

## November 12, 2024, City Council Agenda Comments

The following comments on items on the Newport Beach City Council [agenda](#) are submitted by:

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### ***Item 1. Minutes for the October 22, 2024 City Council Meeting***

The passages shown in *italics* below are from the [draft minutes](#) with suggested corrections shown in ***strikeout underline*** format. The page numbers refer to Volume 66.

**Page 193**, Item IV, bullet 2, paragraph 2: “*Assemblymember Dixon noted a 25-bill limit per ***legislature legislator*** and encouraged the community to write letters and testify in person.*”

**Page 194**, Item VIII, paragraph 2: “*Regarding Item 17 (Year-End Budget Results and Surplus Allocation), Adam Leverenz inquired if it was possible ***not to allocate save*** an unrestricted General Fund surplus for unexpected future needs. Mayor O’Neill stated that Council could reallocate the funds in the future if needed.*” [See [video](#). The speaker inquired if it was possible to not allocate the surplus and instead let it “sit” until a need for it arises.]

### ***Item 3. Ordinance No. 2024-29 and Resolution No. 2024-80: Amendments to Ground Lease and Local Coastal Program Amendments Related to the Lido House Hotel Site (PA2020-068)***

The two parts of this item are distinctly different: the completion of land use changes approved by the Coastal Commission is simply a ratification of something already considered; the changes to the lease are entirely new and previously unconsidered.

Of the three new agreements – Attachment F, consisting of a Second Amendment to the Ground Lease (page 3-53); and Attachment G, consisting of an Option Agreement to Ground Lease (page 3-60) with Related Third Amendment to Ground Lease (page 3-75) – I have not attempted to read all the details, but I would note Recital A of each appears to identify the phrase “Ground Lease” as a defined term, but then the body of the agreement seems to refer to “Lease” and “Ground Lease” with indifference. Is there a “Lease” separate from the “Ground Lease”?

Additionally, Recital B of the Third Amendment mentions there having been a First Amendment, but nowhere do its recitals mention that subsequent to the First Amendment there was a Second Amendment.

And Recital F (“*Lessee proposes to construct five (5) cottages, fourteen (14) public parking spaces, public sidewalks, and public landscaping areas adjacent to the Premises at the contiguous real property located at 475 32nd Street*”) seems confusing as a project description. If this is referring to the old fire station site, I don’t believe the cottages are going there, and I believe the 14 parking spaces refers only to those to be developed along Via Oporto, with substantially more (possibly private ones) to be created in the demolished fire station’s location.

**Item 8. Resolution No. 2024-81: Initiating General Plan and Zoning Amendments Related to the Lower Castaways Aquatics Facility (PA2024-0138)**

The statement on page 8-2 that a City-owned community Aquatics Facility is “*consistent with the intent of the CM Land Use Category*” seems disingenuous to me. First, the CM category is designated for “Recreational and Marine **Commercial**” use, and as further detailed on that page, quoting from [Table LU1](#) of the [General Plan](#) Land Use Element, “*The CM designation is intended to provide for **commercial** development on or near the bay in a manner that will encourage the continuation of **coastal-dependent** and **coastal-related** uses.*”

Not only is a City-owned community aquatics facility not commercial, but it is neither coastal-dependent nor coastal-related. It could equally well be proposed in Kansas.

While the Planning Director may have some discretion to find additional uses compatible with a designation, that is generally possible only when there is not some other designation intended for the proposed use. In this case there is. Namely, the PR (Parks and Recreation) General Plan land use designation, which at the end of [Table LU1](#) is described as the designation that “*applies to land used or proposed for active **public** or private recreational use. Permitted uses include parks (both active and passive), golf courses, marina support facilities, **aquatic facilities**, tennis clubs and courts, private recreation, and similar facilities.*”

As a result, I believe that to execute the proposed project, the Council will not only have to raise the 2,000 square foot Anomaly 54 development limit and amend the Castaways Marina Planned Community (PC-37) text, but also change the General Plan land use designation from CM to PR.

In addition, parallel legislative changes will be needed to our [Local Coastal Program](#), whose [Coastal Land Use Plan](#) contains, in [Chapter 2](#), the identically-defined CM designation and applies it to Lower Castaways in the [Coastal Land Use map](#) where it needs to be changed to PR, and whose Implementation Plan refers (in [Chapter 21.26](#)) to the PC-37 marina plan as the property’s Coastal Zoning District, including the expectation of 70 slips in Subsection 21.26.055.L.

All of this, I believe, would have to be changed to allow a public aquatics facility on a property designated for coastal-dependent or related commercial uses.

**Item 12. Amendment No. One to Lease with Newport Harbor Post No. 291 of the American Legion for Use of the Real Property and Tidelands Located at 215 15th Street**

I am puzzled by the reference near the top of page 12-3 to the “Property” having “*a parking lot consisting of 26 spaces.*” The aerial photo on the preceding page appears to show a lot with far more spaces than that.

There also could be a discrepancy regarding the current rent requirements. Both pages 12-3 and 12-4 say the current base rent is \$13,478.05 per month, which (multiplying by 12) would be \$161,736.60. Yet, the fourth paragraph on page 12-3 says “*Total rent paid to the City for calendar year 2023 was \$155,582.46.*”

While I appreciate there may be a dispute as to whether the Post has met its obligations to pay an amount *over* the base rent, how could it be that the City accepted an amount that appears to be *less* than what it claims to be the current base rent? Does the “current” \$13,478.05 per month figure include an upward adjustment<sup>1</sup> made after the calendar year 2023 rent was due?

Additionally, page 12-4 refers to “a *City Council working group*” that since 2021 has guided City staff negotiations with the Post. Who is this group? And who authorized them to do this? Direction of staff by individual Council members seems inconsistent with the Charter, specifically [Section 406](#), which expects the Council to act collectively, not individually.

### ***Item 15. Ordinance Nos. 2024-30 to 2024-32 and Resolution No. 2024-83: Adopting a Nexus Study and Fee Schedule, and Establishing a Development Impact Fee Program***

The staff report Discussion (on page 15-2) refers to the absence of existing impact fees for “*water facilities besides a nominal fee for new sewer connections.*” I believe there is also an existing fee for new water connections in areas where the City provides water service, as authorized by NBMC [Chapter 14.33](#) (Water Capital Improvement Charges).

The discussion goes on to mention the City’s in-lieu park dedication fees, which are not part of the current action, and which it says apply only to new for-sale residential subdivisions. I have never understood its limitation to for-sale residential product. Don’t renters also need and use park space?

Also, unless I missed it, the staff report also does not do a good job of explaining why Table 4 (Revenue Projections, Facilities Costs, and Non-Fee Funding Required) on page 15-11 shows the proposed Police and Fire impact fees will cover only a part of the needed improvements. Apparently this is because substantial improvements would be needed even if there were no new development.

With regard to proposed Ordinance No. 2024-30, I do not understand its references to “sewage collection and treatment facilities” and “sewage treatment plant improvements” on page 15-84. While the City maintains infrastructure to collect sewage, I am not aware of it having, or planning to have, any sewage treatment plants. I thought the Orange County Sanitation District handled that. Also, since the sewer connection fee is currently imposed by NBMC [Section 14.24.050](#), and will now be covered by a revised Chapter 14.33, does Section 14.24.050 need to be revised or repealed?

With regard to proposed Ordinance No. 2024-32, I am puzzled why, on the last line of page 15-99 it refers to “*the City’s police departments.*” Does Newport Beach have more than one Police Department?

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<sup>1</sup> 2023 having been the 20th lease year, Section 4.1(b) on page 12-33 appears to have required at least a 10%, and likely larger, increase on January 1, 2024, to reflect cost of living increases over the previous five years. It would have been helpful to quote the base rent in the same year (2023) for which the total rent paid is reported.

### ***Item 16. Resolution No. 2024-84: Amending City Council Policy I-10 Including Re-Titling and Cultural Arts Sculpture Exhibition Proposal***

The City Clerk's [Council Policies Archive](#) reveals that the existing Policy I-10 is a mish-mash of two separate earlier policies, [F-20](#) from 1981, establishing a Reserve Fund for Culture and Arts,<sup>2</sup> and [I-20](#) from 1983, regarding Co-sponsorship for Cultural Events and Arts Groups, which seems to have almost immediately been appended to a [1983 revision](#) of F-20, with the name of the combined policies changed to [I-12](#) in 1994, and finally to [I-10](#) in 2003.

The Council's originally flexible contribution to the Reserve Fund was set at a fixed \$55,000 annually in the [1988 revision of F-20](#). It is not clear what became of the Reserve Fund, or when contributions to it ceased, but they have not been made in recent years.

The Reserve Fund (independent of the annual Cultural Arts grants program) does not sound like an entirely bad idea to me, and I am not sure why the Arts Commission is recommending its elimination.

As to the Sculpture Exhibition proposal, I believe the same savings could be realized by going to 3-year stays on a 1.5 year rotation cycle, as by going to 3-year stays with an installation skipped every third year. To me, an even, regular 1.5 year cycling would be preferable.

### ***Item 17. Approval of an Agreement with Visit Newport Beach, Inc. for Tourism Promotion, Branding and Marketing Services***

The present proposal would make a number of positive changes to the relationship between the City and Visit Newport Beach. However, it also seems to continue the long-term trend of the organization claiming an ever increasing fraction of the City's tourism revenue.

It should be remembered that VNB was previously called the "Conference and Visitors Bureau," and, as with other industries in Newport Beach, for most of its history the CVB was self-funded by those it marketed, and operated completely independently of the City (much like the recently created "Meetings Assessment Partnership").

Only in 1987, by a contentious 4:3 vote, did the Council agree to begin supporting the CVB by imposing a Visitor Service Fee (NBMC [Chapter 3.28](#)), that directed 1% of room rents collected by the tourism industry to the CVB, which was added to the City's own existing 8% of rents collected TOT fee (NBMC [Chapter 3.16](#)).<sup>3</sup>

Over the years, VNB's share of the total revenue collected by the City from guests, which started as 1/9 (11%) of a 9% charge, has crept up to 18% of a total 10% charge (with the Visitor Service Fee seeming to have lost its separate meaning and purpose).

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<sup>2</sup> Not to be confused with the later, short-lived [Policy I-13](#) establishing a Public Arts and Cultural Facilities Fund to be filled by development fees.

<sup>3</sup> See the [Item I-1](#) staff report from February 9, 1987, as well as comments in opposition of supporting the CVB starting on page [53](#) (January 26, 1987) and starting on page [72](#) (February 9, 1987) of the Volume 41 of the City Council minutes.

## Will the City be Retaining Its Short-Term Lodging Revenue?

The Abstract to the current staff report assures readers that VNB *“agreed to the Committee’s proposal to have the City retain the TOT revenues associated with short-term lodging to help it further address the related impacts and community needs.”*

According to page 55 of the City’s current adopted [2025 budget detail](#), in FY2023-2024 it expected to pay Visit Newport Beach (“CVB”) \$1,871,100 in residential (short-term lodging) TOT and \$5,150,250 of hotel TOT. In FY2024-2025, those numbers, it says, are expected to be \$1,855,902 and \$5,305,875. From, this one would have guessed the statement in the Abstract means the City would be retaining roughly \$1.9 million per year formerly going to VNB.

However, considering this is accompanied by a request to increase VNB’s share of the total revenue collected by the City from the current 18% to a new 23%, and a request to terminate the \$150,000 per year “public benefit funding” VNB had been returning to the City,<sup>4</sup> the concession negotiated is much more modest.

Under the new arrangement, by the City’s own Fiscal Impact estimate on page 17-4, the City will be sending VNB only \$400,000 per year less than it would have under the old arrangement. And considering VNB will no longer be returning \$150,000 of what it receives, the among being “retained” by the City would appear to be a mere \$250,000 per year – far less than the \$1.9 million formerly sent to them from short-term lodgings collections.

In short, the idea that the proposed arrangement will allow the City to retain the charges imposed on short-term lodging guests, rather than using them for marketing, seems a fantasy.

## Could Transparency Be Improved?

The proposal suggests a number of improvements in transparency, including consolidating “Newport Beach & Company” into a single organization with increased oversight by a seven-member governing board, two of whose members will be City employees.

I would like to suggest there be a requirement that the board meetings be noticed and open to the public.

I would also like the Council to consider a requirement to let it appoint a Council member to serve on the new VNB board. Ideally, that would lead to more direct communication during Council Announcements as to what VNB is up to.

## Miscellaneous Comments

I have not read the proposed contract in great detail, but the Scope of Services beginning on page 17-18 shows signs of having been hastily thrown together with limited proofreading.

For example, on page 17-21, in the second bullet, *“A policy to establishing a process ...”* was presumably intended to read *“A policy **establishing** a process ...”*

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<sup>4</sup> See Term/Topic 2 in Attachment C, page 17-45.

And on page 17-22, in the third bullet under Governance, the word “by” does not make sense in “VNB shall seek City Council approval before obligating itself in any way to pay any “fixed operating costs” **by** One-Hundred Thousand Dollars (\$100,000) or more in any twelve (12) month period.” Was it intended to read “**of**”? Or “**increased by**”?