

CITY OF NEWPORT

ORDINANCE NO. 2120

AN ORDINANCE AMENDING CHAPTER 14.30 OF THE NEWPORT MUNICIPAL CODE RELATING TO CRITERIA FOR THE REVIEW AND APPROVAL OF NEW CONSTRUCTION IN THE NYE BEACH DESIGN REVIEW DISTRICT

Findings:

1. The City of Newport Zoning Ordinance (No. 1308, as amended) sets out criteria for new construction within the Nye Beach Design Review District. These criteria are found in Newport Municipal Code (NMC) Chapter 14.30.
2. Proposed amendments relate to thresholds for when discretionary review is required for new construction projects, setback standards for new garages, and density limitations. Specifically, the amendments:
 - a. Clarify NMC 14.30.090(A), a provision that requires conditional use review for new or expanded outright permitted uses in the C-2 zone district that exceed 2,000 square feet of gross floor area. The proposed revision makes it clear that this requirement applies to commercial land uses;
 - b. Modify NMC 14.30.100(A)(3), a provision that allows a 20-foot or zero-foot garage setback. The proposed revision retains the 20-foot garage setback, with an option of reducing the setback only if it is approved by the Planning Commission under the Nye Beach Design Guidelines; and
 - c. Correct the sentence structure in NMC 14.30.100(A)(5), to clarify that the term "density" refers to the number of residential units allowed on a property as opposed to the size of the units.
3. Consistent with NMC 14.36.020, the Newport City Council, at its July 17, 2017 meeting, initiated the proposed amendments to NMC Chapter 14.30 in response to feedback it received from members of the public that a zero foot garage setback is not appropriate in Nye Beach. Persons developing property in Nye Beach were given the option of constructing garages to meet either a 20-foot or zero foot setback as part of a package of revisions to the Newport Municipal Code in 2015. The first of three planned single-family detached homes is under construction along West Olive Street. That residence includes an attached garage built on the property line and it is the project that generated public concern.
4. This amendment process has been expedited because the City Council was concerned that additional projects might break ground before it had a chance to reassess the setback standard. With that in mind, the scope of the code revisions was narrowed to the three sections discussed by Council on July 17, 2017 (and cited herein) given that the City has undertaken the minimum level

of public outreach required to meet legal requirements, so that this ordinance could be quickly brought forward.

5. NMC 14.36.010 provides that legislative amendments to the Newport Zoning Ordinance, as codified in Chapter 14.30 of the Newport Municipal Code, may be approved by the Newport City Council after considering a recommendation by the Planning Commission and upon a determination that the changes are necessary and further the general welfare of the community.
6. Proposed changes to NMC 14.30.090(A) are necessary and further the general welfare of the community because they clarify the code in a manner that is consistent with prior legislative intent. A conditional use review requirement for new or expanded outright permitted uses over 2,000 square feet in size in the C-2 zone district was added to the code in 2003 so that the Planning Commission and public could weigh in on whether or not large commercial uses were primarily oriented toward a tourist market and of a scale compatible with Nye Beach. While the existing code provision can and has been read to apply only to commercial uses, the proposed changes make it absolutely clear that this is the case.
7. The revisions to the garage setback standard of NMC 14.30.100(A)(3), are necessary and further the general welfare of the community because they provide a greater degree of public oversight when developers are seeking design flexibility while still offering a reasonable path forward under clear and objective standards for those individuals who want certainty that if they meet the requirements they can proceed with their project. The City Council is cognizant that ORS 197.307 et. seq. requires the City provide persons constructing “needed housing,” such as detached single family homes, a path to approval that does not require a land use decision. This will be possible if they adhere to a 20-foot garage setback. Developers desiring a reduced garage setback will have the option of proceeding under the existing discretionary design guidelines. Those guidelines allow design flexibility when dealing with small or irregular shaped lots, while providing the Planning Commission and public a robust set of tools to assess whether or not a proposed development is in keeping with the design objectives of Nye Beach.
8. Amendments to NMC 14.30.100(A)(5) are necessary and further the general welfare of the community by clarifying an awkwardly structured sentence so that it is clear that the term “density” refers to the number of residential units allowed on a property, which it is commonly understood to mean, as opposed to the size of the units.
9. The Newport Planning Commission and Commission Citizens Advisory Committee reviewed the draft changes at a work session on August 14, 2017, and the Commission held a public hearing on August 28, 2017 to consider the proposed amendments. Testimony was provided by members of the public and the owners of property and/or businesses within Nye Beach. After taking public testimony, and considering evidence and argument in the record, the Planning

Commission voted to recommend that the City Council adopt the proposed revisions to the Newport Municipal Code.

10. The City Council held a public hearing on September 18, 2017 regarding the question of the proposed revisions and after considering public testimony, the recommendation of the Planning Commission, and evidence and argument in the record the Council concluded that the amendments are necessary in order to further the general welfare of the community and voted in favor of their adoption.

11. Information in the record, including affidavits of mailing and publication, demonstrate that appropriate public notification was provided for both the Planning Commission and City Council public hearings.

THE CITY OF NEWPORT ORDAINS AS FOLLOWS:

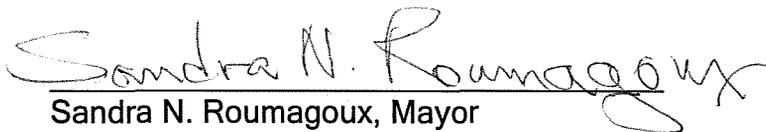
Section 1. The above findings are hereby adopted as support for the amendments, below.

Section 2. Chapter 14.30 of the Newport Municipal Code (Ordinance No. 1308 (as amended)), Design Review, is amended as shown in Exhibit "A."

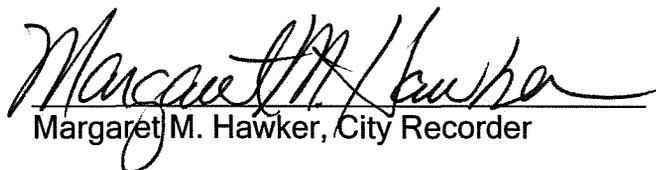
Section 3. This ordinance shall take effect 30 days after its adoption.

Date adopted and read by title only: September 18, 2017.

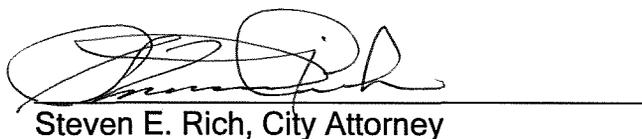
Signed by the Mayor on September 19, 2017.


Sandra N. Roumagoux, Mayor

ATTEST:


Margaret M. Hawker, City Recorder

Approved as to form:


Steven E. Rich, City Attorney

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(Formatting Note: New language is shown with a double underline. Deleted language is in ~~strikeout~~. Staff comments, shown in italics, are preceded by the word "staff" and are not a part of the amendments)

14.30.020 Design Review Districts: Overlay Zones Established

The following:

- A. Historic Nye Beach Design Review District. The Historic Nye Beach Design Review District Overlay Zone shall be indicated on the Zoning Map of the City of Newport with the letters HNBO and is the area described as follows:

Beginning at the northeasterly corner of SW Hurbert Street and SW 2nd Street; thence westerly along the north line of SW 2nd Street to the west line of SW Dolphin Street, said point also being the southeast corner of Lot 1, Block B, Barlow Blocks Addition to the City of Newport; thence north along the west line of SW Dolphin Street to 10 feet beyond the north line of Lot 7, said Barlow Blocks Addition; thence westerly, 10 feet north of and parallel with said north line of Lot 7 to the Pacific Ocean; thence northerly along the Pacific Ocean to the south line of NW 12th Street; thence east along the south line of NW 12th Street to the east line of an alley between NW Spring Street and NW Hurbert Street; thence south along the east line of said alley way to the north line of NW 10th Street; thence southwesterly to the southwest corner of the intersection of NW 10th Street and NW Brook Street; thence south along the west line of NW Brook Street to the south line of NW 8th Street; thence east along the south line of NW 8th Street to the west line of NW Hurbert Street; thence south along the west line of NW Hurbert Street to the north line of NW 6th Street; thence east to the northeast intersection of NW 6th Street and NW Hurbert Street; thence south along the east line of NW Hurbert Street and SW Hurbert Street to the north line of SW 2nd Street and the point of beginning.

14.30.030 Adoption of Design Review: Guidelines and Standards

The document entitled "Newport Design Review: Guidelines and Standards" dated July 29, 2015, is hereby adopted by reference and made a part hereof. The guidelines and

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standards contained therein shall be the guidelines and standards applicable to the Historic Nye Beach Design Review District.

14.30.040 Design Review Required

The following development activities in an established design review district are required to obtain a design review permit under the design standards in an identified design review district or, in the alternative, to apply for a design review permit and to obtain approval under the design guidelines for that design review district:

- A. New construction, substantial improvement, or relocation of one or more dwelling units.
- B. New construction, substantial improvement, or relocation of a commercial or public/institutional building.
- C. New construction, substantial improvement, or relocation of a residential accessory structure that contains more than 200 square feet of gross floor area and is not more than 10 feet in height.
- D. New construction, substantial improvement, or relocation of a commercial accessory structure that contains more than 120 square feet of gross floor area.
- E. An addition that increases the footprint of an existing building by more than 1,000 square feet.

14.30.050 Exemptions

The following activities are exempt from the provisions of this chapter:

- A. Development activity that is subject to the provisions of Newport Municipal Code Chapter 14.23, Historic Buildings and Sites.
- B. Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications that are solely necessary to assure safe living conditions.
- C. Development that does not involve the construction, substantial improvement, or relocation of a dwelling unit,

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commercial or public/institutional building, or accessory structure.

14.30.060 Approval Authority

The following are the initial review authorities for a Design Review application:

- A. Community Development Director. For projects subject only to the design standards specified in the document entitled "Newport Design Review: Guidelines and Standards," dated July 29, 2015. The approval or denial of a Design Review application by the Community Development Director is a ministerial action performed concurrent with City review of a building permit.
- B. Planning Commission. For projects that require design review under the design guidelines contained in the document entitled "Newport Design Review: Guidelines and Standards," dated July 29, 2015, including the following:
 - 1. New construction, substantial improvement, or relocation of a dwelling unit; commercial or public/institutional building; or accessory structure that is over 65 feet in length or 35 feet in height; or
 - 2. New construction, substantial improvement, or relocation of a dwelling unit; commercial or public/institutional building; or accessory structure that does not meet the design standards contained in the document entitled "Newport Design Review: Guidelines and Standards" dated July 29, 2015; or
 - 3. New construction, substantial improvement, or relocation of a dwelling unit; commercial or public/institutional building; or accessory structure that involves a conditional use, a variance, or any other type of land use permit for which a Type III Land Use Action decision process is required, pursuant to Chapter 14.52, Procedural Requirements.

14.30.070 Application Submittal Requirements

- A. For requests that are subject to Community Development Director review for compliance with design standards, an

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application for Design Review shall consist of the following:

1. A completed and signed City of Newport Building Permit Application Form.
 2. Building plans that conform to the submittal requirements for a building permit that include a site plan, floor plan, exterior architectural elevations, cross-section drawings, and construction specifications illustrating how the design standards have been met.
 3. A written checklist identifying the design elements used to comply with the design standards.
- B. For requests that are subject to Planning Commission review for compliance with design guidelines, an application for Design Review shall consist of the following:
1. Submittal requirements for land use actions listed in Section 14.52.050.
 2. Exterior elevations of all buildings on the site as they will appear after development. Such plans shall indicate the material, texture, shape, and other design features of the building(s), including all mechanical devices.
 3. A parking and circulation plan illustrating all parking areas, drive isles, stalls, and points of ingress/egress to the site.
 4. A landscape plan showing the location, type and variety, size and any other pertinent features of the proposed landscaping and plantings for projects that involve multiple-family (more than 2 units), commercial, and public/institutional development.
 5. A lighting plan identifying the location and type of all permanent area lights, including parking area lighting, along with details of the lighting fixtures that are to be installed.
 6. A written set of proposed findings that explain how the project complies with the applicable design guidelines.

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7. Any other information the applicant believes is relevant to establishing that the project complies with applicable design guidelines.

- C. All plans shall be drawn such that the dimensions can be verified with an engineers or architects scale.

14.30.080 Permitted Uses

In addition to uses permitted outright or conditionally in the underlying zoning district, the following uses are permitted within areas subject to design review.

- A. Historic Nye Beach Design Review District.

1. Tourist Commercial (C-2) zoned property.

- a. Up to five (5) multi-family dwelling units per lot or parcel are permitted outright provided they are located on a floor other than a floor at street grade.
- b. A single-family residence is permitted outright if located on a floor other than a floor at street grade.
- c. A single-family residence is permitted outright, including the street grade floor, within a dwelling constructed prior to January 1, 2004. Residential use at the street grade is limited to the footprint of the structure as it existed on this date.
- d. Single family, duplex, triplex, fourplex and multifamily dwelling units, including at the street grade, are permitted outright on property located south of NW 2nd Court and north of NW 6th Street that front NW and SW Coast Street, NW and SW Cliff Street, and W. Olive Street.

2. High Density Multi-Family Residential (R-4) zoned property.

- a. Uses permitted outright in the C-2 zone district that are not specified as a use permitted outright or conditionally in the R-4 zone district, are allowed subject to the issuance of a conditional use permit in accordance with the provisions of Chapter 14.34, Conditional Uses and subject to the limitation that the use not exceed a total of 1,000 square feet of gross floor area. This provision does not preclude

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an application for a use as a home occupation under Chapter 14.27, Home Occupations.

14.30.090 Prohibited Uses

The following uses are prohibited within areas subject to Design Review.

A. Historic Nye Beach Design Review District

1. Any new or expanded outright permitted commercial use in the C-2 zone district that exceeds 2,000 square feet of gross floor area. New or expanded uses in excess of 2,000 square feet of gross floor area may be permitted in accordance with the provisions of Chapter 14.34, Conditional Uses.
2. Recreational vehicle parks within the Tourist Commercial (C-2) and Public Structures (P-1) zoning districts.

Staff: Clarifies that prohibition of uses in the C-2 zone district over 2,000 square feet in size, without conditional use approval, applies to commercial uses. At its August 28, 2017 hearing, the Planning Commission questioned whether or not additional language was needed to make it clear that the provision refers to commercial land uses, not uses that are subject to commercial building codes. In the context of Chapter 14 of the Municipal Code (i.e. the Zoning Ordinance) the term "commercial use" refers only to land uses, so no further clarification is needed.

14.30.100 Special Zoning Standards in Design Review Districts

All zoning standards and requirements applicable under Ordinance No. 1308 (as amended) in the subject zoning district shall apply, except that the following additional zoning standards are applicable for the design review district as applicable in the underlying zoning designation and shall be modified for each district as specified.

A. Historic Nye Beach Design Review District:

1. No drive through windows are allowed.
2. Commercial buildings with frontage on NW and SW Coast Street, W Olive Street, NW and SW Cliff Street,

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NW Beach Drive, and NW Third Street shall be set back from the property line fronting the street no more than 5 feet unless the development provides for a pedestrian oriented amenity (such as a courtyard, patio, or café with outdoor seating), compliance with the setback is precluded by topography or by easement, or a larger setback is authorized by the Planning Commission through the design review process.

3. Required yards and setbacks established in Chapter 14.11 (Required Yards and Setbacks) and Chapter 14.18 (Screening and Buffering between Residential and Non-Residential Zones) shall be reduced by 50%, except for Section 14.11.030, Garage Setback, which is to remain at 20-feet, ~~unless the garage is placed on the property line in which case there is no garage setback requirement.~~ A setback for a garage that is less than 20-feet may be permitted if it is found by the Planning Commission to be consistent with the Design Review Guidelines pursuant to NMC 14.30.060(B).

Staff: Proposed language eliminates a zero-foot garage setback as an outright option. New development that can meet a 20-foot garage setback can proceed under the clear and objective design standards (i.e. no land use decision and opportunity for public input). Developers may seek a garage setback below 20-feet by demonstrating that the design of the building will meet the design guidelines, the process for which requires public notice and a land use decision. The Council could elect to hold to a fixed 20-foot setback, in which case the underlined language above would be dropped. The Planning Commission indicated that it could support such a move, but appeared to prefer the option of allowing a reduced setback through guideline review.

4. The following adjustments to Chapter 14.12 (Minimum Size) and Chapter 14.13 (Density Limitations, Table "A") are allowed within the District.
 - a. The minimum lot area within both the R-4 and C-2 zones shall be 3,000 square feet.
 - b. The minimum lot width for the R-4 zone shall be 30 feet.

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5. Residential use permitted on C-2 zoned property located south of NW 2nd Court and north of NW 6th Street that front NW and SW Coast Street, NW and/or SW Cliff Street, and W. Olive Street shall comply with the following additional requirements:
 - a. The maximum residential density ~~per residential unit~~ is 1,250 square feet per unit.
 - b. The maximum building height is 35 feet.
 - c. The maximum lot coverage in structures is 64%. If the proposed residential use provides at least 1 off-street parking space for each dwelling unit in a below-grade parking structure (for the purposes of this section below-grade is defined to mean that 50% or more of the perimeter of the building is below-grade) located directly below the residential portion of the structure, the maximum lot coverage allowed is 90%.
 - d. The residential use provides at minimum 1 off-street parking space for each dwelling unit.
 - e. At least one residential building per lot is set back from the property line abutting the street no more than 5 feet.

Staff: Clarifies that density refers to the number of residential units permitted on a property.

6. The following adjustments to the off-street parking requirements of Chapter 14.14 (Parking, Loading, and Access Requirements) are provided for uses within the District:
 - a. Commercial uses shall have the first 1,000 square feet of gross floor area exempted from the off-street parking calculation.
 - b. All uses within the District shall be allowed an on-street parking credit that shall reduce the required number of off-street parking spaces by one off-street parking space for every one on-street parking space abutting the property subject to the following limitations:

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- i. Each on-street parking space must be in compliance with the City of Newport standards for on-street parking spaces.
- ii. Each on-street parking space to be credited must be completely abutting the subject property. Only whole spaces qualify for the on-street parking credit.
- iii. On-street parking spaces credited for a specific use may not be used exclusively by that use, but shall be available for general public use at all times. No signs or actions limiting general public use of on-street parking spaces are allowed except as authorized by the City of Newport.

14.30.110 Modification of a Design Review Permit

A modification of an approved design may be requested of the approving authority for any reason by an applicant. Applications for a modification shall be submitted and processed in the same manner as the original application.

- A. If the requested modification is from an approval issued under design standards, the modification request shall be approved by the Community Development Director if the modification also meets the design standards.
- B. If the modification does not meet the design standards or if the modification is from an approval issued under the design guidelines, the modification shall be processed under the design review process for compliance with the applicable design guidelines. The Commission's authority is limited to a determination of whether or not the proposed modification is consistent with the applicable design review guidelines.

(Chapter 14.30 was revised by Ordinance No. 2084; adopted September 21, 2015; effective October 21, 2015.)