

March 26, 2019, City Council Consent Calendar 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 March 12, 2019 City Council Meeting

The passages shown in *italics* below are from the [draft minutes](#) with suggested corrections indicated in **strikeout underline** format. The page numbers refer to Volume 64.

Page 51, Item SS3, paragraph 3 from end: “*Mayor Dixon pointed out the total cost for CIP projects, noting that Council only approves \$5 million **of General Fund money** in the budget, and expressed appreciation to staff for pursuing external funding sources and grants.*”

Page 51, Item SS3, last paragraph: “*Jim Mosher received clarification from Public Works Director Webb that the amount of **General Fund money in** the CIP budget is determined by Council.*”

Page 51, Item SS4: “*Without objection, the item was continued to the March 26, 2019 study session.*” [It might be noted the item doesn’t seem to be on the present agenda.]

Page 55, line 2 from end: “*The motion **unanimously** carried **unanimously.***”

[This may be a matter of taste, but I would suggest this change be made in the eight places where this new way of recording votes appears (for the first time) in the present minutes. An adverb like this sounds more natural to me *after* the verb, as in “the dog ate quickly,” than before it. I seem to not be alone in this perception: Google currently [finds](#) 396,000 web pages containing “*The motion carried unanimously*” compared to [just](#) 17,400 with “*The motion unanimously carried.*” In adopting this new, more concise way of reporting Council votes (which I like), City Charter [Section 410](#) should be kept in mind: “*At the demand of any member, the City Clerk shall call the roll and shall cause the ayes and nays [erroneously changed in 2012: the former and normal counterpart of “ayes” is “noes”] taken on an issue which is the subject of the demand to be entered in the minutes of the meeting.*” Although there is rarely a “demand” for a roll call vote, use of the electronic voting system means all votes are effectively taken by roll call. Nonetheless, the [current Policy A-1](#) (see “A” on page 10), as revised in August 2017, omitted the mention of electronic voting found in the [former Policy A-10](#). The current policy appears to contemplate only oral votes, with members announcing a “yes” or “no” to be recorded in the minutes.]

Page 57, Item 13, end of paragraph 1: “*... and thanked the Finance Committee, staff and past **Council Councils** for their efforts.*”

Page 57, Item XVII: “*Robert Rush discussed a lawsuit that he was recently involved in, indicated that he had filed a complaint with the Fair Political Practice Commission (FPPC) regarding Council Member Herdman, and provided a copy of the complaint to the City Clerk.*” [The document mentioned here does not yet appear to have been archived with the meeting materials. I would think it should be.]

Page 60, last paragraph: “Mel ~~Beal~~ Beale, Airport Working Group (AWG), expressed support for Alternative 3,…”

Item 3. Resolution No. 2019-24: Amendments to the Records Retention Schedule

Since the expectation that records will be retained seems fundamental to transparency, it remains unfathomable to me why Newport Beach would allow Diane Gladwell to copyright the City Council’s Records Retention Schedule as her personal work product, thereby prohibiting the public from examining anything but a single physical copy of it, available for inspection only, on request, in person, in the City Clerk’s office.

In addition, the staff report gives no clear explanation of the specific changes being requested. And even if it did, it would, for the foregoing reason, be difficult for the public to assess their significance without being to see the larger document in which they exist.

As to the proposed Resolution No. 2019-24, it is good to see the City Attorney has personally signed off on this and the other resolutions in the present agenda packet (as opposed to seeing only the scribbled initials of some unidentifiable surrogate).

That said, this resolution, like most of the others, has its problems.

In particular, Section 3 (staff report page 3-4) implies Exhibit 1 is a complete copy of the Records Retention Schedule adopted in 2014, to which amendments have been made by Resolution Nos. 2016-48 and 2018-18. In fact, Exhibit 1 is nothing of the sort. It appears, instead, to be a coded and cryptic list of changes to the existing RRS which the Council is being asked to authorize. It was possibly meant to read something like: “**Section 3:** *The records of the City of Newport Beach, as set forth in the Records Retention Schedule, ~~Exhibit 1~~, and as amended by Resolution Nos. 2016-48, and 2018- 18 and Exhibit 1 (“Amended Records Retention Schedule”), are hereby authorized to be destroyed in accordance with California Government Code Section 34090 et. seq. and the applicable timeline set forth in the Amended Records Retention Schedule upon the request of the Department Directors and with the written consent of the City Attorney, without further action by the City Council of the City of Newport Beach.*” – although, even then, Exhibit 1 sets forth a clear timeline only for item “P-034” on staff report page 3-9. The Council is apparently being asked to give permission for Building Permit Applications (staff report page 3-6) to be destroyed immediately, even though technically they will no longer be listed in the RSS at all, so no timeline is being adopted (not to mention the strangeness of throwing away building permit applications, when they seem like something one would want to keep for proof of what was originally requested).

Slightly more philosophically, I have trouble understanding the rationale for erasing electronic records. The first “Whereas” of the proposed resolution says “*the maintenance of numerous records is expensive,[and] slows document retrieval.*” I don’t believe that is true of electronic records: their storage is increasingly *inexpensive* and any competent IT Department should be able to design a system in which the quantity of records stored does not significantly affect the retrieval time (especially for a fixed subset, such as the most recent records).

Item 4. Resolution No. 2019-25: Formation of a Homeless Task Force

As noted under Item 3, it is good to see the City Attorney personally reviewing resolutions as (arguably) required by City Charter [Section 602\(f\)](#). This one reverts, however, to “approval as to form” by the undecipherable initials of some unknown person (see page 4-4), seriously diminishing accountability.

The following corrections to the proposed Resolution No. 2019-25 are suggested:

Page 4-3: “Section 1: The City Council does hereby establish the Newport Beach Homeless Task Force (“Task Force”). Attachment “A”, **which is attached hereto and incorporated herein by this reference**, shall govern the membership, term, meetings, purpose and responsibilities of the Task Force, ~~which is attached hereto and incorporated herein by this reference.~~” [The Task Force is obviously **not** attached, but Attachment “A” is.]

Also, for correctness in the next to last line: “of the CEQA Guidelines, California Code of Regulations, Title 14, **Division 6**, Chapter 3, because it”

Page 4-5: “AUTHORIZATION: Established by Resolution No. 2019-**25** adopted on March 26, 2019.”

“MEMBERSHIP: The Task Force shall be comprised of two (2) councilmembers and seven (7) residents appointed by the Mayor and confirmed by the City Council. **Council Policy A-2 is waived as it pertains to the term of Council and Committee members appointed to the Task Force. As provided herein, the term of the appointed members of the Task Force shall be indefinite pending City Council action or expiration of the Task Force's term listed above.**”

[This elaborate statement about duration of service is unnecessary, and confusing. First, because City Council Policy A-2 says nothing about the term of appointments, and hence does not need to be waived. And second, because the duration of the committee is specified in the separate “TERM” paragraph. If, despite that, this unnecessary passage is retained, the last sentence should end: “... or expiration of the Task Force's term listed **above below.**”]

“QUALIFICATIONS OF MEMBERS: ... The Task Force shall include residents with an interest in working to create a vision and plan to respond to the issues of homelessness in Newport Beach, **have and having** expertise in housing, mental health services, social services, public safety, health services, or education.”

[note: I might have an interest in volunteering to serve on this committee, but the “expertise” requirement rules me out. In considering the qualifications it wants to establish, I think the Council should be avoid making them so narrow that the applicants will be persons with the appearance of a financial interest in the outcome.]

*“MEETINGS: The Task Force is an ad hoc committee. Meetings shall be held as required by the business needs of the Task Force **in-such at** locations, dates and times in accordance with the Ralph M. Brown Act.”*

“PURPOSE & RESPONSIBILITIES:

...

*A. Develop strategies **and a** plan to integrate all services needed to address homelessness.*

*D. Develop **an** appropriate metrics system to monitor reduction of homeless **population**.*

E. Report the Task Force’s conclusions back to the full City Council.

[As to the need for “E,” the most fundamental responsibility of the committee seems to have been omitted.]

Item 5. Resolution No. 2019-26: Amending the Structure, Membership, Roles and Responsibilities of the Aviation Committee

I commend the City for reducing the size of the Aviation Committee. I personally feel 15 members is still too many. As with the present committee, the large number means most matters will pass by with most members saying nothing, which creates a poor impression of their involvement and active engagement in important issues – as well as the public’s ability to interact effectively with those voting.

I am also uncomfortable with the seats restricted to members or designees of outside interest groups. It seems to me that the responsibility for making appointments to City bodies lies with our elected representatives on the City Council. While the individual Council members, when considering applications, are free to consider involvement in outside interest groups, allowing outside bodies or persons to designate the appointees seems, to me, an improper delegation of a governmental function. I feel all positions should be open equally to all citizens meeting the technical requirements for the position, without the need for endorsement by anyone other than a majority of the Council members.

Naming outside groups also seems improper since the list can change over time. The groups named may disappear, while others may self-declare themselves into existence. I don’t think the government should be in the business of designating some as more “valid” than others.

For this reason, I would eliminate positions “F,” “G” and “H” on page 5-8.

I also do not see the need for the “at-large member” (“C” on page 5-7).

Eliminating these four positions would reduce the committee to 11 or 12 members (which still seems large to me), as well as simplifying the proposed resolution.

As to the last paragraph of “MEMBERSHIP” (inviting representatives from JWA and Costa Mesa to “participate,” I think it would be beneficial to the City to invite a representative from the City of

Tustin (and possibly Irvine?), as well. Their citizens share many of the same concerns (and they are affected even more severely than the residents of Newport Beach by the new NextGen departure patterns over their city (rather than the Back Bay) during “reverse flow” wind conditions.

As to the “MEMBER TERM,” six years seems too long to me. As written, persons replacing an existing member early in their term could stay on the committee for up to 18 years. That does not encourage participation by new people.

As to “QUALIFICATION OF CITIZEN MEMBERS,” I find it hard to imagine we would have to reach outside Newport Beach to find “*One (1) member of the general aviation community.*” Persons with “specific expertise to the Committee that may be unavailable within the City” can always be interviewed by the committee. Like the representatives from JWA and Costa Mesa, they do not have to be made members of it.

As to the “PURPOSE AND RESPONSIBILITIES,” although the resolution title says it is amending the “Roles and Responsibilities,” I see no changes other than the new final sentence “*F. Provide advice on aviation matters as requested by the City Council,*” which I would think is impliedly included in the existing [Resolution No. 2011-31](#). Since the Council evidently feels the earlier resolution’s statement of purpose and responsibilities is not producing an effective committee, it might be wise to re-read City Council [Policy A-17](#) (which the committee is supposed to be implementing) and make adjustments to both, as necessary.

Item 6. Resolution No. 2019-27: Amending Resolution No. 2001-100, Adopting a Revised Discrimination and Harassment Prevention Policy

Although signed off on “as to form” by our City Attorney, this resolution seems confused.

In particular, on page 6-3 it says it seeks to amend and repeal amend [Resolution No. 2001-100](#), which as the second “WHEREAS” explains, is the one by which the Council approved and adopted, after much staff effort, the [Employee Policy Manual](#), including its appendices.

Since what is being presented to the City Council is a revised version of a single appendix to that Manual, it appears to me that the Council does **not** want to repeal its approval of the entire manual, but **only** its prior approval of Appendix A via [Resolution No. 2016-111](#), replacing that with a newly approved version.

The statement at the end of Section 1 (page 6-3), that “*Resolution No. 2001-100 is hereby repealed*” is particularly troubling, since the present attachment offers nothing to replace anything in the previously-adopted Manual other than the already-amended Appendix A. I should think this was intended to read “*Resolution No. ~~2001-100~~ 2016-111 is hereby repealed*”

That said, it is troubling that the currently posted version of the [main section](#) of the Employee Policy Manual says “*Latest Revision 07-12-2010.*” Since the City Council did not meet on that date, it is unclear how the Manual came to be revised without Council action, if

that is indeed what happened. **For future clarity, it would be good for the main section and each appendix to cite the Council resolution by which it was adopted.**

It might further be noted that, much like the present resolution, the Human Resources Department's [web presentation](#) of the Manual is confusing.

It shows links to an "Employee Policy Manual" and four appendices ("A" through "D").

Following the link to the "[Employee Policy Manual](#)" yields a **120-page PDF**, containing what is apparently the full Employee Policy Manual (on PDF pages 1 through 74) and **five** appendices ("A" through "E").

On page iv (PDF page 5 of 120), the Table of Contents refers to **Appendix A** as the "UNLAWFUL DISCRIMINATION AND HARASSMENT POLICY" and the copy of it provided on PDF pages 75 through 79 appear to be the version before the redlining of Resolution No. 2016-111 (compare to [Attachment B](#) to City Council agenda Item 18 from September 13, 2016, to which the formal Resolution No. 2016-111 was a [last minute addition](#)). Moreover, this version of Appendix A says at the bottom of its last page (page 79 of the 120 page PDF) that it was "Revised: November 2005." Yet the present resolution mentions no revisions of the original Appendix A, other than those made by the Council in 2016.

As indicated in the preceding paragraph, page iv of the currently posted Manual also refers to an **Appendix E** ("ORGANIZATIONAL VALUES AND BEHAVIORS") which is part of the 120 page PDF (starting on PDF page 119), but does not appear to have been separately posted.

Like much about this, some of the substance of the proposed revisions is confusing as well.

As an example, Section 3 (on page 6-6) continues to open by saying "*The following definitions that apply to this Policy are derived from the California Fair Employment and Housing Act ("FEHA") and include, but are not limited to:*" – implying that the definitions shown were taken from the FEHA (Cal. [Gov. Code Secs. 12900 – 12907](#)) and that if one looks there one will find more definitions applicable to the policy. The definitions that were crossed out (see staff report pages 6-15 through 6-17) were from the Definitions chapter of the FEHA, in particular [Gov. Code Sec. 12926](#), but the new definitions that were added (see staff report page 6-15), and which are now the *only* five definitions in the policy, don't seem to come from the Act, at all. Indeed, Google was unable to discover where any of them came from. If they do come from some external source, it would be helpful to identify it. Saying they are from the FEHA creates confusion, at least for me.

Abandoning any effort to understand the redlining, in examining the largely new "clean" policy on page 6-6, in the new Section 2, I would suggest "...; *City Council and other members of City Boards, ~~and~~ Commissions and Committees; ...*" to coincide with the parlance long used by the City Clerk.

Item 7. Resolution No. 2019-28: Approval the December 31, 2011 Salary Schedule and Revisions Through June 11, 2018

The reference to “California Code Regulation (CCR) 570.5” is unclear, since the CCR is a massive document with (likely) more than one Section 570.5. The reference is, in fact, to Section 570.5 of Title 2 of the CCR, or, more precisely “[2 CCR § 570.5](#)”.

It would be helpful to revise the proposed resolution (staff report page 7-4) as follows:

“*WHEREAS, to comply with **Title 2 of the** California Code of Regulations (“CCR”), **Section 570.5**, which was adopted by CalPERS April 13, 2011 ...*”

“*WHEREAS, the City Council approved and adopted the current Citywide Salary Schedule effective June 12, 2018, bringing the City into compliance with **2 CCR § 570.5**.*”

Regarding the latter statement, the City posts what appears to be a comprehensive [salary schedule](#) on the Human Resources website. I am not aware of the Council ever approving and adopting that document as a whole, as it is doing the one attached to the proposed Resolution No. 2019-28. Instead, I have noticed salary schedules being approved as [MOU's](#) with the many bargaining units are approved. If that is indeed what has happened, it would be useful for the proposed resolution to document that more clearly. It would also be good for the salary schedule web page to indicate more clearly when the items listed in it were approved.

Finally, I, for one, do not fully understand the significance of the “Citywide Salary Schedule effective December 31, 2011, with all revisions through June 11, 2018” shown in Exhibit 1 of the proposed resolution. Since salaries change with time, it looks like this is a list of the salaries that were in effect on December 31, 2011, with a list (at the end) of Council-approved revisions to those through June 11, 2018. But much is left to the imagination, such as the meaning of the column headings in the main table and the significance of the many lines shown within each “Class.” Are these “steps” available within the class? Whatever they are, what step, or other thing, do they represent?

The current online listing suffers from the same problems of not explaining the column titles (oddly different from the column titles in the present Exhibit 1), and not explaining the many lines under each job “Title”.

If the purpose of this is public disclosure, the disclosure is not as good as it could be.

Item 10. Spyglass Hill Reservoir Mixing System – Award of Contract No. 7428-1 (19W15)

It might again be noted that although this expenditure is explicitly being requested “*to assist with maintaining proper **water quality** as identified by the Utilities Department,*” this is not the kind of water quality that is the subject of the City’s [Water Quality/Coastal Tidelands Committee](#).

Item 11. Amendment No. 1 to Professional Services Agreement with Parkmobile, LLC for Pay-By- Cell and Parking Reservation Services

The staff report is clearly advocating for a transition to a “pay-by-cell only” system of paying for public parking in Newport Beach. It would seem to me some viable alternative needs to remain for access to *all* spaces, not just some, so as not to discriminate against residents and visitors who may not have the appropriate technology or application. A future change to “pay-by-cell only,” if applied in the Coastal Zone, would likely also require Coastal Commission approval since it clearly affects access.

Item 14. 2018 General Plan Status Report and Housing Element Annual Progress Report (PA2007- 195)

On March 7, 2019, the Newport Beach Planning Commission met to formulate a recommendation to the City Council regarding the present report (their [agenda Item 4](#)).

I [commented briefly](#) on this item at that time. In [years past](#) I have commented much more extensively on it.

The fact that only a bare quorum of four Commissioners (and no members of the public other than I) bothered to show up, that neither their discussion or recommendation (see [draft minutes](#)), nor my comments, are being transmitted to the City Council seems indicative of the total lack of interest in this matter by staff, elected and appointed representatives and the public.

That lack of interest in the current General Plan seems ironic in view of the large amount of money the City proposes to spend to improve it. It also makes further comment seem pointless.