraph (2) of subdivision (d) of Government Code Section 65589.5,~~ upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.

## Title 20

### PLANNING AND ZONING\*

#### Chapters:

#### Part 1. Zoning Code Applicability

20.10 Purpose and Applicability of the Zoning Code

20.12 Interpretation of Zoning Code Provisions

20.14 Zoning Map

#### Part 2. Zoning Districts, Allowable Land Uses, and Zoning District Standards

20.16 Development and Land Use Approval Requirements

20.18 Residential Zoning Districts (R-A, R-1, R-BI, R-2, RM, RMD)

20.20 Commercial Zoning Districts (OA, OG, OM, OR, CC, CG, CM, CN, CV, CV-LV)

20.22 Mixed-Use Zoning Districts (MU-V, MU-MM, MU-DW, MU-CV/15th St., MU-W1, MU-W2)

20.24 Industrial Zoning District (IG)

20.26 Special Purpose Zoning Districts (OS, PC, PF, PI, and PR)

20.28 Overlay Zoning Districts (MHP, PM, B, H)

#### Part 3. Site Planning and Development Standards

20.30 Property Development Standards

20.32 Density Bonus

~~20.34 Conversion or Demolition of Affordable Housing~~

20.36 Landscaping Standards

20.38 Nonconforming Uses and Structures

20.40 Off-Street Parking

20.42 Sign Standards

20.44 Transportation Demand Management Requirements

20.46 Transfer of Development Rights

#### Part 4. Standards for Specific Land Uses

20.48 Standards for Specific Land Uses

20.49 Wireless Telecommunications Facilities

## **Part 5. Planning Permit Procedures**

- 20.50 Permit Application Filing and Processing**
- 20.52 Permit Review Procedures**
- 20.54 Permit Implementation, Time Limits, and Extensions**
- 20.56 Planned Community District Procedures**
- 20.58 Specific Plan Procedures**

## **Part 6. Zoning Code Administration**

- 20.60 Administrative Responsibility**
- 20.62 Public Hearings**
- 20.64 Appeals**
- 20.66 Amendments**
- 20.68 Enforcement**

## **Part 7. Definitions**

- 20.70 Definitions**

## **Part 8. Maps**

- 20.80 Maps**

## **Part 9. Specific Plans**

- 20.90 Santa Ana Heights Specific Plan**
- 20.91 (Reserved)**
- 20.92 (Reserved)**

## Chapter 20.10

### PURPOSE AND APPLICABILITY OF THE ZONING CODE

#### 20.10.050 Responsibility for Administration.

A. Responsible Authority. This Zoning Code shall be administered by: City Council, hereafter referred to as the "Council"; the Planning Commission, hereafter referred to as the "Commission"; the ~~Planning Director~~Community Development Director, hereafter referred to as the "Director"; the Zoning Administrator; and the Community Development ~~Planning~~ Department, hereafter referred to as the "Department," and any other City official or body as specifically identified.

**Chapter 20.18**

**RESIDENTIAL ZONING DISTRICTS (R-A, R-1, R-BI, R-2, RM, RMD)**

**20.18.030 Residential Zoning Districts General Development Standards.**

**Table 2-2**

Bluff edge setback	As provided in Section <a href="#">20.28.040</a> (Bluff (B) Overlay District). <a href="#">See also Section 21.28.040</a>
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Chapter 20.20

COMMERCIAL ZONING DISTRICTS (OA, OG, OM, OR, CC, CG, CM, CN, CV, CV-LV)

20.20.020 Commercial Zoning Districts Land Uses and Permit Requirements.

Table 2-4

Take-Out Service—Fast-Casual (up to 20 seats) <u>(1)</u> (2)	P/MUP	P/MUP	P/MUP	P/MUP	Section <a href="#">20.48.090</a>
<u>Alcohol Sales (off-sale) (with late hours) (1)</u>	<u>CUP</u>	<u>CUP</u>	<u>CUP</u>	<u>CUP</u>	<u>Section 20.48.030</u>

(2) Permitted or Minor Use Permit Required.

a. For Take-Out Service – Fast Casual (up to 20 seats), a minor use permit shall be required for any use located within one hundred (100) feet of any residential zoning district.

b. Except as provided in (2)(a), a minor use permit shall be required for any use located within five hundred (500) feet, ~~property line to property line,~~ of any residential zoning district.

c. A minor use permit shall be required for any use that maintains late hours.

Table 2-5

Take-Out Service—Fast-Casual (up to 20 seats) <u>(1)</u> (2)	P/MUP	P/MUP	P/MUP	P/MUP	P/MUP	P/MUP	Section 20.48.090
<u>Alcohol Sales (off-sale) (with late hours) (1)</u>	<u>CUP</u>	<u>CUP</u>	<u>CUP</u>	<u>CUP</u>	<u>CUP</u>	<u>CUP</u>	<u>Section 20.48.030</u>

(2) Permitted or Minor Use Permit Required.

a. For Take-Out Service – Fast Casual (up to 20 seats), a minor use permit shall be required for any use located within one hundred (100) feet of any residential zoning district.

b. Except as provided in (2)(a), A minor use permit shall be required for any use located within five hundred (500) feet, ~~property line to property line,~~ of any residential zoning district.

~~c~~b. A minor use permit shall be required for any use that maintains late hours.

Chapter 20.22

MIXED-USE ZONING DISTRICTS (MU-V, MU-DW, ,MU-CV/15<sup>TH</sup> ST., MU-W1, MU-W2)

20.22.020 Mixed-Use Zoning Districts Land Uses and Permit Requirements.

Table 2-8

Take-Out Service—Fast-Casual (up to 20 seats) <u>(4)</u> (5)	P/MUP	P/MUP	P/MUP	P/MUP	Section <a href="#">20.48.090</a>
<u>Alcohol Sales (off-sale) (with late hours) (4)</u>	<u>CUP</u>	<u>CUP</u>	<u>---</u>	<u>Cup</u>	<u>Section 20.48.030</u>

(5) Permitted or Minor Use Permit Required.

a. For Take-Out Service – Fast Casual (up to 20 seats), a minor use permit shall be required for any use located within one hundred (100) feet of any residential zoning district.

b. Except as provided in (5)(a), a minor use permit shall be required for any use located within five hundred (500) feet, ~~property line to property line~~, of any residential zoning district.

~~c~~b. A minor use permit shall be required for any use that maintains late hours.

Table 2-9

Take-Out Service—Fast-Casual (up to 20 seats) (3)(4)	P/MUP	P/MUP	Section <a href="#">20.48.090</a>
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(4) Permitted or Minor Use Permit Required.

a. For Take-Out Service – Fast Casual (up to 20 seats), a minor use permit shall be required for any use located within one hundred (100) feet of any residential zoning district.

b. Except as provided in 4(a), A minor use permit shall be required for any use located within five hundred (500) feet, ~~property line to property line~~, of any residential zoning district.

~~c~~b. A minor use permit shall be required for any use that maintains late hours.

## Chapter 20.28

### OVERLAY ZONING DISTRICTS (MHP, PM, B, H)

#### 20.28.020 Mobile Home Park (MHP) Overlay Zoning District.

B 3. A mobile home park phase out plan and report on the impact of conversion, closure, or cessation of the use on the displaced residents of the mobile home park has been prepared, reviewed, and found to be acceptable and consistent with the provisions of the California Government Code.

#### 20.28.040 Bluff (B) Overlay District.

D. Location of Development Areas. The development areas are listed below and depicted in the referenced map exhibits adopted in Part 8 of this title. The placement of structures and grading is limited by development areas as defined in this section and in subsection (C) of this section. The development areas for each parcel are polygons established by the property lines and the following development lines. (See Map Exhibits B-1 through B-8, attached to the ordinance codified in this title.) All contour lines refer to NAVD\_88 contours.

##### ~~1. Map 1—Kings Place.~~

~~1a.~~ Kings Place (104-112 and 204-224).

~~ai.~~ Development Area A. Between the front property line adjacent to Kings Place and the development line established at an elevation that is sixteen (16) feet below the average elevation of the top of the curb adjacent to the lot.

~~bii.~~ Development Area C. All portions of the lot not located in Area A.

~~2b.~~ Kings Place (116-200).

~~ai.~~ Development Area A. As indicated by the specified distance (in feet) from the front property line on the development area map.

~~bii.~~ Development Area B. All portions of the lot not located in Area A or C.

~~ciii.~~ Development Area C. Between the down slope boundary of Area A and a development line established at the twenty-six (26) foot contour line.

~~dii.~~ Additional Development Standards. Sport courts are allowed in Area B. Enclosed accessory structures that do not exceed twelve (12) feet in height from existing or finished grade and do not exceed four hundred (400) square feet (cumulative) in area shall be allowed in Area B.

##### ~~2. Map 2—Irvine Terrace.~~

~~a.~~ Dolphin Terrace.

~~i.—Development Area A. Between the front property line adjacent to Dolphin Terrace and a ten (10) foot setback from the top of the existing bluff.~~

~~ii.—Development Area B. Between the ten (10) foot setback from the top of the existing bluff and a line established at an elevation that is thirteen (13) feet below the average elevation of the top of the curb adjacent to the lot.~~

~~iii.—Development Area C. All portions of the lot not located in Areas A and B.~~

~~D 3.— Map 3—Irvine Terrace.~~

~~a.—Bayadere Terrace (1607).~~

~~i.—Development Area A. The extent of the existing principal structure.~~

~~ii.—Development Area B. Between the extent of the existing development and a development line established at an elevation that is thirteen (13) feet below the average elevation of the top of the curb adjacent to the lot.~~

~~iii.—Development Area C. All portions of the lot not located in Areas A and B.~~

~~b.—Bayadere Terrace (1615-1638).~~

~~i.—Development Area A. Between the front property line adjacent to Bayadere Terrace and the forty-eight (48) foot contour line\*.~~

~~ii.—Development Area B. Between the forty-eight (48) foot contour line\* and a development line established at an elevation that is thirteen (13) feet below the average elevation of the top of the curb adjacent to the lot.~~

~~iii.—Development Area C. All portions of the lot not located in Areas A and B.~~

~~c.—Bayadere Terrace (1701-2201).~~

~~i.—Development Area A. Between the front property line adjacent to Bayadere Terrace and the fifty (50) foot contour line\*.~~

~~ii.—Development Area B. Between the fifty (50) foot contour line and a development line established at an elevation that is thirteen (13) feet below the average elevation of the top of the curb adjacent to the lot.~~

~~iii.—Development Area C. All portions of the lot not located in Areas A and B.~~

~~D 4.— Map 4—Avocado Avenue/Pacific Drive.~~

~~a.—Avocado Avenue.~~

i.—Development Area A. Above the sixty eight (68) foot contour line for 415 Avocado Avenue, above the fifty (50) foot contour line for 411 Avocado Avenue and the prolongation of such contour line along the shortest segment to the thirty five (35) foot contour line<sup>2</sup> for 401 Avocado Avenue.

ii.—Development Area C. Below the sixty eight (68) foot contour line at 415 Avocado Avenue, fifty (50) foot contour line at 411 Avocado Avenue, and below the thirty five (35) foot contour line\* along 401 Avocado Avenue.

b.—Pacific Drive (2235-2329).

i.—Development Area A. Between the front property line adjacent to Pacific Drive and the fifty three (53) foot contour line.\*

ii.—Development Area C. All portions of the lot not located in Area A.

D-5.—Map 5—Carnation Avenue.

a.—Carnation Avenue (201-233).

i.—Development Area A. Between the front property line adjacent to Carnation Avenue and the 50.7 foot contour line.\*

ii.—Development Area C. All portions of the lot not located in Area A.

b.—Carnation Avenue (239-317).

i.—Development Area A. As indicated by the specified distance (in feet) from the front property line adjacent to Carnation Avenue on the development area map.

ii.—Development Area B. Between the Area A development line and the seventy (70) foot contour line.\*

iii.—Development Area C. All portions of the lot not located in Area A or B.

iv.—Additional Development Standards. If Area A overlaps Area B, the area of overlap shall be regulated as Area A.

D-6.—Map 6—Ocean Boulevard/Breakers Drive.

a.—Breakers Drive (3100-3200).

i.—Development Area A. Between the fifty two (52) foot contour line\* and the property line adjacent to Breakers Drive.

ii.—Development Area B. Between the forty eight (48) foot contour line\* and the thirty three (33) foot contour line.\*

iii.—Development Area C. All portions of the lot not located in Area A or B.

~~iv.—Additional Development Standards. Structure height may not exceed the fifty-two (52) foot contour line.\* No fences or walls allowed in Area C.~~

~~b.—Ocean Boulevard (3207-3309).~~

~~i.—Development Area A. Between the forty-eight (48) foot contour line\* and the property line adjacent to Ocean Boulevard and between the thirty-three (33) foot contour line\* and the property line adjacent to Breakers Drive.~~

~~ii.—Development Area C. Between the thirty-three (33) foot and forty-eight (48) foot contour lines.\*~~

~~iii.—Additional Development Standards. Covered walkways connecting a conforming garage and principal structure are allowed in Area C.~~

~~c.—Ocean Boulevard (3317-3431).~~

~~i.—Development Area A. Between the forty-eight (48) foot contour line\* and the property line adjacent to Ocean Boulevard.~~

~~ii.—Development Area B. Between the forty-eight (48) foot contour line and the thirty-eight (38) foot contour line.\*~~

~~iii.—Development Area C. All portions of the lot not located in Area A or B.~~

~~iv.—Additional Development Standards. No fences or walls in Area C.~~

~~d.—Ocean Boulevard (3601-3729).~~

~~i.—Development Area A. Between the property line adjacent to Ocean Boulevard and the seaward extent of the existing development area.~~

~~ii.—Development Area C. All portions of the lot not located in Area A.~~

~~iii.—Additional Development Standards. New development shall not extend further onto the bluff face beyond existing development.~~

~~D.7.—Map 7—Shorecliffs.~~

~~a.—Shorecliff Road.~~

~~i.—Development Area A. As indicated by the specified distance (in feet) from the front property line on the development area map.~~

~~ii.—Development Area B. Between the seaward boundary of Area A and a line established by a ten (10) foot setback from the bluff edge (not all lots have an Area B).~~

~~iii.—Development Area C. All portions of the lot not located in Area A or B.~~

~~iv.—Additional Development Standards. If Area A overlaps Area B, the area of overlap shall be regulated as Area A. No fences or walls shall be allowed in Area C.~~

~~D 8.—Map 8—Cameo Shores.~~

~~a.—Brighton Road.~~

~~i.—Development Area A. As indicated by the specified distance (in feet) from the front property line on the development area map.~~

~~ii.—Development Area B. Between the seaward boundary of Area A and a line established by a ten (10) foot setback from the bluff edge (not all lots may have an Area B).~~

~~iii.—Development Area C. All portions of the lot not located in Area A or B.~~

~~iv.—Additional Development Standards. If Area A overlaps Area B, the area of overlap shall be regulated as Area A. No fences or walls shall be allowed in Area C.~~

~~I.—Adjustment of Development Area Boundary.~~

~~1.—Reduced Development Area(s). A bluff development area shall be reduced whenever necessary to:~~

~~a.—Ensure safety and stability against slope failure (i.e., landsliding) for the economic life of a development. At a minimum, the development area shall be adjusted to ensure a slope stability factor greater than or equal to 1.5 at the end of the economic life of the development for the static condition of the bluff or a factor of safety greater than or equal to 1.1 for the seismic condition of the bluff, whichever is further landward; and~~

~~b.—Ensure that the principal structures are safe from hazards due to erosional factors for the economic life of the building.~~

~~2.—Increased Development Area(s). A development area's boundaries may be adjusted through the approval of a site development review in compliance with Section 20.52.080 (Site Development Reviews) to allow structures and grading not otherwise allowed. In addition to the site development review findings, all of the following findings shall also be made:~~

~~a.—The increased bluff development area will ensure a slope stability factor of safety greater than or equal to 1.5 at the end of the economic life of the development for the static condition of the bluff or a factor of safety greater than or equal to 1.1 for the seismic condition of the bluff or canyon, whichever is farther landward;~~

~~b.—The increased bluff development area will provide adequate protection from erosion factors for the economic life of the development;~~

~~c.—The increased bluff development area will be compatible and consistent with surrounding development; and~~

~~d.—The increased bluff development area will not have an impact on public views or sensitive habitat areas, and is not otherwise detrimental to the general public health and welfare.~~

## Chapter 20.30

### PROPERTY DEVELOPMENT STANDARDS

#### 20.30.120 Solid Waste and Recyclable Materials Storage.

Purpose. This section provides standards for the provision of solid waste (refuse) and recyclable material storage areas in compliance with State law (California Solid Waste Reuse and Recycling Access Act, [Cal. Pub. Resources Code Section 42900](#)) and Chapter 6.04 and Chapter 6.06.

## Chapter 20.32

### DENSITY BONUS

#### 20.32.020 Definitions.

L. “Lower-income student” means a student who has a household income and asset level that does not exceed the level for Cal Grant A or Cal Grant B award recipients as set forth in [Cal. Education Code Section 69432.7\(k\)\(1\)](#). The eligibility of a student to occupy a unit for lower-income students under this section shall be verified by an affidavit, award letter, or letter of eligibility provided by the institution of higher education in which the student is enrolled or by the California Student Aid Commission that the student receives or is eligible for financial aid, including an institutional grant or fee waiver from the college or university, the California Student Aid Commission, or the ~~f~~Federal government.

O. “Specific adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. The following shall not constitute a specific, adverse impact upon the public health or safety: (1) inconsistency with the zoning or General Plan land use designation, or (2) the eligibility to claim a welfare exemption under [Cal. Rev. & Tax. Code subdivision \(g\)](#) of Section 214 ~~(G) of the Revenue and Taxation Code~~.

#### 20.32.030 Eligibility for Density Bonus and Incentives.

A 8. A senior citizen housing development, as defined in [Cal. Civ. Code Sections 51.3 and 51.12](#) ~~Civil Code Sections 51.3 and 51.12~~, that has at least thirty-five (35) dwelling units or a mobile home park that limits residency based on age requirements for housing older persons in compliance with [Cal. Civ. Code Section 798.76 or 799.5](#) ~~Civil Code Section 798.76 or 799.5~~.

#### 20.32.050 Allowed Density Bonuses.

C 4. Priority for the affordable units shall be given to lower-income students experiencing homelessness. A homeless service provider, as defined in [Cal. Health & Saf. Code paragraph \(3\) of subdivision \(e\)](#) of Section 103577 ~~(3)(e) of the Health and Safety Code~~, or institution of higher education that has knowledge of a person’s homeless status may verify a person’s status as homeless for purposes of this subsection.

#### 20.32.060 Parking Requirements in Density Bonus Projects.

B 3 b. The housing development is a for-rent housing development for individuals who are sixty-two (62) years of age or older that meet the definition in [Cal. Civ. Code](#) Sections 51.2 and 51.3 ~~of the Civil Code~~ and the housing development has either paratransit service or unobstructed access within one-half mile of a fixed bus route that operates at least eight ~~(8)~~ times per day; or

B 3 c. The housing development is either a special needs housing development, as defined in [Cal. Health & Saf. Code](#) Section 51312 ~~of the Health and Safety Code~~, or supportive housing development as defined in [Cal. Health & Saf. Code](#) Section 50675.14 ~~of the Health and Safety Code~~, and the housing development has either paratransit service or unobstructed access within one-half mile of a fixed bus route that operates at least eight ~~(8)~~ times per day.

**20.32.130 Continued Availability.**

B 1. Rental Units. Rents for density bonus units shall be set at an affordable rent as defined in Cal. Health & Saf.ety Code Section 50053; and

B 2. Owner-Occupied Units. Owner-occupied units shall be available at an affordable housing cost as defined in Cal. Health & Saf.ety Code Section 50052.5.

**20.32.140 Occupancy and Resale of Ownership Units.**

A 1. The unit is initially occupied by a very low-, low-, or moderate-income household, offered at an affordable housing cost as defined in Cal. Health & Saf. Code Section 50052.5 ~~of the Health and Safety Code~~, and subject to an equity sharing agreement.

A 2 a. The nonprofit housing corporation is organized pursuant to Internal Revenue Code Section 501(c)(3) and has received a welfare exemption under Cal. Revenue and Tax.ation Code Section 214.15 for properties intended to be sold to low-income households who participate in a special no-interest loan program;

B 2. The City shall recapture any initial subsidy and its proportionate share of appreciation, which shall then be used within five (5) years for any of the purposes described in Cal. Health & Saf.ety Code Section 33334.2(e) that promote home ownership. For the purposes of this section:

## Chapter 20.34

### ~~CONVERSION OR DEMOLITION OF AFFORDABLE HOUSING~~

#### Sections:

#### ~~20.34.010 Purpose.~~

#### ~~20.34.020 Applicability.~~

#### ~~20.34.030 Exemptions.~~

#### ~~20.34.040 Review Authority.~~

#### ~~20.34.050 Replacement of Affordable Housing.~~

#### ~~20.34.060 Determining Requirements for Replacement Units.~~

#### ~~20.34.070 Feasibility Analysis.~~

#### ~~20.34.080 Administration and Feasibility Analysis Fees.~~

#### ~~20.34.090 Findings to Conclude that Replacement of Units is Not Feasible.~~

#### ~~20.34.100 Affordable Housing Agreement.~~

#### ~~20.34.010 Purpose.~~

The purpose of this chapter is to:

- A. ~~Be consistent with and implement the provisions of the Mello Act (Government Code Section 65590); and~~
- B. ~~Maintain the number of low- and moderate-income dwelling units within the coastal zone.~~

#### ~~20.34.020 Applicability.~~

~~The provisions of this chapter shall apply to the conversion or demolition of existing residential dwelling units within the coastal zone occupied by persons or families of low or moderate income ("affordable units"), as defined in Health and Safety Code Section 50093, when either of the following occurs:~~

- A. ~~The conversion or demolition of eleven (11) or more dwelling units located in two or more structures;~~  
~~or~~
- B. ~~The conversion or demolition of three or more dwelling units located in one structure.~~

#### ~~20.34.030 Exemptions.~~

~~The provisions of this chapter shall not apply to the following:~~

- A. ~~Demolition of a Public Nuisance. The demolition of a residential structure that has been declared a public nuisance in compliance with the provisions of Health and Safety Code Division 13 (commencing with Section 17000) or any City ordinance enacted pursuant to those provisions shall be exempt from the provisions of this chapter. For purposes of this chapter, no structure, which conforms to the standards that were applicable at the time the structure was constructed and that does not constitute a substandard~~

~~structure, as provided in Section 17920.3 of the Health and Safety Code, shall be deemed to be a public nuisance solely because the structure does not conform to one or more of the current provisions of Municipal Code Title 15;~~

~~B.—Replacement with a Coastal Dependent Use. The conversion or demolition of a residential structure for purposes of a nonresidential use that is either “coastal dependent,” as defined in Public Resources Code Section 30101, or “coastal related,” as defined in Public Resources Code Section 30101.3; or~~

~~C.—Land Availability. The conversion or demolition of a residential structure when there are less than fifty (50) acres, in aggregate, of privately owned, vacant land available for residential use within the City’s coastal zone or within three miles inland of the coastal zone.~~

**~~20.34.040 Review Authority.~~**

~~A.—Director. The administration of this chapter shall be delegated to the Director and shall comply with the Mello Act, as it may be amended from time to time.~~

~~B.—Determination. The Director shall make a determination as to the applicability of this chapter when a residential structure is to be converted or demolished. If applicable and based on the documentation provided in compliance with Section 20.34.060, the Director shall make determinations as to:~~

- ~~1.—How many units were occupied by low and moderate income persons or families;~~
- ~~2.—Whether the conversion or demolition proposes to go from residential to nonresidential and if so whether the proposed new use is coastal dependent;~~
- ~~3.—Whether a feasibility analysis is required to be prepared;~~
- ~~4.—The feasible number of affordable units required to be replaced, if any; and~~
- ~~5.—Whether the required replacement affordable units are to be located on site or off site.~~

~~C.—Referral to Commission. The Director may defer action and refer a determination to the Commission for a decision on any of the matters outlined in subsection (B) of this section.~~

~~D.—Administrative Act. Determinations made by the Director under the provisions of this chapter are an administrative function. The determinations made by the Director for the purpose of complying with the purpose of this chapter shall not be construed as amendments to this Zoning Code.~~

**~~20.34.050 Replacement of Affordable Housing.~~**

~~A.—One for One Replacement. If the Director determines that the proposed conversion or demolition activities involve affordable dwelling units, replacement of the affordable dwelling units shall be provided on a one for one basis, unless the Director determines that replacement is not feasible.~~

~~B.—Location of Replacement Units. Replacement dwelling units shall be located on the site of the converted or demolished structure(s) or elsewhere within the coastal zone if feasible. If location on the site or elsewhere within the coastal zone is not feasible, the replacement units shall be located within three miles of the coastal zone.~~

~~C.—Period of Affordability.~~

~~1.—Restricted Units. Affordable dwelling units that were previously required to be restricted to low or moderate income persons or families because of an existing affordable housing agreement that are required to be replaced in compliance with the requirements of this chapter shall remain affordable for the duration of time remaining on the existing affordable housing agreement.~~

~~2.—Nonrestricted Units. Affordable dwelling units that were not previously required to be restricted to low or moderate income persons or families through an existing affordable housing agreement, but are now required to be provided in compliance with this chapter, shall remain affordable for a minimum of thirty (30) years.~~

#### ~~20.34.060 Determining Requirements for Replacement Units.~~

~~A.—Required Documentation. The property’s affordability status shall be documented by the Department. Affordability is measured by the income level of all current tenants. This information, along with information provided by the current tenants to the Department, will be used to determine if affordable dwelling units currently exist and the need to replace those units in compliance with the requirements of this chapter.~~

~~B.—Information to Be Provided.~~

~~1.—In order to make a determination of a property’s affordability status, the applicant shall provide the following information regarding the subject property:~~

~~a.—Address of the property;~~

~~b.—Total number of existing units;~~

~~c.—Income of the tenants;~~

~~d.—Square footage and number of bedrooms per unit;~~

~~e.—Names and addresses of current tenants;~~

~~f.—Tenant family size in each unit;~~

~~g.—Information on any evictions within the last year; and~~

~~h.—Whether there are currently any vacant units and how long they have been vacant.~~

~~2.—In addition to the information provided by the applicant, the Department shall document information regarding the income status and household size of current tenants.~~

~~C.—Eviction of Tenants.~~

~~1.—For purposes of this chapter, a residential dwelling unit shall be deemed occupied by a person or family of low or moderate income if the person or family was evicted from the subject dwelling unit within one year prior to the filing of an application to convert or demolish the unit and if the eviction was for the purpose of avoiding the requirements of this chapter.~~

~~2.—If a substantial number of persons or families of low or moderate income were evicted from the subject residential structure within one year prior to the filing of an application to convert or demolish that structure, the evictions shall be presumed to have been for the purpose of avoiding the requirements of~~

this chapter and the applicant for the conversion or demolition shall bear the burden of proving that the evictions were not for the purpose of avoiding the requirements of this chapter.

~~D.—Residential Use Not Feasible. If the conversion or demolition of a residential structure is for the purpose of replacement by a nonresidential use that is not “coastal dependent,” and the Director has determined that a residential use is no longer feasible in that location, the Director shall require replacement of any dwelling units occupied by persons and families of low or moderate income.~~

#### ~~20.34.070 Feasibility Analysis.~~

~~A.—Feasibility Analysis Required.~~

~~1.—If the applicant claims that it is not feasible to provide affordable replacement dwelling units an independent feasibility analysis shall be prepared prior to any approvals being granted for the proposed project.~~

~~2.—The test of feasibility shall be conducted using the income levels contained in the General Plan, Housing Element.~~

~~B.—Feasibility of Replacing Affordable Units.~~

~~1.—“Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technical factors.~~

~~2.—If the feasibility analysis determines that it is not feasible to replace the affordable units, the analysis shall provide an explanation of why it is not feasible, including the provision of the units both on site and off site.~~

~~C.—Feasibility Analysis Preparation. The feasibility analysis shall be prepared by an independent firm under the direction of the Department. The selected firm shall have prior experience in the preparation of real estate feasibility analysis and shall provide an unbiased, neutral opinion as to the feasibility of complying with the requirements of this chapter.~~

#### ~~20.34.080 Administration and Feasibility Analysis Fees.~~

~~A.—Administration Fee. An application to convert or demolish residential units in the coastal zone shall be accompanied by an administration fee in compliance with the City’s master fee schedule.~~

~~B.—Feasibility Analysis Processing Fee. If a feasibility analysis is required in compliance with Section 20.34.070 (Feasibility Analysis), the total cost of the analysis plus a feasibility analysis processing fee shall also be paid. The feasibility analysis processing fee shall be a percentage of the total feasibility analysis cost and shall be used to cover the cost of processing the feasibility analysis.~~

#### ~~20.34.090 Findings to Conclude that Replacement of Units is Not Feasible.~~

~~In order to conclude that the replacement of affordable dwelling units is not feasible the review authority shall first find all of the following:~~

~~A.—The feasibility analysis was prepared in a professional and appropriate manner, and the facts and information presented in the feasibility analysis are accurate to the best of the review authority’s knowledge; and~~

~~B.—The feasibility analysis concluded that the provision of affordable housing as required by this chapter and the Mello Act (Government Code Section 65590) is not feasible.~~

~~**20.34.100 Affordable Housing Agreement.**~~

~~An affordable housing agreement shall be executed in a recordable form prior to the issuance of a building permit for any portion of a residential development project subject to the requirements of this chapter.~~

~~A.—Form of Agreement. The form of the agreement shall be similar in content to the agreement specified in Section 19.54.080 (Affordable Housing Agreement) and as required by the City Attorney.~~

~~B.—Period of Affordability. The agreement shall provide that the required affordable dwelling units remain affordable for a minimum of thirty (30) years.~~

~~C.—Availability of Affordable Units. The agreement shall provide that the replacement dwelling units be available for occupancy within three years from the date work commenced on the conversion or demolition of the existing dwelling units.~~

## Chapter 20.42

### SIGN STANDARDS

#### 20.42.030 General Provisions.

F. Billboard Policy. The City completely prohibits the construction, erection or use of billboards, other than those that legally exist in the City, or for which a valid permit has been issued and has not expired, as of the date on which this provision was first adopted. The City adopts this policy in compliance with ~~California Government~~ Cal. Gov. Code Section 65850 and ~~Cal. ifornia Bus. iness and& Prof. essions~~ Code Sections 5354(a) and 5408.3 ~~(both effective January 1, 2003)~~. Permits shall not be issued for billboards that violate this policy, and the City will take immediate abatement action against billboards constructed or maintained in violation of this policy. The Council affirmatively declares that it would have adopted this billboard policy even if it were the only provision in this chapter. The Council intends for this billboard policy to be severable and separately enforceable even if other provisions of this chapter may be declared, by a court of competent jurisdiction, to be unconstitutional, invalid, or unenforceable. This provision does not prohibit agreements to relocate existing, legal billboards, as encouraged by Cal. Bus. iness and& Prof. essions Code Section 5412.

## Chapter 20.48

### STANDARDS FOR SPECIFIC LAND USES

#### 20.48.030 Alcohol Sales.

C 2 b ii. A pattern of documented violations of the permit conditions, this Zoning Code, ~~the Municipal~~this Code, the Cal. Pen.~~al~~ Code, or other State statutes; or

#### 20.48.060 Bed and Breakfast Inns.

A 3. Sales. Accessory sales of goods and services shall be limited to registered guests only. In compliance with Cal. Bus.iness & Prof.essions Code Section 24045.12, a bed and breakfast inn may sell alcohol to registered guests only; provided, that the establishment has an approved ABC License Type 80 (Special On-Sale General B and B license).

#### 20.48.090 Eating and Drinking Establishments.

G 2 b i. A pattern of documented violations of the permit conditions, this Zoning Code, the Municipal Code, the Cal. Pen.~~al~~ Code, or other State statutes; or

#### 20.48.100 Emergency Shelters.

This section provides standards for the establishment and operation of emergency shelters in compliance with Cal. Gov.ernment Code Section 65583.

#### 20.48.200 Accessory Dwelling Units.

A. Purpose. The purpose of this section is to establish the procedures for the creation of accessory dwelling units and junior accessory dwelling units, as defined in Part 7 (Definitions) of this title and in ~~California~~Cal. Gov.ernment Code Sections 65852.2 and 65852.22, ~~or any successor statute~~, in areas designated for residential use, including as part of a planned community development plan or specific plan, and to provide development standards to ensure the orderly development of these units in appropriate areas of the City.

B 4. Required to correct legally established nonconforming zoning condition(s), building code violation(s), and/or unpermitted structure(s) that do/does not present a threat to public health and safety and is/are not affected by the construction of the accessory dwelling unit or junior accessory dwelling unit. This does not prevent the City from enforcing compliance with applicable building standards in accordance with ~~California~~Cal. Health & Saf.ety Code Section 17980.12.

F 3 c iii. An accessory dwelling unit constructed on a lot with an existing or proposed single-unit or multi-unit dwelling that is located within one-half-mile walking distance of a major transit stop or high-quality transit corridor, as those terms are defined in ~~Section 21155 of the Cal.~~Pub.lic Resources Code Section 21155, shall not exceed a height of eighteen (18) feet. An additional two feet in height shall be permitted to accommodate a roof pitch on the accessory dwelling unit that is aligned with the roof pitch of the primary unit.

J. Historic Resources. Accessory dwelling units and/or junior accessory dwelling units proposed on residential or mixed-use properties that are determined to be historic shall be approved ministerially, in conformance with ~~California~~Cal. Government Gov. Code Sections 65852.2 and 65852.22. However, any

accessory dwelling unit or junior accessory dwelling unit that is listed on the California Register of Historic Resources shall meet all Secretary of the Interior Standards, as applicable.

#### **20.48.205 SB 9 Housing Developments and Urban Lot Splits in Single-Unit Residential Zoning Districts.**

This section provides regulations for the creation of SB 9 housing developments and urban lot splits as required pursuant to ~~California-Cal. Gov.ernment~~ Code Sections 65852.21 and 66411.7, ~~or any successor statute~~. This section shall sunset automatically without action of the City in the event ~~California-Cal. Gov.ernment~~ Code Sections 65852.21 and 66411.7 are repealed or no longer mandated by State law.

B. 3 c Ellis Act. The development is located on a lot on which the owner has exercised rights under the Ellis Act (~~Cal. Gov. Government~~ Code Sections 7060 through 7060.7) to withdraw accommodations from rent or lease within fifteen (15) years before the date that the development proponent submits an application.

B. 3 d Historic Resource. The development is located within a historic district or property included on the State Historic Resources Inventory, as defined in ~~Section 5020.1 of the California-Cal. Pub.lic~~ Resources Code Section 5020.1, or on a lot that is designated or listed as a City landmark or historic property.

B. 3 e Environmental Resource or Hazard. As specified in ~~more detail in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Cal. Gov.ernment~~ Code Section 65913.4, the development is located on a lot that is any of the following:

B. 4 b i One-half mile walking distance of a high-quality transit corridor, as defined in ~~subdivision (b) of Section 21155 of the Cal. Pub.lic~~ Resources Code Section 21155;

B. 4 b ii One-half mile walking distance of a major transit stop, as defined in ~~Section 21064.3 of the Cal. Pub.lic~~ Resources Code Section 21064.3; or

B. 4 m Findings for Denial of an SB 9 Housing Development. Notwithstanding the foregoing, the City may deny an application for an SB 9 housing development if the Director makes written finding(s), based upon a preponderance of the evidence, that the development would have a specific, adverse impact, as defined and determined in ~~paragraph (2) of subdivision (d) of Cal. Gov. Government~~ Code Section 65589.5, upon the public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.

B. 5 g Owner-Occupancy. The owner of the lot proposed for an urban lot split shall comply with the requirements provided herein and sign an affidavit stating that the owner intends to occupy one of the housing units as their principal residence for a minimum of three (3) years from the date of the final, recorded parcel map for the urban lot split, unless the applicant is a community land trust, as defined in ~~clause (ii) of subparagraph (C) of paragraph (11) of subdivision (a) of Section 402.1 of the Cal. Rev. enue & Tax. ation~~ Code Section 402.1 (a)(11)(C)(ii), or is a qualified nonprofit corporation as described in ~~Section 214.15 of the Cal. Rev. enue & Tax. ation~~ Code Section 214.15.

#### **20.48.230 Tattoo Establishments.**

B. 3 Noise. The owner or operator shall be responsible for the control of noise generated by the tattoo establishment. All noise generated by the use shall comply with the provisions of Chapter 10.26 (Community Noise Control) and other applicable noise control requirements of ~~the Newport Beach Municipal Code. this Code~~.

## Chapter 20.49

### WIRELESS TELECOMMUNICATIONS FACILITIES

#### 20.49.020 Effect of Chapter.

B. Permit and Agreement Required. Unless the provisions of this chapter provide otherwise, prior to installation or modification of any telecom facility in the City, the applicant shall obtain a Minor Use Permit (MUP), Conditional Use Permit (CUP), Limited Term Permit (LTP), or Zoning Clearance (ZC) in accordance with Section 20.49.060 (Permit Review Procedures). Applicants who obtain a MUP, CUP, LTP, or ZC (and an encroachment permit, if required) for any telecom facility approved to be located on any City-owned property or City-held trust property, shall enter into an agreement prepared and executed by the City Manager ~~or his or her designee~~ prior to installation of the facility, consistent with Section 20.49.080 (Agreement for Use of City-Owned or City-Held Trust Property).

E 2. Requirements established by any other provision of ~~this Municipal~~ Code and by any other ordinance and regulation of the City.

F. Legal Nonconforming Facility. Any telecom facility that was lawfully constructed, erected, or approved prior to February 27, 2014, that is operating in compliance with all applicable laws, and which facility does not conform to the requirements of this chapter shall be deemed a legal nonconforming facility. Legal nonconforming facilities shall comply at all times with the laws, ordinances, regulations, and any conditions of approval in effect at the time the facility was approved, and any regulations pertaining to legal, nonconforming uses or structures that may be applicable pursuant to provisions of ~~the Municipal~~this Code or ~~f~~Federal and State laws as they may be amended or enacted, in the future.

#### 20.49.030 Definitions.

S. Wireless Tower. "Wireless tower" means any structure built for the sole or primary purpose of supporting antennas used to provide wireless services authorized by the FCC. A distributed antenna system (DAS) installed pursuant to a Certificate of Public Convenience and Necessity (CPCN) issued by the California Public Utilities Commission on a water tower, utility tower, street light, or other structures built or rebuilt or replaced primarily for a purpose other than supporting wireless services authorized by the FCC, including any structure installed pursuant to ~~California-Cal. Pub.lic Util.ity~~ Code Section 7901, is not a wireless tower for purposes of this definition. For an example only, a prior-existing streetlight standard which is replaced with a new street light standard to permit the addition of antennas shall not be considered a wireless tower, but rather a replacement street light standard.

#### 20.49.050 General Development and Design Standards.

F. 3 b New or replacement vertical structures may be allowed when authorized by ~~the Municipal~~this Code and approved by the Public Works Department. Replacement poles or streetlights shall be consistent with the size, shape, style, and design of the existing pole, including any attached light arms. New poles or streetlights may be installed, provided they match existing or planned poles within ~~the~~the area.

F. 6 b i Where existing utilities services (e.g., telephone, power, cable TV) are located underground, the support equipment shall be placed underground if required by other provisions of ~~this Municipal~~ Code. Flush-to-grade underground vault enclosures, including flush-to-grade vents, or vents that extend no more than twenty-four (24) inches above the finished grade and are screened from public view may be

incorporated. Electrical meters required for the purpose of providing power for the proposed telecom facility may be installed above ground on a pedestal in a public right-of-way provided they meet applicable standards of Title 13 unless otherwise precluded by ~~the Municipal~~this Code.

J. 2 All graffiti on any components of the telecom facility shall be removed promptly in accordance with ~~this Municipal~~ Code.

#### **20.49.060 Permit Review Procedures.**

B. Installations in the Public Right-of-Way. All telecom facilities proposed to be located in the public right-of-way shall comply with the provisions of ~~the Municipal~~this Code including but not limited to the provisions of Title 13 as it may be amended from time to time.

C. Application Submission Requirements for Telecom Facilities on City-Owned or City-Held Trust Properties. Prior to the submittal for any application for any facility located on any City-owned property or City-held trust property, the applicant shall first obtain written consent to the application from the City Manager ~~or his or her designee~~.

E. Review of Collocated Facilities. Notwithstanding any provision of this chapter to the contrary, and consistent with ~~California Cal.~~ Gov.ernment Code Section 65850.6 ~~(as amended or superseded)~~, the addition of a new facility to an existing facility resulting in the establishment of a collocated telecom facility shall be allowed without discretionary review if it complies with Section 20.49.090. If a collocated telecom facility does not satisfy all of the requirements of Cal. Gov.ernment Code Section 65850.6 and Section 20.49.090, the facility shall be reviewed pursuant the review procedures provided in Table 4-1.

F. Emergency Communications Review. At the time an application is submitted to the Community Development Department, a copy of the plans, map, and emission standards shall be sent to the Police Chief ~~of the Newport Beach Police Department~~. The ~~Police Department~~Police Chief or its designee shall review the plan's potential conflict with emergency communications. The review may include a pre-installation test of the telecom facility to determine if any interference exists. If the Police Department determines that the proposal has a high probability that the facility will interfere with emergency communications devices, the applicant shall work with the Police Department to avoid interference.

#### **20.49.080 Agreement for Use of City-Owned or City-Held Trust Property.**

In applying for a permit pursuant to this chapter, all telecom facilities located on City-owned or City-held trust property shall require a license agreement approved as to form by the City Attorney, and as to substance (including, but not limited to, compensation, term, insurance requirements, bonding requirements, and hold harmless provisions) by the City Manager, consistent with provisions of ~~the Municipal~~this Code and any applicable provisions of the City Council Policy Manual.

**Chapter 20.50**

**PERMIT APPLICATION FILING AND PROCESSING**

**20.50.020 Authority for Land Use and Zoning Decisions.**

Table 5-1 (Review Authority) identifies the review authority responsible for reviewing and making decisions on each type of application required by this Zoning Code.

TABLE 5-1  
REVIEW AUTHORITY

Type of Action	Applicable Code Chapter/Section	Role of Review Authority (1)				
		Director	Zoning Administrator	Hearing Officer	Commission	Council (2)
Administrative and Legislative						
Interpretations	Section <a href="#">20.12.020</a>	Determination (3)			Appeal	Appeal
Planned Communities	Chapter <a href="#">20.56</a>				Recommend	Decision
Specific Plans	Chapter <a href="#">20.58</a>				Recommend	Decision
Zoning Code Amendments	Chapter <a href="#">20.66</a>				Recommend	Decision
Zoning Map Amendments	Chapter <a href="#">20.66</a>				Recommend	Decision
Permits and Approvals						
Affordable Housing Implementation Plan	Chapter <a href="#">20.32</a>		Decision (3)(4)		Appeal/Decision (4)	Appeal/Decision (4)
Comprehensive Sign Program			Decision (3)		Appeal	
Conditional Use Permits	Section <a href="#">20.52.020</a>				Decision	Appeal

TABLE 5-1  
REVIEW AUTHORITY

Type of Action	Applicable Code Chapter/Section	Role of Review Authority (1)				
		Director	Zoning Administrator	Hearing Officer	Commission	Council (2)
Conditional Use Permits— Residential Zones HO	Section <a href="#">20.52.030</a>			Decision		Appeal
Heritage Sign					Decision	Appeal
Innovative Sign Program					Decision	Appeal
Limited Term Permits	Section <a href="#">20.52.040</a>		Decision (3)		Appeal	Appeal
Minor Use Permits	Section <a href="#">20.52.020</a>		Decision (3)		Appeal	Appeal
Modification Permits	Section <a href="#">20.52.050</a>		Decision (3)		Appeal	Appeal
Planned Development Permits	Section <a href="#">20.52.060</a>				Decision	Appeal
Reasonable Accommodations	Section <a href="#">20.52.070</a>			Decision	<u>Appeal</u>	Appeal
Sign Permits	Chapter <a href="#">20.42</a>	Determination (3)			Appeal	Appeal
Site Development Reviews (See Table 5-2 (Review Authority for Site Development Reviews))	Section <a href="#">20.52.080</a>		Decision (3)		Decision	Appeal

TABLE 5-1  
REVIEW AUTHORITY

Type of Action	Applicable Code Chapter/Section	Role of Review Authority (1)				
		Director	Zoning Administrator	Hearing Officer	Commission	Council (2)
Variances	Section <a href="#">20.52.090</a>				Decision	Appeal
Zoning Clearances	Section <a href="#">20.52.100</a>	Determination (3)			Appeal	Appeal

Notes:

- (1) “Recommend” means that the Commission makes a recommendation to the Council; “Determination” and “Decision” mean that the review authority makes the final determination or decision on the matter; “Appeal” means that the review authority may consider and decide upon appeals to the decision of a previous decision-making body, in compliance with Chapter [20.64](#) (Appeals).
- (2) The Council is the final review authority for all applications in the City.
- (3) The Director or Zoning Administrator may defer action and refer the request to the Commission for consideration and final action.
- (4) The Zoning Administrator shall be the initial review authority for density bonus units and parking reductions. The Planning Commission shall be the initial review authority for concessions, incentives and waivers. The City Council shall be the review authority for any financial incentive or fee waiver.

## Chapter 20.52

### PERMIT REVIEW PROCEDURES

#### 20.52.015 Affordable Housing Implementation Plan.

A. Purpose. An affordable housing implementation plan (AHIP) provides a process to review and grant density bonuses, concessions, incentives, and development standard waivers in compliance with Cal. Government Code Section 65915 et seq. and Chapter 20.32.

#### 20.52.040 Limited Term Permits.

G. 5 The limited duration use is consistent with all applicable provisions of the General Plan, any applicable specific plan, ~~the Municipal~~this Code, and other City regulations.

H. 11 Compliance with Applicable Provisions. A requirement that the approval of the requested limited term permit is contingent upon compliance with applicable provisions of ~~this Municipal~~Code and the successful granting of all required permits from any other department or governing agency; and

## Chapter 20.60

### ADMINISTRATIVE RESPONSIBILITY

#### Sections:

**20.60.010 Purpose.**

**20.60.020 City Council.**

**20.60.030 Planning Commission.**

**20.60.040 Hearing Officer.**

**20.60.050 Zoning Administrator.**

**20.60.060 ~~Planning Director~~Community Development Director.**

#### **20.60.010 Purpose.**

This chapter describes the authority and responsibilities of the Newport Beach City Council, Planning Commission, Hearing Officer, Zoning Administrator, and ~~Planning Director~~Community Development Director in the administration of this Zoning Code.

#### **20.60.020 City Council.**

B. Imposition of Conditions. In making decisions on applications, the Council may impose conditions it deems necessary to implement the General Plan and ~~this Municipal~~ Code standards that apply to development and to further the public health, safety, and general welfare of the community.

#### **20.60.030 Planning Commission.**

B. Duties and Functions. The Commission shall perform the duties and functions prescribed by State law, the City Charter, and ~~this Municipal~~ Code, including the following:

C. Imposition of Conditions. In making decisions on applications, the Commission may impose conditions it deems necessary to implement the General Plan and ~~this Municipal~~ Code standards that apply to development and to further the public health, safety, and general welfare of the community.

#### **20.60.040 Hearing Officer.**

C. Imposition of Conditions. In making decisions on applications, the Hearing Officer may impose conditions deemed necessary to implement the General Plan and ~~this Municipal~~ Code's standards that apply to development and to further the public health, safety, and general welfare of the community.

#### **20.60.050 Zoning Administrator.**

B. 1 The Zoning Administrator shall have the authority to investigate and make decisions on the applications identified in Table 5-1 (Review Authority) in compliance with this Zoning Code and ~~this Municipal~~ Code as well as the following:

C. Imposition of Conditions. In making decisions on applications, the Zoning Administrator may impose conditions it deems necessary to implement the General Plan and ~~this Municipal Code's~~ standards that apply to development and to further the public health, safety, and general welfare of the community.

**20.60.060 ~~Planning Director~~Community Development Director.**

## Chapter 20.64

### APPEALS

#### **20.64.030 Filing and Processing of Appeals and Calls for Review.**

B. 1 Filing an Appeal or Call for Review. An appeal or call for review shall be filed with the Director or City Clerk, as applicable, within fourteen (14) days following the date the action or decision was rendered unless a different period of time is specified by ~~the Municipal Code~~ Code (e.g., Title 19 allows ten (10) day appeal period for tentative parcel and tract maps, lot line adjustments, or lot mergers).

## Chapter 20.70

### DEFINITIONS

#### 20.70.010 Purpose of Part.

This part provides definitions of terms and phrases used in this Zoning Code that are technical or specialized, or that may not reflect common usage. If the definitions in this part conflict with definitions in other provisions of ~~the Municipal~~this Code, these definitions shall control for the purposes of this Zoning Code. If a word is not defined in this part, or elsewhere in this Zoning Code, the most common dictionary definition is presumed to be correct.

#### 20.70.020 Definitions of Specialized Terms and Phrases.

Affordable Housing Cost. For purposes of Chapter 20.32 (Density Bonus), see ~~California-Cal.~~ Health ~~&~~ Saf.ety Code Section 50052.5.

Affordable Rent. For purposes of Chapter 20.32 (Density Bonus), see ~~California-Cal.~~ Health ~~and &~~ Saf.ety Code Section 50053.

“Alcohol sales, off-sale, accessory only (land use)” means an establishment that has all of the following characteristics:

1. Alcoholic beverages will be or are sold, served, or given away for consumption off the premises where sold, served, or given away;
2. The establishment is applying for or has obtained an ABC License Type 20 (off-sale beer and wine—package store) or License Type 21 (off-sale general—package store); and
3. The sale of alcoholic beverages is accessory to the retail sale of food products and the display area for alcoholic beverages does not exceed thirty (30) percent of the net floor area of the use. Illustrative examples include ~~convenience markets,~~ drug stores, grocery stores, and supermarkets, but do not include convenience markets.

~~“Conversion” means, for the purposes of Chapter 20.34 (Conversion or Demolition of Affordable Housing), a change of a residential dwelling, including a mobile home, to a condominium, cooperative, or similar form of ownership; or a change of a residential dwelling, including a mobile home, to a nonresidential use.~~

Animal-Keeper (Land Use).

3. “Animal, wild” means an animal that is not customarily confined or cultivated by man for domestic or commercial purposes but kept for display. Includes an animal that may be imported, transported, or possessed only by first obtaining a California Department of Fish and Game Permit, as required in ~~14 CCR California Cal Code of Regulations Title 14,~~ Section 671 (Importation, Transportation and Possession of Live Restricted Animals).

“Area median income” means the median income, adjusted for family size, applicable to Orange County, established by the U.S. Department of Housing and Urban Development, and published annually by the California Department of Community Development in the ~~25 California Code of Regulations, Title 25, CCR~~ Section 6932 ~~(or its successor provision).~~

“California Environmental Quality Act (CEQA)” means a State law (~~California~~ Cal. Pub. ~~lic~~ Resources Code Section 21000 et seq.).

“Condominium” means a form of property ownership providing for individual ownership of space in a structure together with an individual interest in the land or other parts of the structure in common with other owners. Includes a condominium project, community apartment project, or stock cooperative, as defined in ~~California Civil~~ Cal. Civ. Code Section 1351.

“Demolition” means:

~~1. For the purposes of Chapter 20.34 (Conversion or Demolition of Affordable Housing), the demolition of a residential dwelling, including a mobile home, or a mobile home lot in a mobile home park, that has not been declared to be a public nuisance under Health and Safety Code Section 17000 et seq. or under this Zoning Code or the Municipal Code.~~

~~2. For the purposes of all other sections of this Zoning Code,~~ the deliberate removal or destruction of the frame or foundation of a portion of a structure.

“Director” means the City of Newport Beach ~~Planning Director~~ Community Development Director or a duly designated representative of the Director, referred to as the “Director.”

“Dwelling unit, accessory (land use)” means a dwelling unit accessory to and attached to, detached from, or contained within the principal dwelling unit on a site zoned for residential use. An accessory dwelling unit also includes the following:

1. An efficiency unit, as defined in ~~Section 17958.1 of the Cal.~~ Health & Saf.ety Code Section 17958.1 ~~or any successor statute.~~

2. A manufactured home, as defined in ~~Section 18007 of the Cal.~~ Health & Saf.ety Code Section 18007, ~~or any successor statute.~~

“Emergency shelter (land use)” means, as defined in Cal. Health & Saf.ety Code Section 50801(e), a facility with minimal supportive services for homeless persons.

“Explosives” means a substance defined as an explosive by Cal. Health ~~and & Safety~~ Saf. Code Section 12000 et seq., and for which a permit is required by the Cal. Health ~~and &~~ Saf.ety Code. See also “Hazardous materials.”

“Final map” means a subdivision map prepared in compliance with Subdivision Map Act, Article 2, Chapter 2, and approved in compliance with Subdivision Map Act, Article 4, Chapter 3 (~~Cal. Gov.ernment~~ Code Section 66410 et seq.), that is used to complete the subdivision of five (5) or more lots. See also “Parcel map” and “Tentative map.”

“General Plan” means the City of Newport Beach General Plan, and all amendments thereto, as adopted by the City Council under the provisions of Cal. Gov.ernment Code Section 65300 et seq., and referred to in this Zoning Code as the “General Plan.”

“Lot line adjustment” means, as provided in the Subdivision Map Act (Cal. Gov.ernment Code Section 66412(d)), a lot line adjustment that relocates one or more lot lines between two or more existing adjacent

lots, where land taken from one lot is added to an adjacent lot and where no more lots are created than originally existed.

“Municipal Code” means the [Newport Beach](#) Municipal Code of the City of Newport Beach, as amended.

“Parcel map” means the subdivision map described by the Subdivision Map Act, Article 3, Chapter 2 ([Cal. Government Code](#) Section 66410 et seq.), which is required to complete a subdivision of four [\(4\)](#) or fewer lots. See also “Final map” and “Tentative map.”

Parks and Recreational Facilities (Land Use).

Parolee-Probationer. A parolee-probationer includes: (a) any individual who has been convicted of a [f](#)Federal crime, sentenced to a United States prison, and received conditional and revocable release in the community under the supervision of a [f](#)Federal parole officer; (b) 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 [Cal. Pen. Code](#) Section 3000, and is under the jurisdiction of the California Department of Corrections, Parole and Community Services Division; (c) 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 (d) 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 [f](#)Federal, State, or County parole or probation officer. For the purposes of this definition, “felony” means a felony as defined by any California or United States statute.

“Public trust lands” means all lands subject to the Common Law Public Trust for commerce, navigation, fisheries, recreation, and other public purposes. Public trust lands include tidelands, submerged lands, the beds of navigable lakes and rivers, and historic tidelands and submerged lands that are presently filled or reclaimed and which were subject to the public trust at any time ([14 CCR California](#) Section 13577). See “Submerged lands” and “Tidelands.”

“SB 9 housing development (land use)” means a residential development that contains two new dwelling units or proposes to add one new dwelling unit on a lot designated for single-family residential use with one existing dwelling unit, pursuant to ~~California Government~~[Cal. Gov.](#) Code Section 65852.21 ~~or any successor statute.~~

“Senior citizen housing development” means a residential development developed, substantially rehabilitated, or substantially renovated for senior citizens (i.e., persons fifty-five (55) years of age or older) that has at least thirty-five (35) dwelling units and that conforms to [Cal. Civ. Code](#) Section 51.3(b)(4).

“Specific plan” means, under [Cal. Government Code](#) Section 65450 et seq., a policy statement and implementation tool adopted by the City Council that addresses a single project or planning problem. A specific plan may include detailed regulations, conditions, programs, and/or proposed legislation that may be necessary or convenient for the systematic implementation of a General Plan element(s).

“Subdivision Map Act” means Division 2, Title 7 of the ~~California Government~~[Cal. Gov.](#) Code, commencing with Section 66410, as amended, regarding the subdivision of real property.

“Submerged lands” means lands that lie below the line of mean low tide (~~from 14 California Cal. Code of Regulations~~[Regs., CCR](#) Section 13577). See “Public trust lands.”

“Supportive housing” means housing with no limit on length of stay, that is occupied by the target population, as defined by ~~Section 53260(d) of the California Cal.~~ Health ~~&and~~ Saf~~ety~~ Code ~~Section 53260(d)~~, and that is linked to on-site or off-site services that assist the tenant to retain the housing, improve his or her health status, maximize their ability to live and, when possible, to work in the community. Supportive housing that is provided in single-, two-, or multi-family dwelling units, group residential, parolee-probationer home, residential care facilities, or boarding house uses shall be permitted, conditionally permitted or prohibited in the same manner as the other single-, two- or multi-family dwelling units, group residential, parolee-probationer home, residential care facilities, or boarding house uses under this code.

“Tentative map” means a subdivision map prepared in compliance with the Subdivision Map Act (~~Cal. Gov.ernment~~ Code Section 66410 et seq.) that specifies the conditions that must be satisfied and the details that must be provided before approval of a final map. See also “Final map” and “Parcel map.”

“Tidelands” means lands that are located between the lines of mean high tide and mean low tide (~~14 from California Cal. Code of Regulations Regs.CCR~~ Section 13577). See “Public trust lands.”

“Urban lot splits (land use)” means the subdivision of an existing, legally subdivided lot intended for single-family residential use to create one new additional lot, pursuant to ~~California-Cal. Government-Gov.~~ Code Section 66411.7 ~~or any successor statute.~~

Visitor Accommodations (Land Use).

2. “Hotel” means an establishment that provides guest rooms or suites for a fee to transient guests for sleeping purposes. Access to units is primarily from interior lobbies, courts, or halls. Related accessory uses may include conference and meeting rooms, restaurants, bars, and recreational facilities. Guest rooms may or may not contain kitchen facilities for food preparation (i.e., refrigerators, sinks, stoves, and ovens). Hotels with kitchen facilities are commonly known as extended stay hotels. A hotel operates subject to taxation under ~~Cal. Rev.enue and&~~ Tax~~ation~~ Code Section 7280.

3. “Motel” means an establishment that provides guest rooms for a fee to transient guests for sleeping purposes. Guest rooms do not contain kitchen facilities. A motel is distinguished from a hotel primarily by direct independent access to, and adjoining parking for, each guest room. A motel operates subject to taxation under ~~Cal. Rev.enue and-& Taxation-Tax.~~ Code Section 7280.

## Chapter 20.80

### MAPS

#### 20.80.020 Bluff overlay.

Bluff Overlay, Development Area Maps (Section 20.28.040): ~~B—Bluff Overlay Index Map (PDF)~~

~~B-1 – Kings Place (PDF)~~

~~B-2 – Irvine Terrace – Dolphin Terrace (PDF)~~

~~B-3 – Irvine Terrace – Bayadere Terrace (PDF)~~

~~B-4 – Avocado Avenue/Pacific Drive (PDF)~~

~~B-5 – Carnation Avenue (PDF)~~

~~B-6 – Ocean Boulevard / Breakers Drive (PDF)~~

~~B-7 – Shorecliffs (PDF)~~

~~B-8 – Cameo Shores (PDF)~~

## Chapter 20.90

### SANTA ANA HEIGHTS SPECIFIC PLAN

#### 20.90.040 Land Use Regulations.

D. 1. All new or entirely reconstructed structures with habitable rooms (e.g., dwelling units, hotels, motels, convalescent homes and hospitals) shall be sound attenuated against present and projected noise, which shall be the sum of all noise impacting the structure, so as not to exceed a standard of forty-five (45) dB CNEL in all habitable rooms. In conjunction with this construction, all associated outdoor living areas shall be sound attenuated, if necessary, against present and projected highway noise so as not to exceed a standard of sixty-five (65) dB CNEL. Prior to the issuance of any building permits for such development, an acoustical analysis report describing the sound attenuation measures required to satisfy the noise standards shall be prepared by a City-approved acoustical consultant and submitted to the ~~Building Director~~Community Development Director for approval. The report shall include satisfactory evidence indicating that the sound attenuation measures have been incorporated into the design of the project.

2. All nonresidential structures shall be sound attenuated against the combined impact of all present and projected noise from exterior noise sources as necessary to meet the interior noise criteria of the General Plan Noise Element. Prior to the issuance of any building permits, evidence prepared by a City-approved acoustical consultant that these standards will be satisfied in a manner consistent with applicable zoning regulations shall be submitted to the ~~Building Director~~Community Development Director in the form of an acoustical analysis report describing in detail the exterior noise environment and the acoustical design features required to achieve the interior noise standard and which indicate that the sound attenuation measures specified have been incorporated into the design of the project.

3. Prior to the issuance of a building permit for a structure that penetrates the 100:1 Noise Surface pursuant to FAR Part 77.13, the project applicant shall submit a "Notice of Proposed Construction" to the Federal Aviation Administration (FAA), which will initiate an Aeronautical Study of the project by the FAA. Upon completion of the FAA Aeronautical Study, the project applicant shall submit evidence to the ~~Building Director~~Community Development Director that restrictions and conditions, if any, imposed on the project by the FAA have been incorporated into the design of the project.

4. All projects including, but not limited to, General Plan Amendments and Zone Changes, within the project area pertinent to the Airport Land Use Commission's (ALUC) John Wayne Airport "Airport Environs Land Use Plan" shall be referred to ALUC until such time as the City becomes a "Consistent Local Agency" as defined by ALUC. For purposes of this requirement, the term "project" shall include those applications requiring discretionary approvals, tentative tract map or parcel map approvals or modifications, and/or condominium conversions. Such projects shall not include minor modifications, such as remodels and additions to single-family dwelling units with no intensification of development.

#### 20.90.050 Open Space and Recreation District: SP-7 (OSR).

C 5. Any other accessory use or structure which the ~~Planning Director~~Community Development Director finds consistent with the purpose and intent of this district.

#### 2.90.060 Residential Equestrian District: SP-7 (REQ).

D 9 Any other accessory use or structure which the ~~Planning Director~~Community Development Director finds consistent with the purpose and intent of this District.

**20.90.070 Residential Kennel District: SP-7 (RK).**

D 9. Any other accessory use or structure which the ~~Planning Director~~Community Development Director finds consistent with the purpose and intent of this district.

F. 4 b iii Within those areas where fences and walls are limited to a maximum height of three and one-half (3 ½) feet per ~~the this Municipal~~ Code.

G. 1. Building Site Area. An amendment to a valid use permit or certificate of use and occupancy for a commercial kennel may be approved administratively by the ~~Planning Director~~Community Development Director, and shall not require an acoustical analysis report per subsection (G)(2) of this section if all of the following conditions apply:

- a. The proposed change does not increase the overall size of the facility by more than ten (10) percent from that shown on the current plot plan;
- b. The proposed change does not increase the number of dog runs from that shown on the current plot plan;
- c. The proposed change does not intensify any accessory uses (e.g., grooming parlor, sale of pet supplies, training classes) allowed by the current permit and does not provide for any additional accessory uses;
- d. The proposed change is consistent with the setback standards for kennel facilities as set out in subsection (F) of this section; and
- e. The proposed change satisfies the required findings for use permits in Part 5 of this title.

2. For all new commercial kennels or for structural modifications to existing kennel facilities requiring a use permit, an acoustical analysis report and appropriate plans shall be submitted describing the noise generating potential of the proposed project and proposed attenuation measures to assure compliance with Chapter 10.26 (Community Noise Control). The report shall be prepared by a City-approved acoustical consultant and submitted to the ~~Building Director~~Community Development Director for review and approval. The approved attenuation features shall be incorporated into the plans and specifications of the project.

**20.90.080 Residential Single-Family District: SP-7 (RSF).**

D 7 a. The noncommercial keeping of pets and animals weighing less than three hundred (300) pounds and not prohibited per subsection (E) of this section (Prohibited Uses), subject to the following standards: pens, cages, and other structures specifically for the keeping of animals other than in the residence shall be located at least twenty-five (25) feet from any residential window located on an adjoining building site. Exceptions to the above may be provided for by a use permit approved by the ~~Planning Director~~Community Development Director.

b. The noncommercial keeping of horses on land immediately adjacent to the Recreation Equestrian District (REQ); provided, that no horse shall be permitted on a building site containing less than ten

thousand (10,000) square feet of land area, and pens, cages, and other structures specifically for the keeping of horses shall be located at least fifty (50) feet from any residential window located on an adjoining building site. One or two adult horses are permitted on a building site containing between ten thousand (10,000) and fifteen thousand (15,000) square feet of land area. One additional adult horse may be kept for each additional ten thousand (10,000) square feet, with a maximum of six (6) horses on any one building site. The offspring of such animals shall be considered adults when eight (8) months old. Exceptions to the above may be provided for via a use permit approved by the ~~Planning Director~~Community Development Director.

D 9. Any other accessory use or structure which the ~~Planning Director~~Community Development Director finds consistent with the purpose and intent of this district.

#### **20.90.090 Residential Multiple-Family District: SP-7 (RMF).**

D 7. Any other accessory use or structure which the ~~Planning Director~~Community Development Director finds consistent with the purpose and intent of this district.

#### **20.90.100 Horticultural Nursery District: SP-7 (HN).**

D 4. Any other accessory uses or structures which the ~~Planning Director~~Community Development Director finds consistent with the purpose and intent of this district.

#### **20.90.110 General Commercial District: SP-7 (GC).**

D 4. Any other accessory uses or structures which the ~~Planning Director~~Community Development Director finds consistent with the purpose and intent of this district.

F 11 a v. Planting. Plant materials, when used as a screen, shall consist of compact evergreen plants. They shall be of a kind, or used in such a manner, so as to provide screening, having a minimum width of two feet within eighteen (18) months after initial installation. Permanent watering facilities shall be provided. If, eighteen (18) months after installation, plant materials have not formed an opaque screen or if an opaque screen is not maintained, the ~~Planning Director~~Community Development Director shall require that either walls, berms, or a solid fence be installed.

#### **20.90.120 Business Park District: SP-7 (BP).**

C 2. The following additional temporary uses are permitted subject to approval of a limited term permit per Part 5 of this title:

a. Outdoor storage of passenger vehicles and vans, equipment, materials and temporary structures directly associated with these uses, in compliance with the site development standards identified below. A cash bond in the amount of five hundred dollars (\$500.00) for each temporary structure shall be posted with the ~~Planning Director~~Community Development Director to guarantee the removal of each temporary structure upon the expiration of the use permit.

b. Commercial coaches serving as temporary office space. A cash bond in the amount of five hundred dollars (\$500.00) for each commercial coach unit shall be posted with the ~~Planning Director~~Community Development Director to guarantee the removal of each commercial coach unit upon expiration of the use permit.

c. Conforming uses shall be permitted in nonconforming structures subject to the approval of a minor use permit. Such building site shall conform with the parking requirements and site development standards contained in Chapter 20.40 and the site development standards contained in this section.

d. Any other uses which the ~~Planning Director~~Community Development Director finds consistent with the purpose and intent of this District.

C 4 f. Any use which the ~~Planning Director~~Community Development Director finds would result in conditions or circumstances contrary to public health, safety and general welfare.

C 6 a. Perimeter Wall or Fence. An opaque wall or fence shall be constructed at six (6) feet in height along the side property line and at eight (8) feet in height maximum along the rear property line, measured from the highest adjacent finished grade of the subject site. For property lines adjacent to the REQ District, an eight-foot-high wall shall be required. In addition, a front wall or fence may be required at the discretion of the ~~Planning Director~~Community Development Director. Fence or wall materials and height shall be subject to approval at the discretion of the ~~Planning Director~~Community Development Director. However, open chain link or chain link with wooden or plastic slats shall be prohibited.

D 5. Any other accessory use or structure which the ~~Planning Director~~Community Development Director finds consistent with the purpose and intent of this district.

E 11. Any use which the ~~Planning Director~~Community Development Director finds would result in conditions or circumstances contrary to public health, safety and general welfare.

**20.90.130 Professional and Administrative Office District: SP-7 (PA).**

D 3. Accessory uses and structures which the ~~Planning Director~~Community Development Director finds consistent with the purpose and intent of this district.

**20.90.170 Fire Facility Overlay District: (FF).**

C 3 b. The site shall not be excessively illuminated based on the luminance recommendations of the Illuminating Engineering Society of North America, or, if in the opinion of the ~~Planning Director~~Community Development Director, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The ~~Planning Director~~Community Development Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.

## Title 21

### LOCAL COASTAL PROGRAM IMPLEMENTATION PLAN

#### Chapters:

#### Part 1. Implementation Plan Applicability

21.10 Purpose and Applicability of the Implementation Plan

21.12 Interpretation of Implementation Plan Provisions

21.14 Coastal Maps

#### Part 2. Coastal Zoning Districts, Allowable Land Uses, and Coastal Zoning District Standards

21.16 Development and Land Use Approval Requirements

21.18 Residential Coastal Zoning Districts (R-A, R-1, R-BI, R-2, and RM)

21.20 Commercial Coastal Zoning Districts (CC, CG, CM, CN, CV, CV-LV, OG)

21.22 Mixed-Use Coastal Zoning Districts (MU-V, MU-MM, MU-CV/15th St., MU-W1, MU-W2)

21.26 Special Purpose Coastal Zoning Districts (OS, PC, PF, PI, PR, and TS)

21.28 Overlay Coastal Zoning Districts (MHP, PM, B, C and H)

#### Part 3. Site Planning and Development Standards

21.30 Property Development Standards

21.30A Public Access and Recreation

21.30B Habitat Protection

21.30C Harbor and Bay Regulations

~~21.34 Conversion or Demolition of Affordable Housing~~

21.35 Water Quality Control

21.38 Nonconforming Uses and Structures

21.40 Off-Street Parking

21.44 Transportation and Circulation

21.46 Transfer of Development Rights

#### Part 4. Standards for Specific Land Uses

21.48 Standards for Specific Land Uses

21.49 Wireless Telecommunications Facilities

#### Part 5. Planning Permit Procedures

**21.50 Permit Application Filing and Processing**

**21.52 Coastal Development Review Procedures**

**21.54 Permit Implementation, Time Limits, and Extensions**

**Part 6. Implementation Plan Administration**

**21.62 Public Hearings**

**21.64 Appeals and Calls for Review**

**21.68 Enforcement**

**Part 7. Definitions**

**21.70 Definitions**

**Part 8. Maps**

**21.80 Maps**

**Part 9. Specific Plans**

**21.90 Santa Ana Heights Specific Plan**

**Part 10. Appendices**

**Appendix A Sea Level Rise**

**Appendix B Coastal Access Signing Program**

**Appendix C Oceanfront Encroachment Policy Guidelines**

## Chapter 21.10

### PURPOSE AND APPLICABILITY OF THE IMPLEMENTATION PLAN

#### 21.10.030 Authority—Relationship to Coastal Land Use Plan.

A. Authority. This Implementation Plan is adopted pursuant to the authority contained in Section 65850 et seq. of the ~~California Cal.~~ Government Code, Division 20 of the ~~Cal.~~ Public Resources Code (California Coastal Act), and ~~Title 14 CCR, Division 5.5~~ Section 13001 et seq. of the California Cal. Code of Regulations (California Coastal Commission Regulations).

## Chapter 21.16

### DEVELOPMENT AND LAND USE APPROVAL REQUIREMENTS

#### 21.16.060 Additional Permits and Approvals May Be Required.

A. 1 Other provisions of ~~the Municipal~~this Code (e.g., conditional use permits, minor use permits, limited-term permits, site development review, zoning clearances, building permits, grading permits, other construction permits, live entertainment permit, or a business license); or

## Chapter 21.18

### RESIDENTIAL COASTAL ZONING DISTRICT ( R-A, R-1, R-BI, R-2, AND RM)

#### TABLE 21.18-4 Notes

(7) Density bonuses may be granted for the development of housing that is affordable to lower-, low-, and moderate-income households and senior citizens in compliance with ~~Government-Cal. Gov.~~ Code Sections 65915 through 65917. Any housing development approved pursuant to ~~Government-Cal. Gov.~~ Code Section 65915 shall be consistent, to the maximum extent feasible, and in a manner most protective of coastal resources, with all otherwise applicable Local Coastal Program policies and development standards.

## Chapter 21.22

### MIXED-USE COASTAL ZONING DISTRICTS (MU-V, MU-MM, MU-CV/15<sup>TH</sup> ST., MU-W1, MU-W2)

#### TABLE 21.22-3 Notes

(6) Density bonuses may be granted for the development of housing that is affordable to lower-, low-, and moderate-income households and senior citizens in compliance with ~~Government-Cal. Gov.~~ Code Sections 65915 through 65917. Any housing development approved pursuant to ~~Government-Cal. Gov.~~ Code Section 65915 shall be consistent, to the maximum extent feasible, and in a manner most protective of coastal resources, with all otherwise applicable Local Coastal Program policies and development standards.

#### TABLE 21.22-4 Notes

(7) Density bonuses may be granted for the development of housing that is affordable to lower-, low-, and moderate-income households and senior citizens in compliance with ~~Government-Cal. Gov.~~ Code Sections 65915 through 65917. Any housing development approved pursuant to ~~Cal. Gov.~~~~Government~~ Code Section 65915 shall be consistent, to the maximum extent feasible, and in a manner most protective of coastal resources, with all otherwise applicable Local Coastal Program policies and development standards.

## Chapter 21.26

### SPECIAL PURPOSE COASTAL ZONING DISTRICTS (OS, PC, PF, PI, PR, AND TS)

#### 21.26.045 Planned Community Coastal Zoning District Land Uses.

C 2 Subject to approval of the ~~Planning Director~~Community Development Director after a determination that the parking provided is adequate to serve demand and that the uses will not adversely impact other land uses in the area.

## Chapter 21.28

### OVERLAY COASTAL ZONING DISTRICTS (MHP, PM, B, C AND H)

#### 21.28.020 Mobile Home Park (MHP) Overlay Coastal Zoning District.

A 1. Mobile Home Parks. Mobile home parks as regulated by the State of California pursuant to the Mobile Home Parks Act (Cal. Health and Safety Code Section 18300) and the California Coastal Act (Cal. Public Resources Code Division 20).

C 3. A mobile home park phase out plan and report on the impact of conversion, closure, or cessation of the use on the displaced residents of the mobile home park has been prepared, reviewed, and found to be acceptable and consistent with the provisions of the California Government Code.

## Chapter 21.30

### PROPERTY DEVELOPMENT STANDARDS

#### 21.30.105 Cultural Resource Protection.

B 1 b. A site where evidence of potentially significant historical resources is found in an initial study conducted in compliance with the California Environmental Quality Act (CEQA) (Cal. Pub. Resources Code Section 21000 et seq.).

B 5. Offer for Relocation of Historic Structure. Before issuance of a permit by the ~~Building Director~~Community Development Director for the demolition of an historic structure the applicant shall first offer the structure for relocation by interested parties.

## Chapter 21.30A

### PUBLIC ACCESS AND RECREATION

#### 21.30A.040 Determination of Public Access/Recreation Impacts.

B. 1 Land Use. The project's impact on use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation and other priority uses specified in ~~California-Cal.~~ Public Resources Code Sections 30222 and 30223.

## Chapter 21.30B

### HABITAT PROTECTION

#### 21.30B.040 Wetlands, Deepwater Areas, and Other Water Areas.

B. 1 Methodology. Wetland delineations shall be conducted in accordance with the definitions of wetland boundaries contained in [14 CCR](#) Section 13577(b) ~~of the California Code of Regulations.~~

D. Limits on Development and Uses. Development involving diking, filling, or dredging of open coastal waters, wetlands, and estuaries shall be limited to uses consistent with the Section 30233 of the [California Cal. Pub. Resources Code](#) (Coastal Act) and Section 21.30B.040(E)(2).

## Chapter 21.34

### ~~CONVERSION OR DEMOLITION OF AFFORDABLE HOUSING~~

Sections:

#### ~~21.34.010 Purpose.~~

#### ~~21.34.020 Applicability.~~

#### ~~21.34.030 Exemptions.~~

#### ~~21.34.050 Replacement of Affordable Housing.~~

#### ~~21.34.010 Purpose.~~

The purpose of this chapter is to:

- A.—Be consistent with and implement the provisions of the Mello Act (Government Code Section 65590); and
- B.—Maintain the number of low- and moderate-income dwelling units within the coastal zone.

#### ~~21.34.020 Applicability.~~

The provisions of this chapter shall apply to the conversion or demolition of existing residential dwelling units within the coastal zone occupied by persons or families of low or moderate income (“affordable units”), as defined in Health and Safety Code Section 50093, when either of the following occurs:

- A.—The conversion or demolition of eleven (11) or more dwelling units located in two or more structures; or
- B.—The conversion or demolition of three or more dwelling units located in one structure.

#### ~~21.34.030 Exemptions.~~

The provisions of this chapter shall not apply to the following:

- A.—Demolition of a Public Nuisance. The demolition of a residential structure that has been declared a public nuisance; or
- B.—Replacement with a Coastal-Dependent or Coastal-Related Use. The conversion or demolition of a residential structure for purposes of a coastal-dependent or coastal-related use; or
- C.—Land Availability. The conversion or demolition of a residential structure when there are less than fifty (50) acres, in aggregate, of privately owned, vacant land available for residential use within the City’s coastal zone or within three miles inland of the coastal zone.

#### ~~21.34.050 Replacement of Affordable Housing.~~

- A.—One for One Replacement. If the Director determines that the proposed conversion or demolition activities involve affordable dwelling units, replacement of the affordable dwelling units shall be provided on a one for one basis, unless the Director determines that replacement is not feasible.

~~B.—Location of Replacement Units. Replacement dwelling units shall be located on the site of the converted or demolished structure(s) or elsewhere within the coastal zone if feasible. If location on the site or elsewhere within the coastal zone is not feasible, the replacement units shall be located within three miles of the coastal zone.~~

## Chapter 21.38

### NONCONFORMING USES AND STRUCTURES

#### 21.38.070 Landmark Structures.

D 3. Any permit required by other titles of ~~the Municipal~~this Code (other than this title) shall be obtained before the initiation or intensification of an accessory use of a landmark structure;

## Chapter 21.44

### TRANSPORTATION AND CIRCULATION

#### 21.44.045 Vacations and Abandonments.

C. Procedure. Vacations and abandonments shall be processed by filing an application for vacation or abandonment pursuant to ~~Cal. Streets and Highways~~Sts. & Hy. Code Sections 8300 through 8363 and by filing an application for a coastal development permit pursuant to Chapters 21.50 and 21.52.

#### 21.44.055 Temporary Street Closures.

A. General. Temporary closing of portions of any street for celebrations, parades, local special events, and other purposes when necessary for public safety shall be permitted pursuant to Section 21101 of the Cal. Vehicle Code.

B. West Newport. Temporarily closing certain streets in West Newport for a period of no more than twenty-four (24) hours during the Independence Day holiday shall be permitted when, in the opinion of the Police Chief ~~or his designee~~, the closure is necessary to protect the public safety. In no event shall any street closure prevent or interfere with the public's access to the beach or bay.

## Chapter 21.48

### STANDARDS FOR SPECIFIC LAND USES

#### 21.48.200 Accessory Dwelling Units.

A. Purpose. The purpose of this section is to establish the procedures for the creation of accessory dwelling units and junior accessory dwelling units, as defined in Part 7 (Definitions) of this title and in ~~California Government~~Cal. Gov. Code Sections 65852.2 and 65852.22, ~~or any successor statute,~~ in areas designated for residential use, including as part of a planned community development plan or specific plan, and to provide development standards to ensure the orderly development of these units in appropriate areas of the City.

B. 4 Required to correct a legally established nonconforming zoning condition. This does not prevent the City from enforcing compliance with applicable building standards in accordance with ~~California Cal.~~Health and Safety Code Section 17980.12.

J. Historic Resources. Accessory dwelling units and/or junior accessory dwelling units proposed on residential or mixed-use properties that are determined to be historic shall be approved ministerially, in conformance with ~~California Government~~Cal. Gov. Code Sections 65852.2 and 65852.22. However, any accessory dwelling unit or junior accessory dwelling unit that is listed on the California Register of Historic Resources shall meet all Secretary of the Interior standards, as applicable. (Ord. 2022-6 § 5, 2022)

## Chapter 21.49

### WIRELESS TELECOMMUNICATIONS FACILITIES

#### 21.49.030 Definitions.

R. Wireless Tower. "Wireless tower" means any structure built for the sole or primary purpose of supporting antennas used to provide wireless services authorized by the FCC. A distributed antenna system (DAS) installed pursuant to a Certificate of Public Convenience and Necessity (CPCN) issued by the California Public Utilities Commission on a water tower, utility tower, streetlight, or other structures built or rebuilt or replaced primarily for a purpose other than supporting wireless services authorized by the FCC, including any structure installed pursuant to ~~California Cal. Public Utility~~ Code Section 7901, is not a wireless tower for purposes of this definition. For an example only, a prior-existing streetlight standard which is replaced with a new streetlight standard to permit the addition of antennas shall not be considered a wireless tower, but rather a replacement streetlight standard.

#### 21.49.050 General Development and Design Standards.

F 3 b. New or replacement vertical structures may be allowed when authorized by ~~the Municipal~~this Code and approved by the Public Works Department. Replacement poles or streetlights shall be consistent with the size, shape, style, and design of the existing pole, including any attached light arms. New poles or streetlights may be installed, provided they match existing or planned poles within the area.

F 6 b i. Where existing utilities services (e.g., telephone, power, cable TV) are located underground, the support equipment shall be placed underground if required by other provisions of ~~the Municipal~~this Code. Flush-to-grade underground vault enclosures, including flush-to-grade vents, or vents that extend no more than twenty-four (24) inches above the finished grade and are screened from public view, may be incorporated. Electrical meters required for the purpose of providing power for the proposed telecom facility may be installed above ground on a pedestal in a public right-of-way provided they meet applicable standards of Title 13 unless otherwise precluded by ~~the Municipal~~this Code.

J 2. All graffiti on any components of the telecom facility shall be removed promptly in accordance with ~~the Municipal~~this Code.

## Chapter 21.50

### PERMIT APPLICATION FILING AND PROCESSING

#### TABLE 21.50-1 Notes

(7) All development on tidelands, submerged lands, and public trust lands as described in ~~California~~ Cal. Pub. Resources Code Section 30519(b) and in deferred certification areas designated by the Local Coastal Program shall require a permit issued by the Coastal Commission in accordance with procedures specified by the Coastal Commission, in addition to other permits or approvals required by the City.

#### **21.50.025 Projects Bisected by Jurisdictional Boundaries.**

B. Projects Bisected by City and Coastal Commission Jurisdiction. Where a proposed development is located within both the Coastal Commission's and City's coastal development permit jurisdictions, coastal development permits are required by both the City and the Coastal Commission. Alternatively, if the applicant, the City and the Coastal Commission agree, the Coastal Commission can process a consolidated coastal development permit application pursuant to the procedures in Cal. Pub. Resources Code, Section 30601.3.

C. Projects Bisected by Different Local Government Jurisdictions. If a project straddles the boundaries of the City and another local government, the applicant must obtain separate coastal permits from each jurisdiction. An exception is possible for public agencies that, pursuant to ~~California~~ Cal. Pub. Resources Code Section 30605, may obtain one "Public Works Plan" approval from the Coastal Commission, in lieu of locally issued coastal permits.

## Chapter 21.52

### COASTAL DEVELOPMENT REVIEW PROCEDURES

#### 21.52.010 Purpose.

This chapter provides procedures to ensure that all public and private development in the coastal zone is consistent with the California Coastal Act of 1976 (Division 20 of the [Cal. Pub. Lic Resources Code](#)) as amended, in accordance with the City's Local Coastal Land Use Plan and the City's Local Coastal Program. The provisions of this chapter shall apply in the coastal zone, as defined by the Coastal Act. Furthermore, the provisions of this chapter, and as applicable the Coastal Act and regulations, shall be utilized to determine whether or not a proposal in the City's permitting jurisdiction constitutes development and whether or not that development requires a coastal development permit or is exempt. No provision contained in any other chapter of the Implementation Plan, nor in any other City policy or regulations, shall be used in such determinations.

#### 21.52.015 Coastal Development Permits.

B 1. Coastal Development Permit Issued by the Coastal Commission. Developments on tidelands, submerged lands, and public trust lands as described in [Cal. Pub. Lic Resources Code Section 30519\(b\)](#) and in deferred certification areas designated by the certified Local Coastal Program require a permit or exemption issued by the Coastal Commission in accordance with the procedure as specified by the Coastal Act. Areas of Coastal Commission permit jurisdiction and deferred certification areas are generally depicted on the Post-LCP Certification Permit and Appeal Jurisdiction Map.

H. Notice of Final Action. Within seven calendar days of the date of the City's final local action on an exemption or coastal development permit application and meeting the requirements of [Title-14 California CCR Cal. Code of Regulations](#) Section 13570, a notice of its final action shall be sent, by first class mail, to the applicant, the Coastal Commission, and any persons who specifically request such notice by submitting a self-addressed, stamped envelope to the City. Such notice shall be accompanied by a copy of the exemption, denial, or coastal development permit approval with conditions of approval and written findings and the procedures for appeal of the action to the Coastal Commission.

#### 21.52.035 Projects Exempt from Coastal Development Permit Requirements.

C. Coastal Act Exemptions. Developments not located within the Coastal Commission's permit jurisdiction determined to be exempt from the coastal development permit requirements pursuant to [California-Cal. Pub. Lic Resources Code Section 30610](#). The following types of projects shall be so exempted unless they involve a risk of adverse environmental effects:

C 1 d i. An increase of ten (10) percent or more of the floor area of existing structure(s) on the building site or an additional improvement of ten (10) percent or less where an improvement to the structure has previously been undertaken pursuant to [California-PublicCal. Pub. Resources Code Section 30610\(a\)](#) and/or this subsection.

C 2 d i. An increase of ten (10) percent or more of the internal floor area of existing structure(s) on the building site or an additional improvement of ten (10) percent or less where an improvement to the structure has previously been undertaken pursuant to [California-PublicCal. Pub. Resources Code Section 30610\(a\)](#) and/or this subsection.

C 4 d. Unless destroyed by disaster, the replacement of fifty (50) percent or more of a single-family residence, seawall, revetment, bluff retaining wall, breakwater, groin or any other structure is not repair and maintenance under ~~California Public~~ Cal. Pub. Resources Code Section 30610(d) but instead constitutes a replacement structure requiring a coastal development permit.

C 7. Time-Share Conversions. Any activity anywhere in the coastal zone that involves the conversion of any existing multiple-unit residential structure to a time-share project, estate, or use, as defined in Section 11003.5 of the ~~Cal. Business and Professions~~ Code. If any improvement to an existing structure is otherwise exempt from the permit requirements of this part, no coastal development permit shall be required for that improvement on the basis that it is to be made in connection with any conversion exempt pursuant to this subsection. The division of a multiple-unit residential structure into condominiums, as defined in Section 783 of the ~~Cal. Civil~~ Code, shall not be considered a time-share project, estate, or use for purposes of this subsection.

C 8. Tentative Parcel Maps for Condominium Purposes. Tentative parcel maps involving the subdivision of airspace within two-unit or multi-unit dwellings for condominium purposes.

#### **21.52.045 Categorical Exclusions.**

A. Post-Certification Categorical Exclusions. The Coastal Commission may adopt a categorical exclusion after certification of this Implementation Plan pursuant to Cal. Pub. Resources Code Sections 30610(e) or 30610.5 ~~of the Public Resources Code and 14 CCR Cal. Code of Regs. Title 14, Division 5.5, Chapter 6, Subchapter 4 or 5 of Chapter 6 of Division 5.5 of Title 14 of the California Code of Regulations (Sections 13215 et seq. 235 and 14 CCR Section 240 et seq-249)~~. Records of such categorical exclusions shall be kept on file with the Department.

B. Notice of Exclusion. A notice of exclusion shall be provided to the Coastal Commission and to any person who has requested such notice within five (5) businessworking days of issuance. The notice of exclusion may be issued at the time of project application but shall not become effective until all other approvals and permits required for the project are obtained. A copy of all terms and conditions imposed by the City shall be provided to the Coastal Commission, per 14 CCR Cal. Code of Regs. Section 13315 ~~of the California Code of Regulations.~~

#### **21.52.075 Coastal Commission Review of Recorded Access Documents.**

A. Standards and Procedures. Upon final approval of a coastal development permit or other authorization for development, and where issuance of the permit or authorization is conditioned upon the applicant recording a legal document which restricts the use of real property or which offers to dedicate or grant an interest or easement in land for public use, a copy of the permit conditions, findings of approval, and drafts of any legal documents proposed to implement the conditions shall be forwarded to the Coastal Commission for review and approval prior to the issuance of the permit consistent with the following procedures and 14 CCR California Code of Regulations ~~Cal. Code of Regs.~~ Section 13574:

## Chapter 21.54

### PERMIT IMPLEMENTATION, TIME LIMITS, AND EXTENSIONS

#### 21.54.030 Effective Date of Permits—Notice of Final Action.

B. Notice of Final Action. Final City action on permits for sites located within the City's coastal zone shall be documented by the notice of final local action which the City sends to the Coastal Commission within seven days of the City's final action on a CDP application and compliance with ~~Title 14 California Code of Regulations~~CCR Cal. Code of Regs. Section 13570.

## Chapter 21.64

### APPEALS AND CALLS FOR REVIEW

#### 21.64.035 Appeal to the Coastal Commission.

A final action taken by the City on a coastal development permit application for appealable development as defined in subsection (A) of this section may be appealed to the Coastal Commission in compliance with this section and ~~Title 14 California Code of Regulations CCR Cal. Code of Regs.~~ Sections 13111 through 13120 and ~~Section 30603 of the Coastal Act Section 30603.~~ If there is any conflict between the provisions of this section or ~~Title 14 California Code of Regulations CCR Cal. Code of Regs.~~ Sections 13111 through 13120 and Section 30603 of the Coastal Act, ~~Title 14 California Code of Regulations CCR Cal. Code of Regs.~~ Sections 13111 through 13120 and Section 30603 of the Coastal Act shall control.

A. Appealable Development—~~Cal. Pub. Lic~~ Resources Code Section 30603(a). A decision by the City on a coastal development permit application within the appeal areas identified in ~~Cal. Pub. Lic~~ Resources Code Section 30603(a) as generally depicted on the Post-LCP Certification Permit and Appeal Jurisdiction Map or on any development approved or denied by the City on a coastal development permit application for a project that constitutes a major public works project or energy facility may be appealed to the Coastal Commission.

B 1. Who May Appeal. An appeal may be filed by an applicant, an aggrieved person, or two members of the Coastal Commission in compliance with ~~Cal. Pub. Lic~~ Resources Code Section 30625.

2. Aggrieved Person Defined. As provided by ~~Cal. Pub. Lic~~ Resources Code Section 30801, an aggrieved person is any who, in person or through a representative, appeared at a public hearing held before the Zoning Administrator, Planning Commission, or Council in connection with the decision or action appealed, or who, by other appropriate means prior to a hearing, informed the City of the nature of their concerns or who for good cause was unable to do either.

C. Exhaustion of City Appeals Required. An applicant or other aggrieved person may appeal a City decision on a coastal development permit application to the Coastal Commission only after exhausting all appeals to the Planning Commission and Council in compliance with this chapter. Exhaustion of all local appeals shall not apply to any circumstance identified in ~~Cal. Code of Regulations 14 CCR~~ Section 13573(a), including, but not limited to, the following circumstances:

1. An appellant was denied the right of the initial local appeal under this chapter because City notice and hearing procedures did not comply with ~~Title 14, Division 5.5, Chapter 8, Subchapter 2, Article 17 of the California Code of Regulations CCR Section 13573 Cal. Code of Regs.~~; or
2. The local government jurisdiction changes an appeal for the filing or processing of appeals.

In addition, in accordance with ~~14 CCR Cal. Code of Regulations~~ Section 13573(b), there shall be no requirement of exhaustion of local appeals when an appeal of a City decision is filed by two members of the Coastal Commission in compliance with ~~Cal. Pub. Lic~~ Resources Code Section 30625. Notice of a Coastal Commissioners' appeal shall be transmitted to the City in compliance with ~~Title 14 California Cal. Code of Regs CCR.ulations~~ Section 13111(d). The Director may transmit the Commissioners' appeal to the local appellate body (which considers appeals from the local body that rendered the final decisions subject to the Commissioner appeal), and the Commissioners' appeal may be suspended pending a decision on the

merits by that local appellate body. If the final action by an appellate body modifies or reverses the previous decision, the Coastal Commissioners shall be required to file a new appeal from that decision.

D. Grounds for Appeal to Coastal Commission—Cal. Pub. Resources Code Section 30603. The grounds for an appeal to the Coastal Commission of a City final action on a coastal development permit application are as follows:

## Chapter 21.68

### ENFORCEMENT

#### 21.68.050 Legal Remedies.

C. Enforcement Pursuant to the Coastal Act. In addition to the enforcement provisions contained in this chapter, the provisions of Cal. Pub. Resources Code Division 20, Chapter 9 ~~of Division 20 of the Public Resources Code~~ shall also apply with respect to violations and enforcement and the City and the Commission shall have the enforcement powers described therein.

## Chapter 21.70

### DEFINITIONS

#### 21.70.010 Purpose of Part.

This part provides definitions of terms and phrases used in this Implementation Plan that are technical or specialized, or that may not reflect common usage. If the definitions in this part conflict with definitions in other provisions of ~~the Municipal~~this Code, these definitions shall control for the purposes of this Implementation Plan. If a word is not defined in this part, or elsewhere in this Implementation Plan, the most common dictionary definition is presumed to be correct.

#### 21.70.020 Definitions of Specialized Terms and Phrases.

“Aggrieved person” means any person who, in person or through a representative, appeared at a public hearing held before the Zoning Administrator, Planning Commission, or Council in connection with the decision or action appealed, or who, by other appropriate means prior to a hearing, informed the City of the nature of their concerns or who for good cause was unable to do either (~~Cal. Pub. Lic. Resources Code~~ Section 30801).

“Alcohol sales, off-sale, accessory only (land use)” means an establishment that has all of the following characteristics:

1. Alcoholic beverages will be or are sold, served, or given away for consumption off the premises where sold, served, or given away;
2. The establishment is applying for or has obtained an ABC License Type 20 (off-sale beer and wine—package store) or License Type 21 (off-sale general—package store); and
3. The sale of alcoholic beverages is accessory to the retail sale of food products and the display area for alcoholic beverages does not exceed thirty (30) percent of the net floor area of the use. Illustrative examples include ~~convenience markets~~, drug stores, grocery stores, and supermarkets, but do not include convenience markets.

“Review authority” means the individual or official City or State body identified by this Implementation Plan as having the responsibility and authority to review and approve or disapprove ministerial and discretionary permit applications described in this Implementation Plan. Includes the Newport Beach City Council (“Council”), the Planning Commission (“Commission”), the ~~Planning Director~~Community Development Director (“Director”), the Zoning Administrator (“Zoning Administrator”), the Community Development Department (“Department”), the City Traffic Engineer, the Public Works Director and the California Coastal Commission (“Coastal Commission”).

Animal-Keeping (Land Use).

3. “Animal, wild” means an animal that is not customarily confined or cultivated by man for domestic or commercial purposes but kept for display. Includes an animal that may be imported, transported, or possessed only by first obtaining a California Department of Fish and Game Permit, as required in 14 CCR California Code of Regulations~~Cal. Code of Regs.~~ Title 14, Section 671 (Importation, Transportation and Possession of Live Restricted Animals).

“Area median income” means the median income, adjusted for family size, applicable to Orange County, established by the U.S. Department of Housing and Urban Development, and published annually by the California Department of Community Development in the [25 CCR Cal. California Code of Regulations, Title 25](#), Section 6932 ~~(or its successor provision)~~.

“California Environmental Quality Act (CEQA)” means a State law (~~California Cal.~~ Pub. ~~lic~~ Resources Code Section 21000 et seq.).

“Categorical exclusion area” means that portion of the coastal zone within an exclusion area boundary adopted in compliance with the California Coastal Act (~~Cal.~~ Pub. ~~lic~~ Resources Code Section 30000 et seq.).

“Categorical exclusion order” means a decision issued by the California Coastal Commission in compliance with the Coastal Act (~~Cal.~~ Pub. ~~lic~~ Resources Code Section 30610(e)), in which the Coastal Commission excludes certain categories of development from requirements to obtain coastal development permits from the Coastal Commission. A categorical exclusion order automatically terminates upon the effective date of the delegation of development review authority to a local government in compliance with [14 California CCR Cal. Code of Regulations](#) Section 13249(b).

“Categorical exemption” means, as defined by [14 CCR](#) Section 15354 of the State CEQA Guidelines ~~(Title 14, California Cal. Code of Regulations)~~, an exemption from CEQA for a class of projects based on a finding by the Secretary of Resources that the class of projects does not have a significant effect on the environment.

“Coastal Commission” means the California Coastal Commission, the State agency established by State law responsible for carrying out the provisions of the California Coastal Act of 1976, as amended (~~Cal.~~ Pub. ~~lic~~ Resources Code Section 30000 et seq.) and for appellate review of decisions rendered by a City review authority.

“Coastal Commission exclusion areas” means the boundaries of the areas where a category of development, or a category of development within a specifically defined geographic area, is excluded from the coastal development permit requirements pursuant to ~~Cal.~~ Pub. ~~lic~~ Resources Code Section 30610, which shall be established by the terms and conditions applied to each categorical exclusion order by the Coastal Commission.

“Coastal Commission permit jurisdiction” means the boundaries of tidelands, submerged lands, and public trust lands described in Section 30519(b) of the ~~Cal.~~ Pub. ~~lic~~ Resources Code where the Coastal Commission retains permit jurisdiction.

“Coastal-dependent development or use” means any development or use which requires a site on, or adjacent to, the sea to be able to function at all (from ~~California Cal.~~ Pub. ~~lic~~ Resources Code Section 30101).

“Coastal development permit (CDP)” means a permit for any development within the coastal zone that is required pursuant to subdivision (a) of ~~Cal.~~ Pub. ~~lic~~ Resources Code Section 30600.

“Coastal-related development or use” means any development or use that is dependent on a coastal-dependent development or use (from ~~California Cal.~~ Pub. ~~lic~~ Resources Code Section 30101.3).

“Coastal zone” means the geographic zone adjacent to the shoreline, the land and water area boundaries of which are determined by the California Coastal Act of 1976, as amended (~~Cal. Pub. Res.~~ Resources Code Section 30000 et seq.).

“Condominium” means a form of property ownership providing for individual ownership of space in a structure together with an individual interest in the land or other parts of the structure in common with other owners. Includes a condominium project, community apartment project, or stock cooperative, as defined in ~~California Cal. Civ. Code~~ Code Section 1351.

“Density bonus” means, as defined by ~~Cal. Gov. Government~~ Code Section 65915 et seq., an increase over the maximum density otherwise allowed by the applicable zoning district that is granted to the owner/developer of a housing project who agrees to construct a prescribed percentage of dwelling units that are affordable to very low- and low-income households. See “Very low-income household” and “Low-income household.”

“Development” means on land, in or under water, the placement or erection of solid material or a structure; discharge or disposal of dredged material or of gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of materials; change in the density or intensity of use of land, including, but not limited to, subdivision in compliance with the Subdivision Map Act (commencing with ~~Government Cal. Gov.~~ Code Section 66410), and another division of land, including lot splits, except where the land division is brought about in connection with the purchase of the land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of a structure, including a facility of a private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes and kelp harvesting.

“Dwelling unit, accessory (land use)” means a dwelling unit accessory to and attached to, detached from, or contained within the principal dwelling unit on a site zoned for residential use. An accessory dwelling unit also includes the following:

1. An efficiency unit, as defined in ~~Section 17958.1 of the California Cal. Health and Saf. Code~~ Code ~~Section 17958.1, or any successor statute.~~
2. A manufactured home, as defined in ~~Section 18007 of the California Cal. Health and Saf. Code~~ Code ~~Section 18007, or any successor statute.~~

“Emergency” means any sudden, unexpected occurrence demanding immediate action to prevent or mitigate loss of or damage to life, health, property or essential public services as used in ~~Cal. Pub. Res.~~ Resources Code Section 30624.

“Emergency shelter (land use)” means, as defined in ~~Cal. Health and Saf. Code~~ Code Section 50801(e), a facility with minimal supportive services for homeless persons.

“Environmentally sensitive habitat area (ESHA)” as defined in ~~Cal. Pub. Res.~~ Resources Code Section 30107.5 means an area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

“Explosives” means a substance defined as an explosive by [Cal. Health and Safety Code](#) Section 12000 et seq., and for which a permit is required by the [Cal. Health and Safety Code](#). See also “Hazardous materials.”

“General Plan” means the City of Newport Beach General Plan, and all amendments thereto, as adopted by the City Council under the provisions of [Cal. Government Code](#) Section 65300 et seq., and referred to in this Implementation Plan as the “General Plan.”

“Final map” means a subdivision map prepared in compliance with Subdivision Map Act, Article 2, Chapter 2, and approved in compliance with Subdivision Map Act, Article 4, Chapter 3 ([Cal. Government Code](#) Section 66410 et seq.), that is used to complete the subdivision of five (5) or more lots. See also “Parcel map” and “Tentative map.”

“Lot line adjustment” means, as provided in the Subdivision Map Act ([Cal. Government Code](#) Section 66412(d)), a lot line adjustment that relocates one or more lot lines between two or more existing adjacent lots, where land taken from one lot is added to an adjacent lot and where no more lots are created than originally existed.

“Major energy facility” means any public or private processing, producing, generating, storing, transmitting, or recovering facility for electricity, natural gas, petroleum, coal or other source of energy which exceeds one hundred thousand dollars ([\\$100,000](#)) in its estimated cost of construction with an automatic increase in accordance with the Engineering News Record Construction Cost Index, except for those governed by the provisions of [Cal. California Public Resources Code](#) Section 30610, 30610.5, 30611 or 30624.

“~~Municipal Code~~” means the [Newport Beach Municipal Code](#) ~~of the City of Newport Beach, as amended.~~

“Parcel map” means the subdivision map described by the Subdivision Map Act, Article 3, Chapter 2 ([Cal. Government Code](#) Section 66410 et seq.), which is required to complete a subdivision of four (4) or fewer lots. See also “Final map” and “Tentative map.”

Parks and Recreational Facilities (Land Use).

2. “Recreation, passive” means a type of outdoor recreation or activity that can be carried out with little alteration or improvement to existing topography of a site, with the use of existing natural resources, and with a minimal impact (e.g., bicycling, hiking, jogging, walking, bird-watching, picnicking, etc.).

Parolee-Probationer. A parolee-probationer includes: (1) any individual who has been convicted of a ~~f~~Federal crime, sentenced to a United States prison, and received conditional and revocable release in the community under the supervision of a ~~f~~Federal parole officer; (2) 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 [Cal. Penal Code](#) Section 3000, and is under the jurisdiction of the California Department of Corrections, Parole and Community Services Division; (3) 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 (4) 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 ~~f~~Federal, State, or County parole or probation officer. For the purposes of this definition, “felony” means a felony as defined by any California or United States statute.

“Public trust lands” means all lands subject to the Common Law Public Trust for commerce, navigation, fisheries, recreation, and other public purposes. Public trust lands include tidelands, submerged lands, the beds of navigable lakes and rivers, and historic tidelands and submerged lands that are presently filled or reclaimed and which were subject to the public trust at any time (~~14 California CCR Cal. Code of Regulations Regs.~~ Section 13577). See “Submerged lands” and “Tidelands.”

“Senior citizen housing development” means a residential development developed, substantially rehabilitated, or substantially renovated for senior citizens (i.e., persons fifty-five (55) years of age or older) that has at least thirty-five (35) dwelling units and that conforms to Cal. Civ. Code Section 51.3(b)(4).

“Specific plan” means, under Cal. Government Gov. Code Section 65450 et seq., a policy statement and implementation tool adopted by the City Council that addresses a single project or planning problem. A specific plan may include detailed regulations, conditions, programs, and/or proposed legislation that may be necessary or convenient for the systematic implementation of a General Plan element(s).

“Subdivision” means the division by any subdivider of any unit or units of improved or unimproved land, or any portion thereof, shown on the latest equalized county assessment roll as a unit or as contiguous units, for the purpose of sale, lease or financing, whether immediate or future. Property shall be considered as contiguous units even if it is separated by roads, streets, utility easement or railroad rights-of-way. Subdivision includes a condominium project, as defined in ~~subdivision (F) of Section 1351 of the Cal. Civ. Code~~ Section 1351 (f), a community apartment project, as defined in ~~subdivision (D) of Section 1351 of the Cal. Civ. Code~~ Section 1351 (D), or the conversion of five (5) or more existing dwelling units to a stock cooperative, as defined in ~~subdivision (M) of Section 1351 of the Cal. Civ. Code~~ Section 1351 (M). [Note: same meaning as in the Subdivision Map Act.]

“Subdivision Map Act” means Division 2, Title 7 of the California Cal. Government Gov. Code, commencing with Section 66410, ~~as amended~~, regarding the subdivision of real property.

“Submerged lands” means lands that lie below the line of mean low tide (~~14 CCR from California Cal. Code of Regulations Regs.~~ Section 13577). See “Public trust lands.”

“Supportive housing” means housing with no limit on length of stay, that is occupied by the target population, as defined by ~~Section 53260(d) of the California Cal. Health and Safety Saf. Code~~ Section 53260 (d), and that is linked to on-site or off-site services that assist the tenant to retain the housing, improve his or her health status, maximize their ability to live and, when possible, to work in the community. Supportive housing that is provided in single-, two-, or multi-family dwelling units, group residential, parolee-probationer home, residential care facilities, or boarding house uses shall be permitted, conditionally permitted or prohibited in the same manner as the other single-, two- or multi-family dwelling units, group residential, parolee-probationer home, residential care facilities, or boarding house uses under this Code.

“Tentative map” means a subdivision map prepared in compliance with the Subdivision Map Act (Cal. Government Gov. Code Section 66410 et seq.) that specifies the conditions that must be satisfied and the details that must be provided before approval of a final map. See also “Final map” and “Parcel map.”

“Tidelands” means lands that are located between the lines of mean high tide and mean low tide (~~14 CCR from California Cal. Code of Regulations Regs.~~ Section 13577). See “Public trust lands.”

Visitor Accommodations (Land Use).

4. "Hotel" means an establishment that provides guest rooms or suites for a fee to transient guests for sleeping purposes. Access to units is primarily from interior lobbies, courts, or halls. Related accessory uses may include conference and meeting rooms, restaurants, bars, and recreational facilities. Guest rooms may or may not contain kitchen facilities for food preparation (i.e., refrigerators, sinks, stoves, and ovens). Hotels with kitchen facilities are commonly known as extended stay hotels. A hotel operates subject to taxation under ~~Cal. Revenue and Taxation~~Rev. & Tax. Code Section 7280.

5. "Motel" means an establishment that provides guest rooms for a fee to transient guests for sleeping purposes. Guest rooms do not contain kitchen facilities. A motel is distinguished from a hotel primarily by direct independent access to, and adjoining parking for, each guest room. A motel operates subject to taxation under ~~Cal. Revenue and Taxation~~Rev. & Tax. Code Section 7280.