

## September 9, 2025, City Council Agenda Comments

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

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### ***Item VII. MATTERS WHICH COUNCILMEMBERS HAVE ASKED TO BE PLACED ON A FUTURE AGENDA***

Without weighing in on the merits of the proposal presented under this heading, it is remarkable to see from the City's [Active Planning Activities](#) site that on September 3, before this agenda was published, and long before the Council had given any direction to do so, City staff had opened a planning activity file, [PA2025-0171](#), to initiate the code amendments the Council may or may not ask for.

### ***Item 1. Minutes for the August 26, 2025, Special City Council Meeting and the August 26, 2025, Regular 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 381**, Item VI, Barto, bullet 2: "Attended Bike and Bike Safety Working Group meeting"

[**Comment:** The [video](#) confirms the accuracy of this, and the absence of any additional explanation. As a bicycle rider, I am pleased to see people are concerned about bike safety. That said, I have no recollection of previously hearing about the existence of a "Bike and Bike Safety Working Group," and have no idea of who created it, who is on it or where or when it meets. Is this a City Council group? Or something else?]

**Page 390**, mid-page: "*Motion by Mayor Pro Tem Kleiman, seconded by Councilmember Blom, to approve the Consent Calendar, including amendments to Agenda Item No. 1, the Minutes; a "no" vote on Agenda Item 3 by Councilmember Weigand; and noted recusals.*"

[**Comment:** Although I submitted some suggested corrections to the minutes provided as Agenda Item 1, I do not recall any list of officially-proposed amendments to the minutes having been made available for inspection prior to this motion.]

**Page 391**, Public Comments: "*Jim Mosher noted his concerns related to the correspondence from the California Department of Housing and Community Development (HCD) requiring the City to revise and update the City's ADU ordinance; requested the City to do a thorough review of the responsive amendments; and noted what he believed were **typographical** errors in the proposed ordinance.*"

[**Note:** See my comments on Item 5, below. "Typographical errors" was the City Attorney's characterization, in response to a Council member's inquiry, of what I had commented about. However, my point was they were *not* typographical errors, but substantive errors requiring the ordinance to be corrected and re-introduced. If the minutes were to be complete, they would indicate that after the Mayor closed public comments, the City Attorney responded to an inquiry from Council member Grant, saying staff could correct typographical errors.]

**Page 391**, full paragraph 2: “Councilmembers Barto, Blom, Weber, and Mayor Stapleton had communications with the applicant ~~which were indicated regarding matters described~~ in the staff report and exhibits.”

[**Comment:** To the best of my knowledge, there is no indication in the staff report or exhibits that Council members had communicated with the applicant. The claim was that the communications were confined to matters covered in the written materials.]

***Item 3. Ordinance No. 2025-22: Amending Chapter 10.08 (Use of Public Property and Interference with Public Access) of the Newport Beach Municipal Code to Add Provisions Related to the Protection of Pedestrians, Vehicle Traffic and Landscaping***

Since this item proposes to make amendments to the Municipal Code, it is a bit surprising and disappointing that at its introduction no redline has been provided showing exactly what is being changed. One hopes that the changes are confined to the subject at hand, but that is unnecessarily difficult to verify.

As to the section that is being added, proposed new Section 10.08.012 (Safe Use of Medians), part “B” seems to me to include an unnecessarily complicated three-point exercise in logic that readers must solve by referencing multiple new definitions to determine if they are engaging in “prohibited conduct,” and in which the each point, confusingly, seems render largely moot the previous ones.

Wouldn’t it have been a lot simpler to say something like: “*Except as provided in subsection C, it is unlawful for any person to stand or walk on any median within the City other than on a part providing a flat paved or non-decorative concrete raised surface at least forty-eight (48) inches in width by forty-eight (48) inches in length.*”

Is there anything in the three-point exercise that fails to capture? And wouldn’t it eliminate the need for all the new definitions other than those of “median” and “pedestrian refuge island”?

As to the latter, before stepping into the street, if this is adopted, members of the public will now be expected to know, from having previously visited the City Clerk’s office and consulting a list kept there, if what they see ahead of them is not just a “pedestrian refuge island,” but a *designated* “pedestrian refuge island.” Is that really practical? Even if it is, when will the list be produced and how often will it be updated? And shouldn’t it be posted on the internet?

And since we are cracking down on crossing medians, might one also ask if some other part of the code makes it unlawful to stand in a part of the street that is *not* a median?

***Item 4. Ordinance 2025-19: Amending Title 11 (Recreational Activities) of the Newport Beach Municipal Code Related to the Prohibition of Climbing on Railings of Public Property and Amending Title 11 (Recreational Activities) Related to Swimming Regulations and Restrictions on Diving, Jumping and Climbing on Public Property Adjacent to Waterways***

I provided extensive [written comments](#) regarding this item when it was introduced as Item 3 at the August 26 meeting.

As pointed out then, if the concern about climbing on railings is confined to it as a prelude to diving and jumping from them, the new language could be combined with the existing diving restrictions rather than creating a new section.

Perhaps more importantly, the exceptions to both the old and proposed new regulations are confined to “*City employees or City contractors who are performing their official duties.*” This is a missed opportunity to add to the exceptions members of the public acting at the direction and under the supervision of City employees or contractors, as during safety training activities.

Council member Weigand voted against introduction of this ordinance for reasons he did not explain. Why the other Council members don’t want to enact better ordinances is beyond me.

### ***Item 5. Ordinance No. 2025-20: Amending Title 20 (Planning and Zoning) of the Newport Beach Municipal Code Updating ADU and JADU Standards (PA2025-0093)***

As the draft minutes (Item 1 on the present agenda) indicate, I provided oral comments on this ordinance when it was introduced as [Item 34](#) at the August 26 meeting.

Those comments referred to substantive inconsistencies between the ordinance as proposed and the HCD review letter and a letter from the California Housing Defense Fund which some of the revisions supposedly responded to. The City Attorney suggested I was pointing out “typographical errors” which our Charter allows staff to correct. But my comments were not about typographical errors, they were about conscious word choices that affect the substantive meaning of the proposed codes.

For example, when one has two sets of regulations, A and B, there is a fundamental and obvious difference between saying a resident must comply with A **and** B (i.e., they must comply with both), compared to saying they must comply with A **or** B (i.e., they can choose which they want to comply with and ignore the other).

In the present case, HCD reminded the City of the existence of California [Government Code Section 66323](#) which, as I understand, sets certain standards that, if a proposed ADU meets them, requires approval despite its not meeting local standards that conflict with them. In other words, Government Code Section 66323 provides an alternative path to ADU approval, not an additional restriction on it.

In view of that, in NBMC Subsection 20.48.200.C.1, which is proposed, on agenda packet page 5-8, to condition approval on a finding that “*The dwelling conforms to the development standards and requirements for accessory dwelling units and/or junior accessory dwelling units as provided in this section **and** California Government Code Section 66323; and,*” it seemed to me that HCD would expect to see “**or**” rather than “**and**”. The use of “and” suggests compliance with the standards of Section 66323 is not sufficient, but the more restrictive local standards must always be met as well. If so, I suspect they will reject this and the identical language submitted to the Coastal Commission.

Similarly, the NBMC Subsection 20.48.200.F, on page 5-10 is proposed to read “*Except as modified by this subsection or authorized by California Government Code Section 66317 **and** 66323, an accessory dwelling unit and/or junior accessory dwelling unit shall conform to all objective standards of the underlying residential zoning district, any applicable overlay district, and all other applicable provisions of Title 20 (Planning and Zoning), including but not limited to*

*height, setback, site coverage, floor area limit, and residential development standards and design criteria.*” As I understand it, [Government Code Section 66317](#) is a separate state law requiring automatic approval of an ADU application if local action is not taken within a certain time, whether or not the approval is required by Section 66323 or any other law. As another alternative way of getting approval, and not an additional restriction, it would seem the highlighted “and” should also be an “or.”

Finally, I did not have time to address this orally, but I believe there could be a problem with the new NBMC Subsection 20.48.200.F.9 on page 5-14, which is proposed to read “*Any accessory dwelling unit or junior accessory dwelling unit that is listed on the California Register of Historic Resources shall meet all Secretary of the Interior Standards, as applicable.*” I could be wrong, but the concern was about new ADU’s proposed on an existing property that is designated as a historical resource, not just with applications regarding an existing ADU that is, itself, designated as a historical resource. As written, the concern kicks in only in the latter case. Wasn’t this intended, instead, to read “*Any accessory dwelling unit or junior accessory dwelling unit on a property that is listed on the California Register of Historic Resources shall meet all Secretary of the Interior Standards, as applicable*”?

Again, this is not a typographical error, but a question about choosing the words that cause the ordinance to mean what it is intended to mean.

Finally, on page 5-9, NBMC Subsection 20.48.200.D is proposed to contain a statement that “*For purposes of this section, “multi-unit dwelling” means a development containing two or more dwelling units on one lot.*” Since this says it is a special definition, it is completely unclear to me if the count is intended to include accessory *dwelling units* on the lot, or not. Shouldn’t it say? The existing definitions in NBMC [Chapter 20.70](#) do not help me resolve the intent.

With little hope that any of these comments will have any affect on the Council’s action, I have not read the rest of the proposed ordinance with the same care.

### ***Item 7. Resolution No. 2025-57: Opposing Proposition 50 and Enabling Legislation***

This does not seem to be an effort to influence state legislation that might affect Newport Beach, but rather an effort to tell voters how to vote on a matter expected to be before them in a special election on November 4, 2025.

As the Whereas clauses of the proposed resolution indicate, the legislation putting the matter of congressional redistricting before voters, [ACA 8](#), [AB 604](#) and [SB 280](#), have all passed the legislature, and the latter two have been signed into law.

While a city council’s attempts to influence legislation have long been considered a legitimate, and in some cases a potentially beneficial, use of public resources, I thought things changed once an issue was on the ballot for voters to decide. With the limited exception of election laws authorizing council members to submit their personal arguments for publication in the sample ballot, for or against a measure their body has placed on a ballot, I thought there was a taboo against the voters’ public resources being used to influence their vote. In other words, once a decision is before voters, I thought that, with the limited exception of being allowed, when asked, to provide objective, factual information about the potential effects of a measure on the agency, public agencies were not supposed to use their power to tip the scale.

While I share many of what seem to be the Council members' concerns, and while those Council members are free to express their personal opinions, I do not think "the City" should be taking a position on a ballot measure.

At the very least, the last three Whereas paragraphs should say "the City Council" rather than "the City."

***Item 22. Resolution No. 2025-60: Notice of Intent to Override Orange County Airport Land Use Commission's Determination of Inconsistency for the Snug Harbor Surf Park Project at 3100 Irvine Avenue (PA2024-0069)***

This item is a bit difficult to comment on because what happened at the August 7, 2025, ALUC meeting has not yet been documented in the form of minutes or a recording readily available to the public.

That said, regarding the proposed resolution, the statements at the top of page 22-8c about the project site's noise environment are misleading. According to JWA's most recent [Noise Abatement Program Quarterly Report \(Jan - Mar 2025\)](#) the site is wholly within the 65 dB CNEL contour.

One of the major concerns raised in a September 3, 2025, letter from airport management (as opposed to the ALUC) was about the potentially high occupancy of a site in the safety zones. This issue (regarding which airport management may have confused total daily occupancy with the maximum number of persons present at any one time) is discussed at length in proposed resolution, but it is not clear those assurances of consistency consider the monthly special events. As heard by the Planning Commission on September 4, there seem to be no limits on the number of attendees, the number present at one time, or the duration of the special events.

Without such limits, a finding of consistency may be impossible to make.

Regarding the final finding ("*The Project is consistent with the overflight standards of the AELUP*" on page 22-8j), it is not clear to me what "overflight standards" it is referring to or how "overflight" is being defined. Moreover, the statement that "Overflights will be the same with the Project as with the existing golf course" is simply an observation that the construction or non-construction of the project will not change the intensity or route of air traffic from or to JWA. That seems self-evident, so I don't see what this claims to establish. The same could be said of the noise observations. It is hard to see how the fact that the noise will be unchanged provides justification for increased development (from something like 11,000 square feet to nearly 80,000 square feet) at a high noise site.

***Item 24. Five Citizen-Member Appointments to the Aviation Committee***

I cannot find it explained in the staff report, but my understanding of the past and present enabling resolutions for the Aviation Committee is that one of the citizen appointees must be a resident of the Newport Coast annexation area. Based on an examination of the unredacted applications in the City Clerk's office, it appears to me the only nominee with that qualification is Mary-Christine (MC) Sungaila. If true, it would seem she would need to be appointed, with the other four appointments being made from the nine remaining nominees. However, it seems a bit contradictory to the stated intent to follow Council Policy A-2 that only one nominee was

provided for that position, when the policy requires two nominees per position. It seems especially contradictory when there was at least one other qualified applicant from Newport Coast (Amber Snider).

Of the remaining citizen nominees from among whom the Council will choose, I would again emphasize Jack Stranberg's accomplishments during his service on the prior Aviation Committee. I believe the recent transition by Southwest Airlines from serving JWA with the smaller and noisier Boeing 737-700 to using the larger yet quieter Boeing 737 MAX 8 (which can carry more people with less noise) is largely the result of his patient diplomacy with that carrier.