

## **RESOLUTION NO. PC2019-036**

### **A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH, CALIFORNIA, RECOMMENDING CITY COUNCIL AUTHORIZE SUBMITTAL OF LOCAL COASTAL PROGRAM AMENDMENT NO. LC2019-002 TO THE CALIFORNIA COASTAL COMMISSION TO AMEND TITLE 21 ENTITLED "LOCAL COASTAL PROGRAM IMPLEMENTATION PLAN" OF THE CITY OF NEWPORT BEACH MUNICIPAL CODE RELATED TO HEDGE HEIGHTS IN FRONT SETBACKS ABUTTING STRADAS WITHIN LIDO ISLE (PA2019-132)**

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

#### **SECTION 1. STATEMENT OF FACTS.**

1. As set forth in Section 30500 of the California Public Resources Code, the California Coastal Act requires each county and city to prepare a local coastal program ("LCP") for that portion of the coastal zone within its jurisdiction.
2. The California Coastal Commission effectively certified the City's Local Coastal Program Implementation Plan on January 13, 2017, and the City of Newport Beach ("City") added Title 21 (Local Coastal Program Implementation Plan) ("Title 21") to the Newport Beach Municipal Code ("NBMC") whereby the City assumed coastal development permit-issuing authority as of January 30, 2017.
3. An amendment to Title 21 is necessary to allow a maximum hedge height of five (5) feet in front setback areas abutting stradas in Lido Isle ("Amendment"), consistent with Lido Isle Community Association ("LICA") standards.
4. Pursuant to Section 13515 of the California Code of Regulations Title 14, Division 5.5, Chapter 8, drafts of the LCP Amendments were made available and a Notice of Availability was distributed on November 22, 2019 at least six (6) weeks prior to the anticipated final action date.
5. A public hearing was held by the Planning Commission on December 5, 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.* ("Ralph M. Brown Act") and Chapter 21.62 of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing.

#### **SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.**

The Amendment is not a project subject to the California Environmental Quality Act ("CEQA") in accordance with 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"). The proposed action is also exempt pursuant to CEQA Guidelines Section 15061(b)(3), the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Lastly, pursuant to CEQA Guidelines Section 15265(a)(1), local governments are statutorily exempt from the requirements of CEQA in connection with the adoption of a local coastal program. The LCP Amendment itself does not authorize development that would directly result in physical change to the environment.

### SECTION 3. FINDINGS.

1. Authorizing the Amendment would correct an existing inconsistency in hedge height regulations between the City and LICA. City regulations contained within Title 20 (Planning & Zoning) of the NBMC establish a maximum of 42 inches for hedges within front setback areas. In 2001, LICA homeowners voted to amend the Association Covenants, Conditions, and Restrictions ("CC&Rs") to change the hedge height limit abutting stradas (public walkways) from 30 inches to 60 inches. The proposed amendment to Title 21 is to increase maximum hedge heights in front setback areas abutting stradas on Lido Isle from 42 inches to 60 inches, consistent with LICA CC&Rs.
2. The Amendment to raise hedge heights will not have an impact on public views or access to the bay front. Stradas serve as pedestrian walkways for internal lots on Lido Isle and generally do not have public views of bay. Additionally, the bay is not directly accessed from the stradas, as access is found off various access points from Via Lido Nord and Via Lido Soud around Lido Isle.
3. The Amendment to Title 21 shall not become effective until approval 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.
4. Title 21, including the proposed amendment, will be carried out fully in conformity with the California Coastal Act.
5. The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

### SECTION 4. DECISION.

#### **NOW, THEREFORE, BE IT RESOLVED:**

1. The Planning Commission finds the Amendment is not a project subject to CEQA pursuant to Section 21065 of CEQA and CEQA Guidelines Sections 15060 (c)(2), 15060 (c)(3), and 15378, California Code of Regulations, Title 14, Division 6, Chapter 3. The Amendment is also exempt pursuant to CEQA Guidelines Section 15061(b)(3) because it has no potential to have a significant effect on the environment. Finally, the adoption of local coastal programs are statutorily exempt according to Section 15265(a)(1) of the CEQA Guidelines.

2. The Planning Commission of the City of Newport Beach hereby recommends submittal of Local Coastal Program Amendment No. LC2019-002 related to hedge heights in front setbacks abutting stradas within Lido Isle, amending Section 21.38.060 (Nonconforming Parking) of Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code as set forth in Exhibit "A," which is attached hereto and incorporated herein by reference, to the California Coastal Commission.

**PASSED, APPROVED, AND ADOPTED THIS 5<sup>TH</sup> DAY OF DECEMBER, 2019.**

AYES: Ellmore, Kleiman, Koetting, Lowrey, Rosene, Weigand

NOES:

ABSTAIN:

ABSENT: Klaustermeier

BY: 

Peter Koetting, Chairman

BY: 

Lee Lowrey, Secretary

**EXHIBIT “A”****Proposed Amendment to the City of Newport Beach Local Coastal Program Implementation Plan Related to Hedge Heights in Front Setbacks In Lido Isle (LC2019-002)**

**Section 1:** Amend Section 21.30.040 (Fences, Hedges, Walls, and Retaining Walls) of Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code to read as follows:

**21.30.040 Fences, Hedges, Walls, and Retaining Walls.**

This section provides standards for the provision of fences, hedges, walls, and retaining walls for development in all coastal zoning districts.

**A. Maximum Height Allowed.**

1. Fences, Hedges, and Walls. Maximum heights of fences, hedges, and walls are shown in Table 21.30-1. Fences, hedges, and walls shall not be allowed or allowed with a reduced height when necessary to protect coastal resources such as public coastal view, public access, and sensitive habitat.

**TABLE 21.30-1****MAXIMUM HEIGHT OF FENCES, HEDGES, AND WALLS**

<b>Location</b>	<b>Maximum Height</b>
Front setback areas.	42 inches. See subsection (B) of this section.
Rear and interior side setback areas.	6 feet in residential and commercial coastal zoning districts. 8 feet in industrial coastal zoning districts adjacent to residential uses.
Setback areas abutting or adjacent to the waterfront of Newport Bay, the shoreline of the Pacific Ocean, the Old Channel of the Santa Ana River (the Oxbow Loop), or the channels in West Newport.	42 inches from existing grade prior to construction. Setback areas on Balboa Island and Little Balboa Island that are abutting or adjacent to Newport Bay are regulated by subsection (B) of this section.

**TABLE 21.30-1****MAXIMUM HEIGHT OF FENCES, HEDGES, AND WALLS**

<b>Location</b>	<b>Maximum Height</b>
At intersections of streets, alleys and driveways within traffic sight areas.	See Section <u>21.30.130</u> (Traffic Safety Visibility Area).

2. Retaining Walls. The maximum height of a retaining wall shall be eight feet measured from finished grade at the base of the wall, not including any required guardrails. A minimum horizontal separation equal to the height of the tallest retaining wall shall be provided between retaining walls, except that the required separation shall not be more than six feet. The above requirements shall not apply to retaining walls that are an integral part of principal structures. An increase in the height of a retaining wall may be requested in compliance with Chapter 21.52 (Coastal Development Review Procedures).

B. Special Area Regulations. In front setback areas in Balboa Peninsula, Balboa Island, Corona del Mar, West Newport, East Bay Front on Little Balboa Island, and North Bay Front and South Bay Front on Balboa Island fences and walls shall be allowed to extend to a height of five feet; provided, that any portion of the fence or wall above two feet shall be constructed of open grillwork, wrought iron, latticework, pickets, Plexiglas, or similar materials so that at least forty (40) percent of the portion of the fence or wall above two feet is open. See Figure 3-1.

C. Exceptions to Maximum Height.

1. Grade Differential. Where the existing or proposed grade of a lot adjacent to the front setback area is more than twenty-four (24) inches above the adjacent sidewalk (or curb elevation where no sidewalk exists), a maximum twenty-four (24) inch high retaining wall shall be allowed to be located at the front property line. Additional retaining walls shall be allowed to a maximum height of thirty-six (36) inches each, provided they are set back a minimum distance of twenty-four (24) inches from the inward face of the previous retaining wall. Additional retaining walls shall be subject to the same limitation. A maximum forty-two (42) inch guardrail shall be allowed atop the uppermost retaining wall for safety purposes, provided the guardrail is constructed of open grillwork, wrought iron, latticework, pickets, or similar materials so that at least forty (40) percent of the fence is open. See Figure 3-1.

2. Decorative Fence/Wall Details and Lights.

- a. Finials, light fixtures, pilaster caps, pots, and similar decorative items may be placed on fence or wall vertical support elements (e.g., pilasters, pillars, posts, etc.), provided they are secure and do not extend more than twelve (12) inches above the maximum allowed height.
- b. The number of decorative items (e.g., finials, pilaster caps, pots, and similar items) and light fixtures shall be limited to not more than one item or fixture for every six lineal feet of fence or wall.

3. Fencing for Pools and Spas.

- a. Swimming pools, spas, and other similar features shall provide safety fencing.
- b. Fencing and guardrails for ponds, spas, and swimming pools located in a front setback area or in the rear and side setback areas regulated as front setback areas on lots with forty-two (42) inch height limitations may be allowed to exceed the height limit in compliance with the following standards:
  - i. Fences shall be constructed of open grillwork, wrought iron, latticework, pickets, or similar materials so that at least forty (40) percent of the fence or wall is open. In lieu of the above, glass or Plexiglas may be allowed; and
  - ii. Fence height shall be limited to the minimum required for safety.

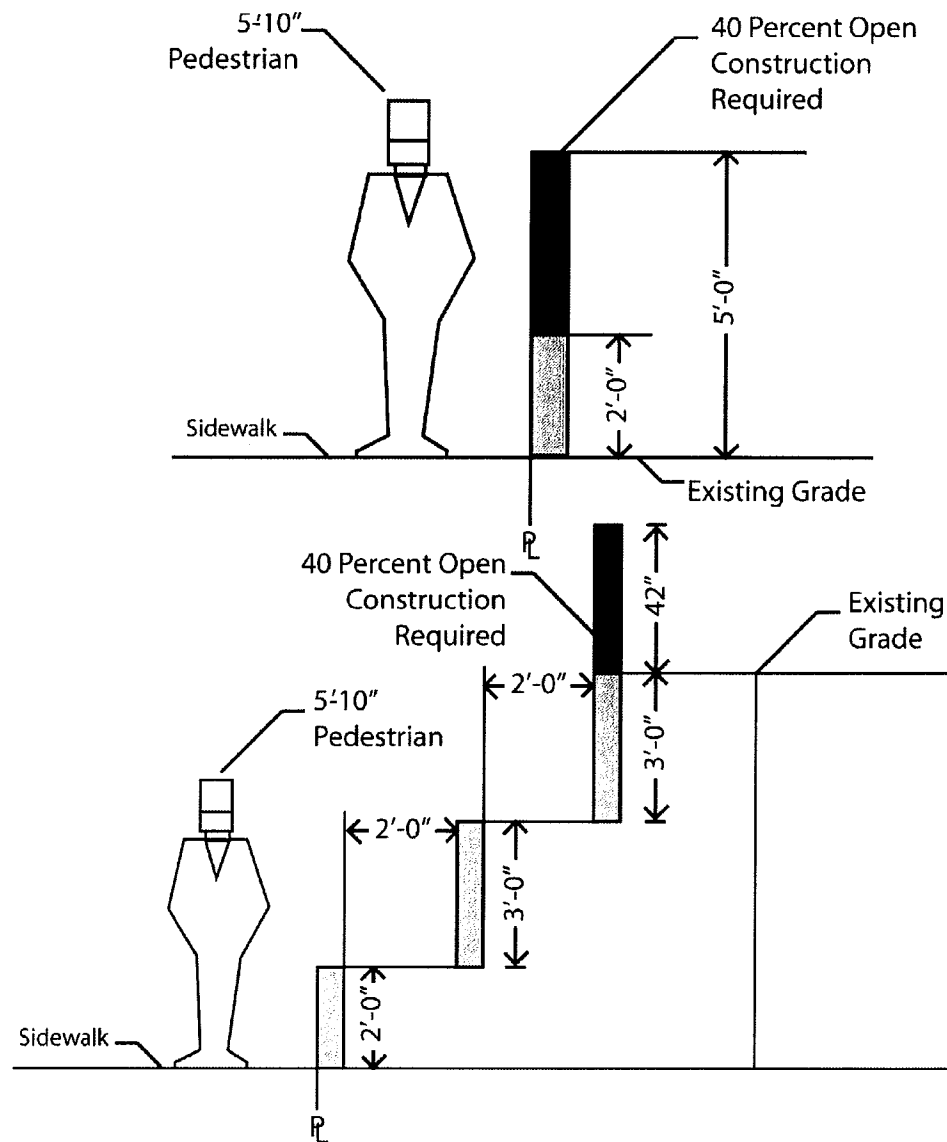


Figure 3-1

**Grade Differential at Front Property Line**

4. Residential Uses Adjacent to Commercial Uses or Alleys. For residential lots adjacent to nonresidential coastal zoning districts or commercial alleys, fences, walls, or hedges may be up to eight feet in height in required residential side yards for buffering and/or sound attenuation.
5. Residential Lots Where the Top of Slab Is Required to Be Raised to 9.0 NAVD 88 and Where the Grade of the Lot Is Proposed to Be Increased. The height of fences and walls within required side and

rear yard setback areas may be increased provided the height does not exceed six feet as measured from the proposed finished grade and nine feet as measured from the existing grade prior to construction. Additionally, the height of fences or walls shall not exceed nine feet as measured from the existing grade of an abutting lot. The portion of the fence or wall above six feet in height from the existing grade prior to construction shall be constructed of open grillwork, wrought iron, latticework, pickets, or similar materials so that at least sixty (60) percent of the fence or wall is open or is constructed of a transparent material.

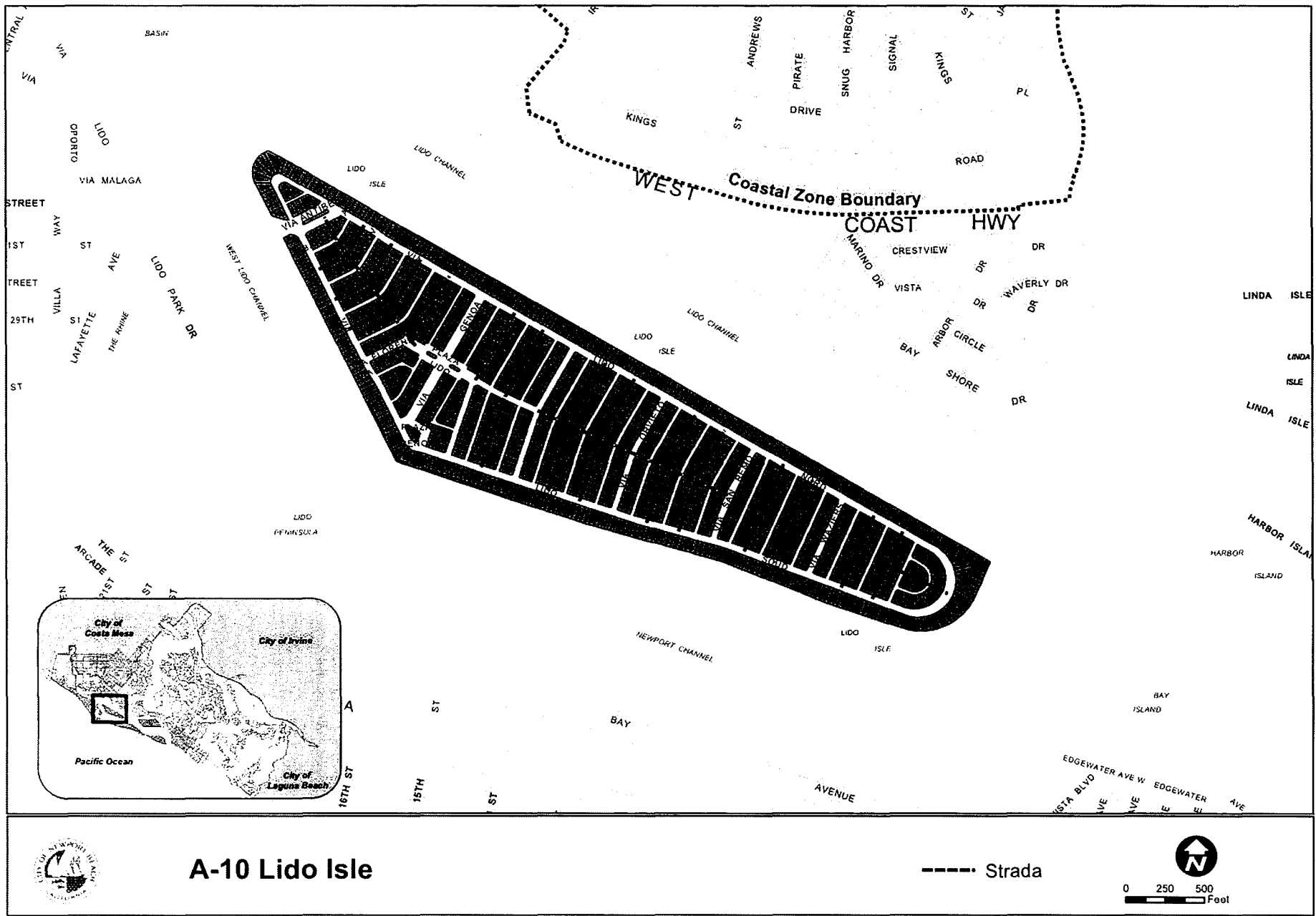
6. Hedges in Lido Isle. In front setback areas abutting stradas in Lido Isle, the maximum hedge height shall be five feet.

D. Measurement of Fence or Wall Height. The height of a fence, hedge, or wall shall be measured from the existing grade prior to construction at the location where the fence, hedge, or wall is located.

E. Prohibited Fence Materials. Barbed wire, electrical fences, razor wire, and other similar materials shall not be allowed in residential coastal zoning districts. (Ord. 2016-19 § 9 (Exh. A)(part), 2016)

**Section 2:** Amending Section 21.80.010 (Area Maps) of Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code to include Area Map A-10 – Lido Isle as follows:





## A-10 Lido Isle