

March 25, 2025, City Council Agenda Comments

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

Jim Mosher (jimmosher@yahoo.com), 2210 Private Road, Newport Beach 92660 (949-548-6229)

Item 1. Minutes for the March 11, 2025 City Council Meeting

The passage shown in *italics* below is from the [draft minutes](#) with a suggested correction shown in ***strikeout underline*** format. The page number refers to Volume 66.

Page 279, Item X, Mayor Stapleton, end of last bullet: *“Attended the Newport Shores annual HOA meeting, the trash interceptor ribbon cutting, the OCIACC Nowruz Spring Festival, and the Fire Station 2 demolition party and extended congratulations to Bob ~~Olsen Olson~~.”*

Item 3. Ordinance No. 2025-4: Amending the Newport Beach Municipal Code to Update Administrative Procedures Related to Good Cause Determinations and the Extension of Deadlines for Short-Term Lodging Permits

This matter involving who should be authorized to grant exceptions to STL permit deadlines, and for what reasons, is unusual in that parts of it have had fairly extensive Council discussion even though it has never been publicly announced on any agenda, including this one, as a matter for such discussion.

The proposal started as part of [Item 3](#) on the October 8, 2024, consent calendar (along with an unrelated Finance Department matter about demolition debris hauling), from which it was pulled for a discussion that was continued to a future planning session.

That discussion was indeed continued (see [video](#)) at the Council’s February 1, 2025, planning session, and a person hoping for relief from the STL deadlines was apparently even expected to plead their case to the Council. However, nothing on the [agenda](#) reminded the public that such a discussion by the Council was planned for that day.

In the February 1 discussion, Council members seemed to agree that what qualified as “good cause” needed to be defined (which it had not been in the October 8 offering). But curiously, the example of an aggrieved person, who turned out to be a professional asset manager who had apparently failed to properly manage his client’s asset rather than a property owner who had innocently missed a deadline due to some special hardship, never explained the unusual circumstances that had caused him to miss a deadline (see [video](#)), nor did the Council discuss whether they would agree his circumstances constituted “good cause” for relief or, more generally, how they thought “good cause” should be defined.

The matter returned as [Item 5](#) on the March 11 consent calendar, where a definition of “good cause” was proposed, but not discussed, although I provided extensive [written comments](#).

As a policy matter, I think it is good for the City to have flexibility in the administration of its regulations. However, in the case of STL permits, since having one is a privilege rather than a right, and there is a long waiting list of people not presently having a permit, but hoping to get one, I would think leniency for those who have the permits but fail to follow the rules, including

failing to meet deadlines, should be very limited. I would also think that in evaluating whether a missed STL permit deadline should be excused, factors in addition to the existence of good cause should be considered, such as whether the property has been the subject of complaints or other enforcement actions. The Council might also want to include in the ordinance examples of circumstances which staff should *not* regard as “good cause” or limit how long after a missed deadline a request for extension can be entertained.

It is, therefore, disappointing that on March 11 the Council did not publicly discuss whether the rather broad definition offered by staff meets their expectations (and how it would be applied to the unknown circumstances of the asset manager at the February 1 Planning Session) – or whether there should be a very narrow definition provided for staff to use to which a mechanism could be added for more problematic claims to be referred on appeal to the Council.

Even assuming the Council members individually reviewed the proposed definition of “good cause” for missing an STL permit deadline, and found it met their expectations, I continue to think the proposed ordinance is defective for two reasons.

Making Definition Applicable to Entire Municipal Code is a Bad Idea

First, rather than placing the definition of “good cause” in the chapter of the Municipal Code regarding STL permits, to which it is intended to apply, staff proposes putting it in a section that will make it applicable to the entire Municipal Code.

This a bad recommendation, or, at the very least, a decision that needs further review.

As I pointed out in my March 11 written comments, the phrase “good cause” appears 27 times in 19 different chapters of the code, in each of which it may have been intended to be understood differently. Inserted after-the-fact a definition that may or may not have been intended is not wise.

A recent example of the problems this can cause was the entry of Pacaso fractional ownership homes into the Newport Beach market. As indicated in my comments on that subject on [pages 12-44 & 45](#) of the March 14, 2023, Council agenda packet, since 1982, with adoption of [Ordinance No. 82-14](#), Newport Beach had perfectly clear regulations in its Zoning Code (Title 20 of the Municipal Code) intended to prohibit such activity (time-share arrangements in residential areas). However, the original language used the phrases “time-share *projects*” and “time-share *development*,” which were explicitly intended to apply to conversion of existing residences to a time-share model, including fractional ownership, even though the terms “project” and “development” were not explicitly defined. However, without considering this, the Zoning Code was repeatedly rearranged and revised, and eventually, definitions of “project” and “development” applicable to the entire Zoning Code were added. And even though the introduction of those definitions was presumably not intended to alter the meaning of the time-share regulations, by the time Pacaso came to town, staff said they did, and they could not prohibit conversions of existing homes, only new construction.

One has to wonder if the Council members have reviewed the 18 Municipal Code chapters unrelated to STL permits in which “good cause” appears, and determined that applying to them

the definition proposed in the STL permit context does not alter the meaning of “good cause” that earlier Councils intended in those other contexts?

Placing Substantive Regulations in Uncodified Portions of Ordinances is a Bad Idea

Second, although neither the Council nor the public [heard](#) the circumstances of the speaker seeking relief at the February 1 Planning Session (only that “things come up”), it appears the intent of these code revisions is to allow staff to excuse people who have *missed* STL permit deadlines. Yet the proposed code revisions are written entirely in terms of *extending* deadlines, which implies a request to extend the deadline has been received before the deadline comes.

The fact that an “extension” can be granted retroactively, in effect *excusing* the missing of a deadline is relegated to an obscure reference in uncodified Section 7 of the proposed ordinance, on page 3-13 of the agenda packet.

Not only could the fact that a deadline can be extended retroactively have easily been included in the codified portion of the code, where all those reading the code would see it, but the code might even have limited how long after the fact a retroactive extension can be granted and how long such an extension can be.

The problems that can be created by not codifying substantive portions of regulations is illustrated by Item 12 on the current agenda. In that case, when enacting a Building Code revision in 2022, the Council only intended for it to be in effect until April 21, 2025, at which time the unrevised text would return. It would have been relatively easy to include this proviso in the code (the state legislature does this quite frequently). Instead, much like here, it exists only in an obscure uncodified section of the 2022 ordinance (see page 12-21 of the present agenda packet). Despite a subsequent ordinance reenacting the code section in question without any mention of an expiration, the proviso in the earlier ordinance seems to remain, like a zombie, completely unknown to those reading the existing code, which does not even mention the ordinance containing it in its revision history.

In the present case, the fact that STL deadline extensions can be retroactive will not only be unknown to readers of the code, but it may assume a similar zombie status if the code were subsequently revised without an intent to be retroactive but without explicitly repealing the present ordinance.

Item 4. Resolution No. 2025-12: Creating the Ad Hoc Refuse Committee

I think the idea of staff reaching out in considering its response to refuse regulations is a good one, and the present proposal is an improvement over the roll-out of the three-cart residential collection system, regarding which input seems to have been sought from a 3-member Council Ad Hoc Solid Waste Committee that was never formally appointed and which the public knew nothing about.

That said, I think it would be better for the Council to appoint a committee of affected residents and business owners from whom staff could seek input. The advantage of that, is that the Brown Act would require the discussions to be noticed and public.

The problem with Council-appointed ad hoc committees (and with ad hoc committees of the City boards and commissions in general, is that they are created precisely to avoid public visibility. Since the Brown Act does not require it, their discussions are rarely if ever public. As a result there is a complete lack of transparency as to how their recommendations were arrived at and what input was considered.

A happy recent, but still extremely rare, exception was the PB&R ad hoc committee seeking to make a recommendation about the proposed Aquatic Center at Lower Castaways, which held a noticed public workshop in the Community Room on [February 12](#).

Item 5. Irrigation Controller Replacement Phase 2 – Award of Contract No. 9735-1

With a low bid of \$472,186 to acquire(?) and install 37 controllers, that comes to nearly \$13,000 per controller.

This contract is clearly for something more than a typical home controller, so it might have been helpful to provide a little more information on what is being contemplated. From the [bid package](#), it looks like it is some version of the Toro [21-1196-IRC-DXi-Controller-SS](#).

Item 9. Concession Agreement with Kit at the Library, Inc. for Use of the Concession Facility at the Central Library Located at 1000 Avocado Avenue

Why is no information provided regarding the 16 other proposals that were received but rejected by City staff?

Why are “limited cosmetic tenant improvements to the Space” anticipated to take as much as 12 months to complete?

Libraries are known to attract children, and I seem to recall seeing them in the entry area adjacent to the concession. Does the menu contain any items that would appeal to young children?

Item 10. Amendment to Professional Services Agreement with Dudek, Inc. for Consulting Services on the Comprehensive General Plan Update (PA2022-080)

The City Council has, in my view, caused significant delay to the general plan update process by announcing its plan, in December, to dismiss all the GPAC and GPUSC members and make new appointments in the new year, which finally happened as [Item 11](#) at the February 25, 2025, meeting.

I am grateful for my reappointment, and as chair of the subcommittee reviewing the existing Noise Element in the GPAC’s prior configuration, I have considerable interest in the current item, although I don’t yet know if I will be continuing that role in the new iteration.

I might note that at the time the subcommittee and full GPAC made our recommendation, we were unaware the traffic noise contours resulting from the addition of 6th Cycle RHNA units (for everything but the 73 freeway and toll road) had already been projected by a prior consultant as part of the recent [Housing Implementation Program EIR](#) (PA2022-0245), specifically in [Chapter 4.11](#) and [Appendix E](#). It appears Dudek is proposing to do something more supported by measurement.

In that regard, I am a little puzzled by proposed Task 1.2.b (agenda packet page 10-10), calling for Dudek to evaluate noise in the Airport Area “*based upon sound level contour mapping from the corresponding Airport Land Use Compatibility Plan (ALUCP)*.” This seems to be a reference to what the County calls the John Wayne [Airport Airport Environs Land Use Plan](#) (AELUP).

Dudek seems not to have been informed that the contours in that plan were created in 1985, or before, and included projections, made then, to the anticipated contours in 2005. The City has an ongoing dispute with the OC [Airport Land Use Commission](#) as to whether the projections published in 1985 are still appropriate contours for planning purposes, and has, indeed, substituted a different set of contours in the November 14, 2023, [Item 22](#) Noise Element revisions mentioned on page 10-2 of the staff report (prepared and adopted without GPAC input). The ALUC does not accept that change, and rejects submissions based on them. There is a particularly acute disagreement as to the noise impact of the small piston-powered planes that fly over what the City calls the “Airport Area” north of Bristol, yet no one seems to have any actual measurements to support their view of what the current situation there actually is.

Assuming this item is approved, I hope staff will instruct Dudek to perform some of its long-term monitoring (Task 1.1) in that area.

I am also a little concerned about the clarity of Task 2. Although entitled “GPAC Subcommittee Coordination,” the unnumbered opening paragraph suggests Dudek feels it has more than fulfilled its obligation to attend meetings of the full GPAC, since the ones it has attended to date ran longer than the 1-hour anticipated (as future ones may also). Do Dudek and staff have a clear understanding of how many additional full GPAC and GPUSC meetings Dudek is expected to attend? Is there sufficient budget for them?

As to the GPAC subcommittees, the Council may wish to know there are six subcommittees, organized to review various combinations of general plan elements, as well as one for the Vision Statement. The proposed 12 meetings would mean Dudek attendance at at most 2 each to review their proposed revisions, none of which have yet been seen, before they go to the Planning Commission and Council. That seems possible, but minimal. Does staff anticipate the possibility of a need for additional GPAC subcommittee discussion meetings *without* Dudek present?

Item 12. Ordinance No. 2025-5: An Amendment to Section 15.02.095 of the Newport Beach Municipal Code Related to Timeframes for Completion of Construction

As noted in my comments when this item was first introduced (and then withdrawn) on March 11, it is unusual in that the current Municipal Code cites Ordinances No. [2023-22](#) § 693 and [2022-26](#) § 1 as the source of the language presently found in NBMC [Section 15.02.095](#), and makes no mention of Ordinance No. 2022-8, where the sunset provision resides.

I concluded from this that no action was needed since neither of those ordinances makes any mention of the provisions they added being subject to sunset. But perhaps action is needed, since neither seems to have explicitly repealed the uncodified parts Ordinance No. 2022-8.

Assuming the April 21, 2025, sunset provision in Ordinance No. 2022-8 *is* still operative, it would appear the present ordinance repealing it will not be adopted until a second reading on April 15, and will not become effective until 30 days later, on May 15.

What will happen to projects that, under the prior code that staff believes will be restored for the 24 days from April 21 to May 15, would need to file for an extension during that time?

Item XIII.A. CONFERENCE WITH REAL PROPERTY NEGOTIATORS

This item involving three non-City-owned properties with no explanation of what the City's interest in them might be, also seems rather unusual.

One of the properties, the former Balboa Theatre at 707 E. Balboa Blvd., the City formerly owned and sold. What happened to that new owner's plans? Is the City considering buying it back?

Another, at 12 Corporate Plaza Drive, is the subject of an active Preliminary Application, [PA2025-0017](#), for 38 residential units in an 85-foot high tower. Is the City contemplating becoming a partner in the development?

And the remaining one, at 3848 Campus Drive, has been the subject of prior closed session agendas, such as on [January 28](#), and also seems to have a pending application, [PA2023-0145](#), to construct a private self-storage facility on the site. What became of those?