

## **ORDINANCE NO. 2020-4**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, ADOPTING CODE AMENDMENT NO. CA2019-006 TO AMEND TITLE 15 ENTITLED "BUILDING AND CONSTRUCTION" AND TITLE 20 ENTITLED "PLANNING AND ZONING" OF THE CITY OF NEWPORT BEACH MUNICIPAL CODE RELATED TO COTTAGE PRESERVATION (PA2019-181)**

**WHEREAS**, amendment to Title 15 ("Building and Construction") and Title 20 ("Planning and Zoning") (collectively Title 15 and Title 20 "Code Amendment") of the City of Newport Beach Municipal Code ("NBMC") is necessary to incentivize the preservation of cottages;

**WHEREAS**, Section 102.7 (Remodel or renovation) of Section 15.02.060 of the NBMC currently requires a dwelling to be subject to building code regulations as a new structure when the valuation of the permit for a remodel or renovation exceeds fifty (50) percent of the market value of the dwelling. As a result of this fifty (50) percent valuation threshold, many small remodel and residential addition projects require substantial improvements to comply with building code regulations as new construction. Due to this increased scope of work and costs, many property owners decide that it is not financially feasible to maintain their existing residential cottages and decide to demolish these cottages. The current redevelopment trend is to reconstruct new single- or two-family dwellings that maximize the building envelope, including three-level development, to realize the maximum return on investment;

**WHEREAS**, authorizing the amendment to Title 15 of the NBMC would incentive the preservation of cottages by removing the valuation threshold requiring building code compliance as new construction and allowing reasonable size additions to existing residential developments that preserve their cottage character and building envelope;

**WHEREAS**, authorizing the amendment to Title 20 of the NBMC would incentivize the preservation of cottages by increasing the percentage of an allowed addition to a nonconforming residential structure thereby eliminating a design constraint that has resulted in property owners choosing to demolish older cottages and redevelop the site with new, larger, three-level homes that maximize the allowable building envelope;

**WHEREAS**, a public hearing was held by the Planning Commission on October 17, 2019, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the public hearing was given in accordance with the California Government Code Section 54950 *et seq.* the ("Ralph M. Brown Act"), and Chapter 20.62 of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing;

**WHEREAS**, at the conclusion of the October 17, 2019, hearing, the Planning Commission voted to continue the item to allow staff additional time to revise certain aspects of the amendments. Requested changes included clarifying the applicability, prohibiting short-term rentals, and reducing the amount of expansion permitted;

**WHEREAS**, a public hearing was held by the Planning Commission on November 21, 2019, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the public hearing was given in accordance with the Ralph M. Brown Act and Chapter 20.62 of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing;

**WHEREAS**, on November 21, 2019, the Planning Commission adopted Resolution No. PC2019-034 by a majority vote (5 ayes, 1 nay), recommending to the City Council approval of Code Amendment No. CA2019-006; and

**WHEREAS**, a public hearing was held by the City Council on January 28, 2020, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the public hearing was given in accordance with the Ralph M. Brown Act and Chapter 20.62 of the NBMC. Evidence, both written and oral, was presented to, and considered by, the City Council at this public hearing.

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

**Section 1:** Section 102.7 (Remodel or renovation) of Section 15.02.060 (added to Section 102.7) of Title 15 (Administrative Code) of the Newport Beach Municipal Code is hereby amended to read as follows:

**15.02.060 Amendment to Section 102.7.**

Section 102.7 is amended to read as follows:

**Section 102.7 Remodel or renovation.** If the valuation of the permit for the remodel or renovation of a building is equal to or exceeds 50 percent of the market value of such building, then the entire building shall comply with the Code provisions for new construction.

**Exceptions:**

1. This provision does not apply for permit valuations less than \$220,700;
2. This provision does not apply to projects that meet the criteria set forth in Section 20.38.060(A)(3) and are not located in a Special Flood Hazard Area per the latest revision of the Federal Insurance Rate Map.
3. The Chief Building Official is authorized to accept less than the requirements for new construction if substantial conformance to the requirements is found and the protection of life and property are maintained.

**Section 2:** Subsection A of Section 20.38.060 (Nonconforming Parking) of Title 20 (Planning and Zoning) of the NBMC is hereby amended to read as follows:

**20.38.060 Nonconforming Parking.**

A. Residential. Where a residential structure or use is nonconforming only because it does not conform to the off-street parking requirements of this Zoning Code, only the following alterations may be allowed:

1. Number of Spaces. A residential development having less than the required number of parking spaces per dwelling unit shall be allowed the following repairs, alterations, and additions:
  - a. Repair and maintenance, interior alterations, and structural alterations, as provided for in Section 20.38.040(A) through (F); and
  - b. Additions up to a maximum of ten (10) percent of the existing floor area of the structure within a ten (10) year period as provided in Section 20.38.040(G).
2. Dimensions or Type of Parking Spaces. Residential developments that are nonconforming because they do not have the required type of covered or enclosed parking spaces or because amendments to this Zoning Code have changed the dimensions of required parking spaces subsequent to the original construction of the structure may be altered or expanded as follows:
  - a. All improvements and expansions allowed under subsection (A)(1) of this section; or
  - b. Additions larger than those allowed under subsection (A)(1) of this section may be allowed subject to the approval of a modification permit in compliance with Section 20.52.050 (Modification Permits).

3. Exception for Cottage Preservation. Notwithstanding the provisions of subsections (A)(1)(b) and (A)(2)(b) of this section, additions of up to fifty (50) percent of the existing floor area of the structure, but no more than 750 square feet, are permitted for a single-unit residential dwelling, duplex, or triplex when they comply with the following criteria:

- a. The floor area of any addition, together with the floor area of the existing structure, shall not exceed the allowed maximum floor area for the zoning district where the property is located;
- b. The addition shall comply with all applicable development standards and use regulations of this Zoning Code;
- c. The square footage of residential parking area additions identified below shall be excluded from the allowed expansion under subsection (A)(3), but shall be included as gross floor area;

Required Parking	Maximum Excluded Area
One-car garage	200 square feet
Two-car garage	400 square feet
Three-car garage	600 square feet

- d. The height of the residential structure shall not exceed the following, regardless of roof pitch:
  - i. Front half of lot: single story with a maximum height of sixteen (16) feet; and
  - ii. Rear half of lot: two story with a maximum height of twenty four (24) feet;
- e. The residential structure shall not include a third floor deck;
- f. Dwellings within the residential development shall not be rented for periods of less than thirty (30) days; and

g. **Deed Restriction and Recordation Required.** Prior to the issuance of a building permit for a cottage preservation project, the property owner shall record a deed restriction with the Orange County Recorder's Office, the form and content of which is satisfactory to the City Attorney, agreeing to maintain the property consistent with the limitations specified above for cottage preservation and the restrictions on short-term lodging. The deed restriction document shall notify future owners of the restriction. This deed restriction shall remain in effect so long as the cottage preservation project exists on the property.

**Section 3:** An amendment to the Local Coastal Program ("LCP") is also underway. LCP Amendment No. LC2019-004 amending Section 21.38.060 (Nonconforming Parking) of Title 21 of the Newport Beach Municipal Code shall not become effective for projects located in the coastal zone for which the LCP is applicable until approval of the subject LCP amendment by the California Coastal Commission and adoption, including any modifications suggested by the California Coastal Commission, by resolution and/or ordinance of the City Council of the City of Newport Beach.

**Section 4:** The recitals provided in this ordinance are true and correct and are incorporated into the operative part of this ordinance.

**Section 5:** If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

**Section 6:** The City Council finds this action is exempt from environmental review under California Environmental Quality Act ("CEQA") pursuant to Section 21065 of the California Public Resources Code and Sections 15060 (c)(2), 15060 (c)(3), and 15378 of the California Code of Regulations Title 14, Division 6, Chapter 3 ("CEQA Guidelines"). This action is also exempt pursuant to CEQA Guidelines Section 15061(b)(3), the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Lastly, pursuant to CEQA Guidelines Section 15265(a)(1), local governments are exempt from the requirements of CEQA in connection with the adoption of a Local Coastal Program. The Amendment itself does not authorize development that would directly result in physical change to the environment.

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

**Section 8:** The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the ordinance, or a summary thereof, to be published pursuant to City Charter Section 414.

This ordinance was reintroduced at a regular meeting of the City Council of the City of Newport Beach held on the 28th day of January, 2020, and adopted on the 11th day of February, 2020, by the following vote, to-wit:

AYES: Mayor O'Neill, Mayor Pro Tem Avery, Council Member Brenner, Council Member Dixon, Council Member Duffield, Council Member Herdman, Council Member Muldoon

NAYS: \_\_\_\_\_

ABSENT: \_\_\_\_\_

  
\_\_\_\_\_  
WILL O'NEILL, MAYOR

**ATTEST:**

  
\_\_\_\_\_  
LEILANI I. BROWN, CITY CLERK

**APPROVED AS TO FORM:**  
CITY ATTORNEY'S OFFICE

  
\_\_\_\_\_  
AARON C. HARP, CITY ATTORNEY

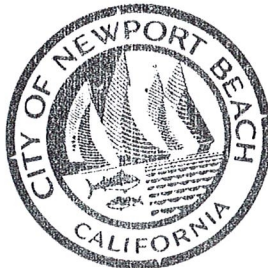
STATE OF CALIFORNIA       }  
COUNTY OF ORANGE       }  
CITY OF NEWPORT BEACH   }       ss.

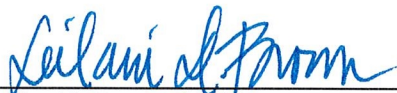
I, Leilani I. Brown, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; that the foregoing ordinance, being Ordinance No. 2020-4 was duly introduced on the 28<sup>th</sup> day of January, 2020, at a regular meeting, and adopted by the City Council at a regular meeting duly held on the 11<sup>th</sup> day of February, 2020, and that the same was so passed and adopted by the following vote, to wit:

AYES: Mayor Will O'Neill, Mayor Pro Tem Brad Avery, Council Member Joy Brenner, Council Member Diane Dixon, Council Member Duffy Duffield, Council Member Jeff Herdman, Council Member Kevin Muldoon

NAYS: None

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 12<sup>th</sup> day of February, 2020.



  
\_\_\_\_\_  
Leilani I. Brown, MMC  
City Clerk  
City of Newport Beach, California

STATE OF CALIFORNIA       }  
COUNTY OF ORANGE       }  
CITY OF NEWPORT BEACH   }       ss.

I, LEILANI I. BROWN, City Clerk of the City of Newport Beach, California, do hereby certify that Ordinance No. 2020-3 has been duly and regularly published according to law and the order of the City Council of said City and that same was so published in *The Daily Pilot*, a newspaper of general circulation on the following dates:

Introduced Ordinance: February 1, 2020  
Adopted Ordinance: February 15, 2020

In witness whereof, I have hereunto subscribed my name this 24<sup>th</sup> day of FEBRUARY, 2020.



  
\_\_\_\_\_  
Leilani I. Brown, MMC  
City Clerk  
City of Newport Beach, California