

CITY OF BELVEDERE

ORDINANCE NO. 2020-

AN ORDINANCE OF THE CITY OF BELVEDERE
AMENDING BELVEDERE MUNICIPAL CODE TITLE 20, DESIGN REVIEW
ORDINANCE, SECTION 20.04.050

THE CITY COUNCIL OF THE CITY OF BELVEDERE DOES ORDAIN AS FOLLOWS:

SECTION 1. Findings.

- A. The City of Belvedere's Design Review Code chapter 20.04 provides that all new building, structures, and other exterior physical improvements require design review approval, and that any such improvement constructed without design review approval constitutes a nuisance and violates the Municipal Code; and
- B. Section 20.04.050 provides that the City may issue a stop work order for any structure or improvement that is being constructed without design review approval, and that the City may enforce design review requirements by all available legal and administrative remedies including but not limited to: Nuisance Abatement (Municipal Code Chapter 8.12); Administrative Remedies (Municipal Code Chapter 1.14); and/or 3) Administrative Citations (Chapter 1.15), and that all remedies are cumulative; and
- C. The City desires to clarify procedures necessary to correct design review violations, including structures that were constructed without design review approval, utilizing the existing enforcement mechanisms, deadlines, and procedures in Title 1 of the Municipal Code (the "Ordinance Amendment"); and
- D. The Ordinance Amendment is consistent with State law and common practices of other California jurisdictions in enforcing design review approval requirements; and
- E. The Ordinance Amendment will protect and promote the general public health, safety, and welfare and preserve the quality of life in Belvedere by encouraging compliance with the Design Review Ordinance; and
- F. The Planning Commission voted on February 18, 2020 to recommend that the City Council adopt the proposed Ordinance Amendment; and
- G. The City Council finds that the proposed Ordinance Amendment is categorically exempt from the California Environmental Quality Act ("CEQA") under CEQA Guideline 15061(b)(3) (common sense exemption), because it can be seen with certainty that there is no possibility that the proposed Amendment could have a significant environmental effect.

SECTION 2. Amendment.

Belvedere Municipal Code section 20.04.050 is hereby amended as follows: (amended language in underline, deleted language in ~~strikeout~~.)

20.04.050 Effect of noncompliance—Structures deemed public nuisance—Retroactive approval—Abatement-authority.

A. Any building permit or occupancy permit hereafter issued in conflict with this Chapter shall be void. Any work or structure or improvement which lacks or is not in compliance with Planning Commission approval or conditional approval or built or commenced without design review approval is in violation of this Chapter, may be stopped by order of the Building Official, and shall be declared to be unlawful and a public nuisance. Each day on which a violation continues shall be regarded as a new and separate violation. This subsection may be enforced by all available legal and administrative remedies including but not limited to: Nuisance Abatement (Municipal Code Chapter 8.12); Administrative Remedies (Municipal Code Chapter 1.14); and/or 3) Administrative Citations (Municipal Code Chapter 1.15).

B. Retroactive Design Review.

1. An application may be made for retroactive design review for a structure or improvement pursuant to Section 20.04.015 which lacks or is not in compliance with Planning Commission approval or condition of approval or built or commenced without design review approval, by application and submission of an application fee as established by resolution of the City Council, and plans and other data in the prescribed form and conditions. An application for retroactive design review shall be processed as provided in Sections 20.04.020 and 20.04.030 of this Code, provided however, that any application that would qualify for administrative approval pursuant to Section 20.04.020(B) shall be processed according to the procedures set forth for a design review exception pursuant to Section 20.04.020(B)(3).

~~2. As a condition of any retroactive design review approval granted by the Planning Commission, a fine shall be imposed in an amount no less than \$1000 and not to exceed \$100,000 per retroactive design review application as the commission, in its sole discretion, deems appropriate depending on the severity of the violation and based on evidence presented at the hearing. As a condition of any retroactive approval granted administratively by staff pursuant to Section 20.04.020(B) of this Code, the fine shall be \$500 per retroactive design review application.~~

~~3~~2. If the Planning Commission finds, based upon substantial evidence in the record, that the applicant has intentionally proceeded with construction without obtaining the required design review approval, the Planning Commission may deny the application for retroactive design review on that ground alone. If the application is denied, City staff shall set the matter for a hearing before the City Council to determine whether a public nuisance exists and the appropriate abatement thereof.

C. If so ordered by the City Council, the City attorney shall immediately commence an action or proceeding to abate, remove, restrain or enjoin any such public nuisance, to restrain or enjoin any person from erecting, construction, altering or extending a structure or using any premises in

violation of the provisions of this Chapter. The Building Official shall promptly report to the Director of Planning and Building any and all such violations which come to his or her attention.

SECTION 3. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof, 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 Ordinance. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or effective. To this end the provisions of this Ordinance are declared to be severable.

SECTION 4. Effective Date. This Ordinance shall take effect and be in force thirty (30) days after the date of its passage. Within fifteen (15) days following its passage, a summary of the ordinance shall be published with the names of those City Council members voting for and against the Ordinance and the City Clerk shall post in the office of the City Clerk a certified copy of the full text of the adopted Ordinance along with the names of the members voting for and against the Ordinance.

INTRODUCED on February 18, 2020 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED: _____
Peter Mark Planning Commission Vice Chair

ATTEST: _____
Christina Cook, City Clerk