



**CITY OF NEWPORT BEACH  
CITY COUNCIL AGENDA**

**STUDY SESSION AND REGULAR MEETING**

**JANUARY 14, 2020**

**CITY COUNCIL CHAMBERS – 100 CIVIC CENTER DRIVE, NEWPORT BEACH, CA 92660**

**STUDY SESSION – 4:00 P.M. (PUBLIC WELCOME)  
CLOSED SESSION FOLLOWS STUDY SESSION  
REGULAR MEETING – 7:00 P.M.**

**WILL O'NEILL, Mayor  
BRAD AVERY, Mayor Pro Tem  
JOY BRENNER, Council Member  
DIANE B. DIXON, Council Member  
DUFFY DUFFIELD, Council Member  
JEFF HERDMAN, Council Member  
KEVIN MULDOON, Council Member**

**GRACE K. LEUNG, City Manager  
AARON C. HARP, City Attorney  
LEILANI I. BROWN, City Clerk  
CAROL JACOBS, Assistant City Manager**

**NOTICE REGARDING PRESENTATIONS REQUIRING USE OF CITY EQUIPMENT**

Any presentation requiring the use of the City of Newport Beach's equipment must be submitted to the City Clerk 24 hours prior to the scheduled City Council meeting.

**PUBLIC HEARINGS**

If in the future, you wish to challenge in court any of the matters on this agenda for which a public hearing is to be conducted, you may be limited to raising only those issues which you (or someone else) raised orally at the public hearing or in written correspondence received by the City at or before the hearing.

**NOTICE TO THE PUBLIC**

The City provides a yellow sign-in card for those wishing to address the City Council to assist in the preparation of the minutes. The cards are available in the lobby of the Council Chambers. Speakers are not required to submit a card as a condition to addressing the City Council. If you do fill out the card, please place it in the box at the podium. Any times listed in this agenda are provided as a courtesy and the actual item may be heard either before or after the time given.

This agenda was prepared by the City Clerk and staff reports are available at the City Clerk's Office located at 100 Civic Center Drive (Bay E, 2<sup>nd</sup> Floor). Staff reports or other written documentation have been prepared or organized with respect to each item of business listed on the agenda. If you have any questions or require copies of any of the staff reports or other documentation regarding any item of business on the agenda, please contact City Clerk staff at 949-644-3005. Agendas, minutes and staff reports are also available on the City's webpage at [newportbeachca.gov/agendas](http://newportbeachca.gov/agendas).

The City of Newport Beach's goal is to comply with the Americans with Disabilities Act (ADA) in all respects. If, as an attendee or a participant at this meeting, you will need special assistance beyond what is normally provided, we will attempt to accommodate you in every reasonable manner. Please contact Leilani Brown, City Clerk, prior to the meeting to inform us of your particular needs and to determine if accommodation is feasible (949-644-3005 or [cityclerk@newportbeachca.gov](mailto:cityclerk@newportbeachca.gov)).

**NEWPORT BEACH CITY COUNCIL AGENDA  
CITY COUNCIL CHAMBERS  
100 CIVIC CENTER DRIVE, NEWPORT BEACH, CA 92660  
JANUARY 14, 2020  
STUDY SESSION – 4:00 P.M. (PUBLIC WELCOME)  
CLOSED SESSION FOLLOWS STUDY SESSION  
REGULAR MEETING – 7:00 P.M.**

**I. ROLL CALL – 4:00 p.m.**

**II. CURRENT BUSINESS**

**SS1. Clarification of Items on the Consent Calendar**

**SS2. Proclamation to Stanbridge University Recognizing Their Recent Student Volunteer Activities within Newport Beach as Part of Their “Roots for Change” Native Tree and Bush Planting Initiative**

**SS3. Update on State Housing Mandate – Regional Housing Needs Allocation (RHNA) and Proposed Action Plan**

The Southern California Association of Governments (SCAG) has submitted a RHNA methodology that results in an allocation of 4,832 units for Newport Beach. This RHNA methodology was an abrupt and significant change that was developed without input from the City. Staff will provide an update on this methodology, the next steps in the RHNA approval process and proposed next steps, particularly in context with the General Plan update that is underway.

**III. PUBLIC COMMENTS**

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*The City Council of Newport Beach welcomes and encourages community participation. Public comments are invited on items listed on the agenda and non-agenda items. Speakers must limit comments to three (3) minutes per person to allow everyone to speak. Written comments are encouraged as well. The City Council has the discretion to extend or shorten the time limit on agenda or non-agenda items.*

**IV. CLOSED SESSION – After Study Session – Council Chambers Conference Room**

**A. CONFERENCE WITH LEGAL COUNSEL  
EXISTING LITIGATION**

**(Government Code § 54956.9(d)(1)):** 1 matter

*Ashley Lauren Watts v. Christine Maroney and Monica Aguilar  
USDC, Central District, Case No. 8:17-cv-01099-AG (SKx)*

**B. CONFERENCE WITH REAL PROPERTY NEGOTIATORS  
(Government Code § 54956.8): 1 matter**

**Property:** 20302 Riverside Drive, Newport Beach, CA 92660  
APN: 439-251-05

**Agency Negotiators:** Grace K. Leung, City Manager  
Carol Jacobs, Assistant City Manager  
Jon Lewis, Chief of Police  
Dennis Birch, Assistant Chief of Police

**Negotiating Parties:** Carole Brown Rich and Kathy Leonard

**Under Negotiation:** Instruct negotiators as to price and terms of payment.

V. **RECESS**

VI. **RECONVENE AT 7:00 P.M. FOR REGULAR MEETING**

VII. **ROLL CALL**

VIII. **CLOSED SESSION REPORT**

IX. **INVOCATION** – Reverend Paul E. Capetz, Christ Church by the Sea

X. **PLEDGE OF ALLEGIANCE**

XI. **NOTICE TO THE PUBLIC**

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XII. **CITY COUNCIL ANNOUNCEMENTS AND ORAL REPORTS FROM CITY COUNCIL ON COMMITTEE ACTIVITIES**

XIII. **MATTERS WHICH COUNCIL MEMBERS HAVE ASKED TO BE PLACED ON A FUTURE AGENDA**

- **Consideration of Resolution Supporting Balanced Energy Solutions and Maintaining Local Control of Energy Solutions as California Transitions to a Clean Energy Future (Muldoon)**

XIV. **PUBLIC COMMENTS ON CONSENT CALENDAR**

*This is the time in which Council Members may pull items from the **CONSENT CALENDAR** for discussion (**ITEMS 1 – 17**). Public comments are also invited on Consent Calendar items. Speakers must limit comments to three (3) minutes. Before speaking, please state your name for the record. If any item is removed from the Consent Calendar by a Council Member, members of the public are invited to speak on each item for up to three (3) minutes per item.*

*All matters listed under **CONSENT CALENDAR** are considered to be routine and will all be enacted by one motion in the form listed below. Council Members have received detailed staff reports on each of the items recommending an action. There will be no separate discussion of these items prior to the time the City Council votes on the motion unless members of the City Council request specific items to be discussed and/or removed from the Consent Calendar for separate action.*

**XV. CONSENT CALENDAR**

***READING OF MINUTES AND ORDINANCES***

**1. Minutes for the December 10, 2019 City Council Meeting**

Waive reading of subject minutes, approve as written, and order filed.

**2. Reading of Ordinances**

Waive reading in full of all ordinances under consideration, and direct the City Clerk to read by title only.

***RESOLUTIONS FOR ADOPTION***

**3. Resolution No. 2020-1: Updating the List of Designated Employees for 2020 Under the City's Conflict of Interest Code**

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Adopt Resolution No. 2020-1, *A Resolution of the City Council of the City of Newport Beach, California, Adopting an Updated Designated Employees List for 2020.*

**4. Resolution No. 2020-2: Adjusting the Salary Schedule for the Positions of Assistant City Clerk and Budget Manager**

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Adopt Resolution No. 2020-2, *A Resolution of the City Council of the City of Newport Beach, California, Amending the Salary Schedule for the Positions of Assistant City Clerk and Budget Manager.*

**5. Resolution No. 2020-3: Initiation of Zoning Code and LCP Amendments Related to State Mandated Regulations for ADU and JADU Regulations (PA2019-248)**

- a) Determine this action is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to Section 15262 of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3; and
- b) Adopt Resolution No. 2020-3, *A Resolution of the City Council of the City of Newport Beach, California, Initiating Amendments to Title 20 Entitled "Planning and Zoning" and Title 21 Entitled "Local Coastal Program Implementation Plan" of the City of Newport Beach Municipal Code Related to State Mandated Regulations of Accessory Dwelling and Junior Accessory Dwelling Units (PA2019-248).*

**6. Resolution No. 2020-4: Authorizing Submittal of a Grant Funding Application to the Orange County Transportation Authority for West Coast Highway and Superior Ave./Balboa Blvd. Intersection Improvement**

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Adopt Resolution No. 2020-4, *A Resolution of the City Council of the City of Newport Beach, California, Authorizing and Approving the Submittal of a Funding Application for an Intersection Capacity Enhancement Project to the Orange County Transportation Authority for Funding Under the Comprehensive Transportation Funding Program.*



**7. Resolution No. 2020-5: Authorizing the Submittal of a Funding Application to the Orange County Transportation Authority for the Balboa Island/Corona del Mar Area Microtransit Feasibility Study**

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly;
- b) Adopt Resolution No. 2020-5, *A Resolution of the City Council of the City of Newport Beach, California, Authorizing and Approving Submittal of a Funding Application for the Balboa Island/Corona del Mar Microtransit Feasibility Study Project to the Orange County Transportation Authority for Funding Under the Project V Community-Based Transit/Circulators Program*; and
- c) Authorize the City Manager to accept contribution funds from the Balboa Island Marketing, Inc., the Balboa Island Improvement Association, as well as possible Districts 5 and 6 City Council Discretionary funds, for use as required Local Match funds upon award of Orange County Transportation Authority Project V grant.

**CONTRACTS AND AGREEMENTS**

**8. MacArthur Boulevard and University Drive Pavement Rehabilitation – Notice of Completion for Contract No. 7183-2 (18R23)**

- a) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project;
- b) Authorize the City Clerk to release the Labor and Materials Bond 65 days after the Notice of Completion has been recorded in accordance with applicable portions of Civil Code; and
- c) Release Faithful Performance Bond one year after acceptance by the City Council.

**9. Concrete Street Pavement Reconstruction (Anade Avenue, Montero Avenue, Alvarado Place, and 6<sup>th</sup> Street) – Award of Contract No. 7184-2 (18R21)**

- a) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301(b)(c) Class 1, (maintenance of existing public facilities involving negligible or no expansion of use), of the CEQA Guidelines, because this project has no potential to have a significant effect on the environment;
- b) Approve the project plans and specifications;
- c) Award Contract No. 7184-2 to Aramexx Construction, for the total bid price of \$1,369,708.00, and authorize the Mayor and City Clerk to execute the contract;
- d) Establish a contingency of \$137,000.00 (approximately 10 percent of total bid) to cover the cost of unforeseen work not included in the original contract; and
- e) Approve Budget Amendment No. 20BA-025 transferring appropriations of \$185,776.70 from the Bison Avenue Pavement Rehabilitation Project (No. 12201-980000-19R21) to the Concrete Street Repair Project (Account No. 12201-980000-18R21) within the Measure M fund.

**10. Approval of Amendment No. Four to Professional Services Agreement with Stantec Consulting Services, Inc. (Stantec) for the Arches Diversion Project**

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Approve Amendment No. Four to Professional Services Agreement with Stantec Consulting Services, Inc. for design of the Arches Diversion Project to reflect additional services and to increase the not-to-exceed contract amount by \$35,200 for a total not-to-exceed amount of \$347,386, and authorize the Mayor and City Clerk to execute the agreements.

**11. Amendment to the Professional Services Agreement with Newport Beach & Company for Video Production and Government Access Channel Management**

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly;
- b) Authorize a waiver of Council Policy F-14 in regard to re-bidding NBTV Video Production and Channel Management and award a single-source contract to Newport Beach & Company by amending its existing contract; and
- c) Execute Amendment No. 1 to the Professional Services Agreement with Newport Beach & Company for Management of NBTV Programming and Operations, which extends the term by one year and adds \$117,208.44 for a total not-to-exceed amount of \$288,023.24.

**12. Lease Agreement with West Point Investment Corporation to Rent Office Space at the Balboa Yacht Basin Located at 829 Harbor Island Drive**

- a) Find this activity exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly; and
- b) Authorize the City Manager and City Clerk to execute a five-year Lease Agreement for use of office space located at the City-owned Balboa Yacht Basin, located at 829 Harbor Island Drive, in a form substantially similar to the agreement attached to the staff report.

**MISCELLANEOUS**

**13. Acceptance of a Hoag Memorial Hospital Presbyterian Community Benefit Program Grant for the Newport Beach-Surfer Awareness in Lifesaving Techniques Program**

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly;
- b) Accept the Hoag Memorial Hospital Presbyterian Community Benefit Program grant funding of \$15,000 to be used in support of the Fire Department's Newport Beach-Surfer Awareness in Lifesaving Techniques (NB-SALT) program; and
- c) Approve Budget Amendment No. 20-027 to increase revenue estimates by \$15,000 and increase expenditure appropriations by \$15,000 in Fire Department, Lifeguard Operations NB-SALT Program.

**14. Annual Mayoral Appointments**

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Confirm Mayor Will O'Neill's appointments under City Council Policy A-2, as provided in the staff report.

**15. Newport Beach Wine and Food Festival Request for Waiver of City Council Policy B-13**

- a) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15304 under Class 4 (Minor Alterations to Land), because it has no potential to have a significant effect on the environment; and
- b) Recommend approval to waive Council Policy B-13, Regulations and Restrictions, Section A1, Use of Alcohol to allow for NBWFF to be conducted at Peninsula Park. Approval of waiver would allow the NBWFF to move forward with the Special Event Permit Process. Event approval would be contingent upon Special Event Permit approval.

**16. Update on Addressing Homelessness**

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Receive and file.

**17. Confirm Appointment to the Balboa Village Advisory Committee to Represent the Balboa Village Merchant Association Business Board**

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Confirm Mayor Will O'Neill's BVAC appointment of Kelly Carlson to represent the Balboa Village Merchant Association Business Board for a term that expires on December 31, 2020.

**ACTION: MOVE AFFIRMATIVE ACTION OF THE CONSENT CALENDAR, EXCEPT FOR THOSE ITEMS REMOVED**

**XVI. ITEMS REMOVED FROM THE CONSENT CALENDAR**

**XVII. PUBLIC COMMENTS ON NON-AGENDA ITEMS**

*Public comments are invited on non-agenda items generally considered to be within the subject matter jurisdiction of the City Council. Speakers must limit comments to three (3) minutes. Before speaking, please state your name for the record.*

**XVIII. CURRENT BUSINESS**

**18. Request to Waive City Council Policy L-2, Driveway Approach, at 400 40<sup>th</sup> Street – Encroachment Permit No. N2019-0620**

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Waive City Council Policy L-2 and allow a new driveway on Marcus Avenue at 400 40<sup>th</sup> Street on Newport Island. It is also recommended that as part of this waiver, the project still be required to include one (1) additional covered non-tandem off-street parking space as called for in the Council Policy.

**19. Ordinance No. 2020-1: Amending Chapter 12.24 of the Newport Beach Municipal Code Regarding Speed Limits**

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Waive reading, read by title only, introduce Ordinance No. 2020-1, *An Ordinance of the City Council of the City of Newport Beach, California, Amending Sections of Chapter 12.24 of the Newport Beach Municipal Code Regarding Increasing and Decreasing State Speed Limits*, and pass to second reading on January 28, 2020.

**20. Housing Action Plan to Address State Mandate for Additional Housing and Resolution No. 2020-6: Dissolving the General Plan Update Steering Committee and Establishing the Housing Element Update Advisory Committee**

- a) Determine the recommended actions exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly;

- b) Direct staff to file an appeal to SCAG regarding the RHNA methodology;
- c) Adopt Resolution No. 2020-6, *A Resolution of the City Council of the City of Newport Beach, California, Dissolving the General Plan Update Steering Committee and Establishing the Housing Element Update Advisory Committee*; and
- c) Provide direction to staff on the Housing Action Plan and amending Section 423 of the City's Charter to be voted upon by the residents.

**21. Appointment to the Visit Newport Beach, Inc. (VNB) Executive Committee**

- a) Determine that the action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because it will not result in a physical change to the environment, directly or indirectly;
- b) Appoint Scott Calder, Jim Mosher or Sharon Wood to fill the unscheduled vacancy on the VNB Executive Committee for a term expiring on June 13, 2021; and
- c) If Sharon Wood is appointed and if desired, waive City Council Policy A-2 relative to serving on only one Board, Commission or Committee at a time.

**XIX. MOTION FOR RECONSIDERATION**

*A motion to reconsider the vote on any action taken by the City Council at either this meeting or the previous meeting may be made only by one of the Council Members who voted with the prevailing side.*

**XX. ADJOURNMENT**

Testimony given before the City Council is recorded.  
The timer light will turn yellow when the speaker has one minute remaining.  
The timer light will turn red when the speaker has 10 seconds remaining.

**PLEASE TURN CELL PHONES OFF OR SET IN SILENT MODE**

City Council Minutes  
Regular Meeting  
December 10, 2019

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**I. CONVENED AT 7:00 P.M.**

**II. ROLL CALL**

Present: Mayor Diane Dixon, Mayor Pro Tem Will O'Neill, Council Member Brad Avery, Council Member Joy Brenner, Council Member Duffy Duffield, Council Member Jeff Herdman, Council Member Kevin Muldoon

**III. INVOCATION – Reverend Keith Horwitz, Soul Center OC**

**IV. PLEDGE OF ALLEGIANCE – Council Member Muldoon**

**V. NOTICE TO THE PUBLIC**

**VI. CITY COUNCIL ANNOUNCEMENTS AND ORAL REPORTS FROM CITY COUNCIL ON COMMITTEE ACTIVITIES**

Council Member Avery:

- Attended the Orange County Sanitation District Operations Committee meeting and a Homeless Task Force meeting

Council Member Duffield:

- Indicated he was looking forward to Council reorganization

Council Member Muldoon:

- Indicated someone from JetSuiteX (JSX) is in attendance to discuss their findings, what they have done to make skies quieter, and possibly change how the airport issue is viewed
- Wished everyone a Merry Christmas

Council Member Brenner:

- Announced a Wildland Fire Community meeting at OASIS Senior Center on December 12, 2019
- Met twice with Assemblywoman Cottie Petrie-Norris, once with Community Development Director Jurjis, and the Corona del Mar High School youth and government program with Mayor Pro Tem O'Neill
- Attended the Orange County Forum's 2020 Housing Outlook with Community Development Director Jurjis
- Served lunch at the OASIS Senior Center's annual volunteer lunch
- Attended the Mariners Mile scoping meeting
- Referencing Item 7 (Traffic Modeling Update Services), requested a traffic discussion during a Study Session, as well as convening the emergency council

Council Member Herdman:

- Displayed a slide to discuss the American Public Works Association's (APWA) Project of the Year Award presented to the City for the Bayside Drive Improvement Project and congratulated the Public Works Department

Mayor Pro Tem O'Neill

- Announced he presented a proclamation to Pacifica Christian High School student, Hannah Novakovich, for receiving the Outstanding Youth Award during National Philanthropy Day Orange County 2019 for her leadership and community service
- Discussed the District 7 General Plan Update workshop and believed the City will be having a Study Session to discuss the new Regional Housing Needs Assessment (RHNA) numbers

Mayor Dixon:

- Provided an update regarding the RHNA numbers, expressed concern that the change would derail the City's efforts to update its General Plan (GP), and indicated the General Plan Update (GPU) Steering Committee is requesting that Council reexamine the GPU process
- Requested that staff include in the upcoming RHNA Action Plan a review of the GPU process, a determination of which Elements of the GP need to move forward at this time and which can be delayed, and possibly create a committee to recommend policy to Council regarding the Elements that need updating
- Announced the upcoming General Plan Workshop dates

## **VII. PUBLIC COMMENTS ON CONSENT CALENDAR**

Regarding the Paramedic Subscription Program (Item 4), Jim Mosher believed major amendments have been made and suggested that Council continue this item to a future meeting so a Study Session can be held to discuss this publicly.

Fire Chief Boyles discussed the amendment to the number of employees the subscription would cover and explained the residency subscription.

## **VIII. CONSENT CALENDAR**

### ***READING OF MINUTES AND ORDINANCES***

#### **1. Minutes for the November 19, 2019 City Council Meeting [100-2019]**

Waive reading of subject minutes, approve as amended, and order filed.

#### **2. Reading of Ordinances**

Waive reading in full of all ordinances under consideration, and direct the City Clerk to read by title only.

### ***RESOLUTIONS FOR ADOPTION***

#### **3. Resolution No. 2019-104: Setting City Council Regular Meeting Dates for Calendar Year 2020 [100-2019]**

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Adopt Resolution No. 2019-104, *A Resolution of the City Council of the City of Newport Beach, California, Setting the Time and Dates of City Council Regular Meetings for Calendar Year 2020.*

#### **4. Rescinding Resolution No. 2015-77 and Adopting Resolution No. 2019-105: Amending the Paramedic Subscription Program Pursuant to Chapter 5.60 of the Newport Beach Municipal Code [100-2019]**

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Adopt amended Resolution No. 2019-105, *A Resolution of the City Council of the City of Newport Beach, California, Rescinding and Replacing Resolution No. 2015-77 Relating to the Paramedic Subscription Program Service Charges Pursuant to Chapter 5.60 (Paramedic Service User Fees) of the Newport Beach Municipal Code.*

### ***CONTRACTS AND AGREEMENTS***

#### **5. Corona del Mar Fire Station No.5/Library Replacement – Notice of Completion for Contract No. 8136-2 (15F12) [38/100-2019]**

- a) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project;
  - b) Authorize the City Clerk to release the Labor and Materials Bond 65 days after Notice of Completion has been recorded in accordance with applicable portions of the Civil Code; and
  - c) Release the Faithful Performance Bond one year after acceptance by the City Council.
- 6. Newport Pier Area Water Main Replacement – Award of Contract No. 7631-2 (20W11) [38/100-2019]**
- a) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Class 2 Section 15302(c) (replacement of existing public facilities involving negligible or no expansion of capacity) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment;
  - b) Approve the project plans and specifications;
  - c) Award Contract No. 7631-2 to Paulus Engineering, Inc. for the bid amount of \$2,651,674.10 for the Newport Pier Area Water Main Replacement project and authorize the Mayor and City Clerk to execute the contract; and
  - d) Establish a contingency of \$265,000.00 (approximately 10% of total bid) to cover the cost of unforeseen work not included in the original contract.
- 7. Approval and Award of Professional Services Agreement with Urban Crossroads for Traffic Modeling Update Services (C-8617-1) [38/100-2019]**
- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
  - b) Approve a Professional Services Agreement with Urban Crossroads of Newport Beach, California for a two-year term and a total amount not-to-exceed \$242,800, and authorize the Mayor and City Clerk to execute the agreement.

**MISCELLANEOUS**

- 8. Planning Commission Action Report for the November 21, 2019 Meeting and Agenda for the December 5, 2019 Meeting [100-2019]**  
Receive and file.
- 9. Budget Amendment to Accept a Check from the California State Library for Literacy Services (CLLS) and Appropriate Funds to the Library's FY 2019-20 Maintenance and Operation Budget [100-2019]**
- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
  - b) Accept a check in the amount of \$18,000 from the California State Library for Literacy Services (CLLS) and approve Budget Amendment No. 20-023 to increase expenditures by the same amount in the Literacy accounts indicated.

**Motion by Mayor Pro Tem O'Neill, seconded by Council Member Muldoon,** to approve the Consent Calendar; and noting the amendments to Item 1 and Item 4.

**The motion carried unanimously.**

**IX. ITEMS REMOVED FROM THE CONSENT CALENDAR – None**

**X. PUBLIC COMMENTS ON NON-AGENDA ITEMS**

Tina Babajanians expressed concerns with people living in their vans at the West Oceanfront parking lot.



Jim Mosher commended staff for allowing the public to download Council and Planning Commission meeting videos. He took issue with a Planning Commission approved project in China Cove that is before the Coastal Commission on December 12, 2019, in which the applicant is now offering the City \$50,000 to improve access and views elsewhere in the City, contingent upon approval by the Coastal Commission, believed some constituents feel this is a payment for favorable treatment, and noted the applicant is being represented by a former assistant city attorney who is now in private practice.

Corey Ferguson, JSX Captain, discussed his background, noted JSX is using the quietest aircraft at John Wayne Airport (JWA), displayed a slide, and provided a handout to discuss JSX's noise footprint compared to aircrafts from other carriers due to their departure profile.

Charles Klobe requested that Council review the project that is going before the Coastal Commission. He indicated he appreciates the quietness of JSX's take-offs; however, noted that the airport has offered to allow them to increase their passenger traffic if they move to the main terminal.

In response to Council questions, Deputy Community Development Director Campbell reported the project was approved by the Planning Commission and directly appealed to the Coastal Commission, but Council could have called it up for review after the Commission approved the project. Regarding the \$50,000, he stated it was a voluntary offer by the property owner, which would need Council approval, and the Coastal Commission staff report is not contingent on the offer going through. He confirmed that the offer was submitted after it was approved by the Planning Commission and there was no opportunity to influence their decision. City Attorney Harp clarified the process, reiterating that it did not need Council approval, the project could have been appealed to Council, or a Council Member could have called it up for review after Planning Commission approval; however, it was appealed directly to the Coastal Commission, and once they received the appeal, it was no longer under the City's authority.

In response to Council Member Muldoon's questions, Mr. Ferguson indicated the new departure procedure approximately 1,200 feet higher than before and stated that the other carriers can do the same, but it would be more difficult for them due to the bureaucracy of the larger carriers.

City Manager Leung confirmed that JSX is invited to the December 20, 2019 technical subcommittee meeting of the Aviation Committee.

#### **XVIII. REORGANIZATION – SPECIAL ORDER OF BUSINESS AT 7:15 P.M.**

##### **10. Presentation by District Director Tim Whitacre, on behalf of Orange County Supervisor Michelle Steel, to Mayor Diane Dixon**

District Director Whitacre presented a Certificate of Recognition to Mayor Diane Dixon for her leadership and service to the City.

##### **Presentation of Gavel Plaque to Outgoing Mayor Diane Dixon and Remarks by Outgoing Mayor**

Mayor Pro Tem O'Neill discussed the City's accomplishments during Mayor Dixon's term and presented her with a gavel plaque in recognition of her service as Mayor during 2019.

Mayor Dixon commended her fellow Council Members, staff, and board, commission and committee members for their hard work and dedication to the City, and discussed the City's balanced budget, unfunded pension liability payments, the homeless issue, and current and future projects. She stated that she is looking forward to continuing to serve the residents of Newport Beach.

##### **11. Election of Mayor**

City Clerk Brown, in presiding, placed all members of the City Council on an equal basis to nominate and elect.



Council Member Duffield nominated Council Member O'Neill for the position of Mayor.

**Motion by Council Member Muldoon, seconded by Council Member Brenner,** to close nominations.

**The motion carried without objection.**

Interested parties were invited to address the City Council. There being none, public comments were closed.

City Clerk Brown asked if there was any further discussion relative to the nomination for Mayor. There being no further discussion, City Clerk Brown conducted oral votes for the Mayor seat.

Without objection, Council Member O'Neill was selected as the Mayor of the City of Newport Beach for 2019-2020.

Mayor O'Neill took his place at the Council dais.

## **12. Election of Mayor Pro Tem**

Mayor O'Neill, in presiding, placed all members of the City Council on an equal basis to nominate and elect.

Council Member Dixon nominated Council Member Avery for the position of Mayor Pro Tem.

**Motion by Council Member Muldoon, seconded by Mayor O'Neill,** to close nominations.

**The motion carried unanimously.**

Interested parties were invited to address the City Council. There being no public comments, Mayor O'Neill asked if there was any further discussion relative to the nomination for Mayor Pro Tem.

There being no further discussion, Mayor O'Neill conducted oral votes for the Mayor Pro Tem seat.

Without objection, Council Member Avery was selected as the Mayor Pro Tem of the City of Newport Beach for 2019-2020.

Mayor Pro Tem Avery took his place at the Council dais.

## **13. Seating Arrangements for City Council**

The Council Members decided on the seating arrangement for the Council dais, pursuant to City Council Policy A-1. The following seating order was determined (left to right):

Joy Brenner – Duffy Duffield – Brad Avery – Will O'Neill – Kevin Muldoon – Diane Dixon – Jeff Herdman

## **14. New Mayor Remarks**

Mayor O'Neill thanked his Council colleagues, the voters of the City, his friends and family, and especially his wife, Jenny, and his children. He discussed the history of the City and his plans to emphasize the following over the coming year: 1) getting the fundamentals right, 2) responding to external pressures in ways the City really has not in many years, and 3) celebrating people and groups for the betterment of the City. He declared 2020 as the *Year of the Volunteer*.

**XII. PRESENTATION**

- **Recognition to Tony Cappa for 27 Years of Leading the OASIS Senior Center's Ukulele Club**

Mayor O'Neill read the proclamation and presented it to Tony Cappa who provided a quote from Oscar Wilde, noted the Ukulele Club is the oldest organized ukulele group in the United States, stated one of their members received UCLA's first ukulele scholarship, and invited people to listen to them play at the OASIS Senior Center.

**XIII. CONSENT CALENDAR**

**MISCELLANEOUS**

**15. Designation of City's Representatives Under California Government Code Section 54957.6(A)**

**Motion by Council Member Herdman, seconded by Council Member Duffield**, to designate the Mayor and Mayor Pro Tem as the City's designated representative for purposes of labor negotiations with all unrepresented employees within the Key and Management Group including, but not limited to, the City Manager, City Attorney and City Clerk, pursuant to California Government Code Section 54957.6(a).

The motion carried unanimously.

**XIX. MOTION FOR RECONSIDERATION – None**

**XX. ADJOURNMENT – Adjourned at 8:12 p.m. in memory of Kay Sandland**

The agenda was posted on the City's website and on the City Hall electronic bulletin board located in the entrance of the City Council Chambers at 100 Civic Center Drive on December 5, 2019, at 4:00 p.m.

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Will O'Neill  
Mayor

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Leilani I. Brown  
City Clerk



**CITY OF**

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# **NEWPORT BEACH**

## **City Council Staff Report**

January 14, 2020  
Agenda Item No. 3

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** Leilani I. Brown, City Clerk - 949-644-3005,  
lbrown@newportbeachca.gov

**PREPARED BY:** Leilani I. Brown, City Clerk

**TITLE:** Resolution No. 2020-1: Updating the List of Designated Employees  
for 2020 Under the City's Conflict of Interest Code

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**ABSTRACT:**

The City of Newport Beach updates its Conflict of Interest Code annually.

**RECOMMENDATION:**

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Adopt Resolution No. 2020-1, *A Resolution of the City Council of the City of Newport Beach, California, Adopting an Updated Designated Employees List for 2020.*

**FUNDING REQUIREMENTS:**

There is no fiscal impact related to this item.

**DISCUSSION:**

The City's Conflict of Interest Code was first adopted in 1977 in response to the enactment of the 1974 Political Reform Act ("Act"). In February of 1990, the City updated its Conflict of Interest Code pursuant to Section 18730 of the Regulations adopted by the Fair Political Practices Commission. The City's Conflict of Interest Code consists of two basic parts:

- 1. The body of the code contains the provisions required by Section 87302 of the Act, such as the manner of reporting financial interests and the method to be used by designated positions when they are required to disqualify themselves from making or participating in the making of decisions; and

2. The Appendix to the code lists the positions of those designated employees within the agency who make or participate in the making of decisions which may foreseeably have a material effect on economic interests and the corresponding disclosure categories for each position specifying which kinds of economic interests are reportable by designated employees in their Statement of Economic Interests.

Prior to the time the Statement of Economic Interests are submitted to the City Clerk on an annual basis, the list of "Designated Employees" is reviewed with the City's department directors to determine if there are additions or deletions that need to be made. The positions on the attached Designated Employees List were determined in cooperation with the department directors by evaluating each position to determine their job duties and corresponding disclosure categories. The Disclosure Categories are listed beside each position and indicate the different financial interests within the City of Newport Beach which must be disclosed and reported on each Designated Employee's Statement of Economic Interests depending upon whether the duties involve a broad range of duties or involve specific duties, such as contracting or decisions which might affect real property interests.

#### **ENVIRONMENTAL REVIEW:**

Staff recommends the City Council find this action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

#### **NOTICING:**

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

#### **ATTACHMENTS:**

Attachment A – Resolution No. 2020-1 with Exhibits  
Attachment B – Exhibit 1 (redline)

## ATTACHMENT A

### RESOLUTION NO. 2020-1

#### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, ADOPTING AN UPDATED DESIGNATED EMPLOYEES LIST FOR 2020

**WHEREAS**, the California Political Reform Act, Government Code Sections 81000 *et seq.* ("Act"), requires every local governmental agency to adopt and promulgate a Conflict of Interest Code;

**WHEREAS**, the Fair Political Practices Commission ("FPPC") has adopted regulations for compliance with the Act under Division 6 of Title 2 of the California Code of Regulations ("Regulations");

**WHEREAS**, Section 18730 of the Regulations provides that incorporation by reference of the terms of Section 18730, along with the designation of employees by position ("Designated Employees") who make or participate in the making of decisions which may foreseeably have a material effect on economic interests, and the formulation of disclosure categories specifying which kinds of economic interests are reportable by Designated Employees in their Statement of Economic Interests, constitute the adoption and promulgation of a Conflict of Interest Code as required by Government Code Section 87300 or the amendment of a Conflict of Interest Code within the meaning of Government Code Section 87306;

**WHEREAS**, on February 26, 1990, the City Council adopted Resolution No. 90-21, which adopted Section 18730 as provided under the Regulations, along with a designation of employees by position and the formulation of disclosure categories, as the Conflict of Interest Code for the City of Newport Beach; and

**WHEREAS**, subsequent to February 26, 1990, the City Council adopted resolutions amending the list of Designated Employees. Since the adoption of the resolutions, there have been further personnel changes and changes in staffing positions and, therefore, the City Council has determined that the City's Designated Employees List should be updated to reflect these changes. The 2020 Designated Employees List, which reflects staffing changes during 2019 and in effect for 2020, is attached hereto as Exhibit 1 and incorporated herein by this reference.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Newport Beach, California, as follows:

**Section 1:** The Regulations, as required by Section 18730, are incorporated herein by this reference.



**Section 2:** Exhibit 1 sets forth designated employees and disclosure categories and is hereby adopted and incorporated as part of the City of Newport Beach's Conflict of Interest Code.

**Section 3:** Exhibit 1 shall be appended to the Newport Beach Conflict of Interest Code and all previously adopted Designated Employees Lists are hereby superseded.

**Section 4:** Exhibit 2, attached hereto and incorporated herein by this reference, outlines the Appendix of Disclosure Categories for each of the Designated Employees.

**Section 5:** All Designated Employees and other positions listed in Exhibit 1 shall file their Statement of Economic Interests with the City Clerk electronically.

**Section 6:** The City Clerk is hereby instructed to take all necessary actions to implement compliance with the Regulations, including preparation and distribution of necessary reporting forms and the subsequent filing and recording of all required reports.

**Section 7:** The City Council finds this action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

**Section 8:** The Recitals provided above are true and correct and are incorporated into the substantive portion of this resolution.

**Section 9:** If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

**Section 10:** This resolution shall take effect immediately upon its adoption by the City Council and the City Clerk shall certify the vote adopting the resolution.

**ADOPTED** this 14<sup>th</sup> day of January, 2020.

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Will O'Neill  
Mayor

**ATTEST:**

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Leilani I. Brown  
City Clerk

**APPROVED AS TO FORM:**  
CITY ATTORNEY'S OFFICE

  
\_\_\_\_\_  
Aaron C. Harp  
City Attorney

Attachments:      Exhibit 1 – 2020 Designated Employee Lists  
                         Exhibit 2 – Appendix of Disclosure Categories





# EXHIBIT 1

## 2020 APPENDIX OF DESIGNATED POSITIONS

Departments/Positions	Disclosure Categories
<b>City Council</b>	GC §87200
<b>Office of the City Attorney</b>	
City Attorney	GC §87200
Assistant City Attorney	1
Deputy City Attorney	1
Paralegal	2, 3
<b>Office of the City Clerk</b>	
City Clerk	1
Assistant City Clerk	1
<b>Office of the City Manager</b>	
City Manager	GC §87200
Assistant City Manager	1
Deputy City Manager	1
Public Information Manager	1
<b>Community Development Department</b>	
Community Development Director	1
Deputy Community Development Director	1
Systems & Administrator Manager	2
Administrative Analyst	2, 3, 4
<b>Building Division:</b>	
Real Property Administrator	1
Senior Plan Check Engineer	3, 4
Building Inspector Supervisor	
Principal Building Inspector	3, 4
Senior Building Inspector	3, 4
Building Inspector I	3, 4
Building Inspector II	3, 4
Permit Specialist II	3, 4
Principal Civil Engineer	3, 4
Civil Engineer	3, 4
EMS Plans Examiner	3, 4
Permit Technician Supervisor	3, 4
<b>Planning Division:</b>	
Principal Planner	1
Senior Planner	2, 3, 4
Associate Planner	2, 3, 4
Assistant Planner	3, 4
Code Enforcement Supervisor	3, 4
Code Enforcement Officer	3, 4
Code Enforcement Officer I	3, 4
Code Enforcement Officer II	3, 4
Code Enforcement Officer Trainee	3, 4



Department/Positions	Disclosure Categories
<b><u>Finance Department</u></b>	
Finance Director/City Treasurer	GC §87200
Deputy Finance Director	1
Revenue Manager	2, 3
Budget Manager	2
Purchasing Agent	2
Buyer	2
<b><u>Fire Department</u></b>	
Fire Chief	1
Assistant Fire Chief	1
Assistant Fire Chief of Lifeguard Operations	1
EMS Division Chief	1
Fire Marshal	1
Battalion Chief	2
Administrative Manager	2
Life Safety Specialist III	3, 4
Life Safety Specialist II	3, 4
Fire Facilities Coordinator	2
<b><u>Harbor Department</u></b>	
Harbormaster/Director	1
<b><u>Human Resources Department</u></b>	
Human Resources Director	1
Human Resources Manager	2
<b><u>Library Services Department</u></b>	
Library Services Director	1
Library Services Manager	2
Adult Services Coordinator (Librarian III)	2
Branch and Youth Services Coordinator (Librarian III)	2
Circulation and Technical Processing Coordinator (Librarian III)	2
<b><u>Police Department</u></b>	
Chief of Police	1
Deputy Chief of Police	1
Support Services Administrator	1
Executive Officer to the Chief of Police	2
Support Services Lieutenant	2
Police Fiscal Service/Facility Manager	2



Department/Positions	Disclosure Categories
<b>Public Works Department</b>	
<b><i>Administration and Finance Division:</i></b>	
Public Works Director	1
Public Works Finance/Administrative Manager	1
Administrative Analyst	2
Analyst	2
Management Specialist	2
Senior Management Analyst	2, 3
<b><i>Engineering and Transportation Division:</i></b>	
Deputy Public Works Director/City Engineer – Public Works	1
Administrative Manager	1
Assistant City Engineer	2, 3, 4
City Traffic Engineer	2, 3, 4
Principal Civil Engineer	2, 3, 4
Senior Civil Engineer	2, 3
Senior Civil Engineer-Plan Check	3, 4
Assistant Civil Engineer	2
Associate Civil Engineer	2
Associate Civil Engineer-5%	2
Associate Civil Engineer-Plan Check	2, 3, 4
Senior Public Works Inspector	2, 3, 4
Public Works Inspector	2, 3, 4
Public Works Inspector II	2, 3, 4
Senior Engineer	2, 3, 4
Water Conservation Coordinator	3, 4
<b><i>Municipal Operations Division:</i></b>	
Deputy Public Works Director – Municipal Operations	1
Assets Maintenance Manager	2, 4
City Arborist	2, 3, 4
Field Maintenance Manager	2
Parks and Trees Manager	2
Senior Management Analyst	2
Automotive Parts Buyer	2
<b><u>Recreation and Senior Services Department</u></b>	
Recreation and Senior Services Director	1
Deputy Recreation and Senior Services Director	2
Recreation Manager	2
Senior Services Manager	2
<b><u>Utilities Department</u></b>	
Utilities Director	1
Field Superintendent II	2
Operations Support Superintendent	2
Senior Management Analyst	2

	Disclosure Categories
<b><u>Boards, Commissions and Committees</u></b>	
Board of Library Trustees	2
Building and Fire Board of Appeals	3, 4
City Arts Commission	2
Civil Service Board	3
Finance Committee	1
Harbor Commission	3, 4
Parks, Beaches and Recreation Commission	4
Planning Commission	GC §87200
<b><u>Consultants</u></b>	1
<p>Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitation:</p> <p>The Department Director may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Department Director's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.</p>	



## EXHIBIT 2

### APPENDIX OF DISCLOSURE CATEGORIES

CATEGORY	DESCRIPTION OF CATEGORY
<b>GC §87200</b>	Must disclose all personal investments and business positions in business entities, sources of income and interests in real property within Newport Beach. The original Form 700 is filed with the City Clerk who sends the original to the FPPC.
<b>1</b>	<p><b>DESIGNATED EMPLOYEES WHOSE DUTIES ARE BROAD AND INDEFINABLE.</b></p> <p>Must disclose all personal investments and business positions in business entities, sources of income and interests in real property within Newport Beach.</p> <p><b>CONSULTANTS</b> shall disclose pursuant to the broadest disclosure category in the code subject to the following limitation:</p> <p style="padding-left: 40px;">The Department Director may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Department Director's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.</p>
<b>2</b>	<p><b>DESIGNATED EMPLOYEES WHOSE DUTIES INVOLVE CONTRACTING OR PURCHASING.</b></p> <p>Must disclose investments and business positions in business entities within Newport Beach and income from sources within Newport Beach which manufacture, sell or provide supplies, materials, books, machinery, services, equipment or computer equipment of the type utilized by the City, or utilized by the employee's department.</p>
<b>3</b>	<p><b>DESIGNATED EMPLOYEES WHOSE DUTIES INVOLVE REGULATORY POWERS.</b></p> <p>Must disclose all investments and business positions in business entities within Newport Beach, and income from sources within Newport Beach which are subject to the regulatory, permit or licensing authority of the City of Newport Beach.</p>
<b>4</b>	<p><b>DESIGNATED EMPLOYEES WHOSE DECISIONS MAY AFFECT REAL PROPERTY INTERESTS.</b></p> <p>Must disclose investments and business positions in business entities within Newport Beach, and income from sources within Newport Beach which engage in land development, construction or the acquisition or sale of real property, and all interests in real property.</p>
<b>5</b>	<p><b>POSITIONS WHICH INVOLVE CITY SELF-INSURANCE BENEFITS.</b></p> <p>Must disclose all interests in real property, investments and business positions in business entities within Newport Beach and sources of income within Newport Beach from:</p> <ul style="list-style-type: none"> <li>a) Persons or entities which provide services, supplies, materials, machinery or equipment of the type utilized by the agency.</li> <li>b) Entities which are engaged in the business of insurance including, but not limited to, insurance companies, carriers, holding companies, underwriters, brokers, solicitors, agents, adjusters, claims managers and actuaries.</li> <li>c) Financial institutions including, but not limited to, banks, savings and loan associations and credit unions.</li> <li>d) Entities or persons who have filed a claim, or have a claim pending, against the agency.</li> </ul>



## ATTACHMENT B

## EXHIBIT 1

**201920 APPENDIX OF DESIGNATED POSITIONS**

Departments/Positions	Disclosure Categories
<b><u>City Council</u></b>	GC §87200
<b><u>Office of the City Attorney</u></b>	
City Attorney	GC §87200
Assistant City Attorney	1
Deputy City Attorney	1
Paralegal	2, 3
<b><u>Office of the City Clerk</u></b>	
City Clerk	1
Assistant City Clerk	1
<b><u>Office of the City Manager</u></b>	
City Manager	GC §87200
Assistant City Manager	1
Deputy City Manager	1
<del>Administrative Analyst</del> <u>Public Information Manager</u>	<del>2</del> <u>1</u>
<b><u>Community Development Department</u></b>	
Community Development Director	1
Deputy Community Development Director	1
Systems & Administrator Manager	2
Administrative Analyst	2, 3, 4
<b><u>Building Division:</u></b>	
Real Property Administrator	1
Senior Plan Check Engineer	3, 4
<u>Building Inspector Supervisor</u>	
Principal Building Inspector	3, 4
Senior Building Inspector	3, 4
<u>Building Inspector I</u>	<u>3, 4</u>
Building Inspector II	3, 4
<del>RBR Inspector</del> <u>Permit Specialist II</u>	3, 4
Principal Civil Engineer	3, 4
Civil Engineer	3, 4
<u>EMS</u> Plans Examiner	3, 4
Permit Technician Supervisor	3, 4
<b><u>Planning Division:</u></b>	
<del>Planning Manager</del>	<del>4</del>
Principal Planner	1
Senior Planner	2, 3, 4
Associate Planner	2, 3, 4
Assistant Planner	3, 4
<del>Planning Technician</del>	<del>3, 4</del>
Code Enforcement Supervisor	3, 4
Code Enforcement Officer	3, 4
<u>Code Enforcement Officer I</u>	<u>3, 4</u>
<u>Code Enforcement Officer II</u>	<u>3, 4</u>
Code Enforcement Officer Trainee	3, 4

Department/Positions	Disclosure Categories
<b><u>Finance Department</u></b>	
Finance Director/City Treasurer	GC §87200
Deputy Finance Director	1
Revenue Manager	2, 3
Budget Manager	2
Purchasing Agent	2
Buyer	2
<b><u>Fire Department</u></b>	
Fire Chief	1
Assistant Fire Chief	1
Assistant Fire Chief of Lifeguard Operations	1
EMS Division Chief	1
Fire Marshal	1
Battalion Chief	2
Administrative Manager	2
Life Safety Specialist III	3, 4
Life Safety Specialist II	3, 4
Fire Facilities Coordinator	2
<b><u>Harbor Department</u></b>	
Harbormaster/Director	1
<b><u>Human Resources Department</u></b>	
Human Resources Director	1
Human Resources Manager	2
<b><u>Library Services Department</u></b>	
Library Services Director	1
Library Services Manager	2
Adult Services Coordinator (Librarian III)	2
Branch and Youth Services Coordinator (Librarian III)	2
Circulation and Technical Processing Coordinator (Librarian III)	2
<b><u>Police Department</u></b>	
Chief of Police	1
Deputy Chief of Police	1
Support Services Administrator	1
Executive Officer to the Chief of Police	2
Support Services Lieutenant	2
Police Fiscal Service/Facility Manager	2



Department/Positions	Disclosure Categories
<b>Public Works Department</b>	
<b><i>Administration and Finance Division:</i></b>	
Public Works Director	1
Public Works Finance/Administrative Manager	1
Administrative Analyst	2
Analyst	2
Management Specialist	2
Senior Management Analyst	2, 3
<b><i>Engineering and Transportation Division:</i></b>	
Deputy Public Works Director/City Engineer – Public Works	1
Administrative Manager	1
Assistant City Engineer	2, 3, 4
City Traffic Engineer	2, 3, 4
Principal Civil Engineer	2, 3, 4
Senior Civil Engineer	2, 3
Senior Civil Engineer-Plan Check	3, 4
Assistant Civil Engineer	2
Associate Civil Engineer	2
Associate Civil Engineer-5%	2
Associate Civil Engineer-Plan Check	2, 3, 4
Senior Public Works Inspector	2, 3, 4
Public Works Inspector	2, 3, 4
Public Works Inspector II	2, 3, 4
Senior Engineer	2, 3, 4
Water Conservation Coordinator	3, 4
<b><i>Municipal Operations Division:</i></b>	
Deputy Public Works Director – Municipal Operations	1
Assets Maintenance Manager	2, 4
City Arborist	2, 3, 4
Field Maintenance Manager	2
Parks and Trees Manager	2
<a href="#">Park Maintenance Supervisor</a>	2
Senior Management Analyst	2
Automotive Parts Buyer	2
<b><u>Recreation and Senior Services Department</u></b>	
Recreation and Senior Services Director	1
Deputy Recreation and Senior Services Director	2
Recreation Manager	2
Senior Services Manager	2
<b><u>Utilities Department</u></b>	
Utilities Director	1
Field Superintendent II	2
Operations Support Superintendent	2
Senior Management Analyst	2

	Disclosure Categories
<b><u>Boards, Commissions and Committees</u></b>	
Board of Library Trustees	2
Building and Fire Board of Appeals	3, 4
City Arts Commission	2
Civil Service Board	3
Finance Committee	1
Harbor Commission	3, 4
Parks, Beaches and Recreation Commission	4
Planning Commission	GC §87200
<b><u>Consultants</u></b>	1
<p>Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitation:</p> <p>The Department Director may determine in writing that a particular consultant, although a “designated position,” is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written determination shall include a description of the consultant’s duties and, based upon that description, a statement of the extent of disclosure requirements. The Department Director’s determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.</p>	



# NEWPORT BEACH

## City Council Staff Report

January 14, 2020  
Agenda Item No. 4

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** Grace K. Leung, City Manager - 949-644-3001,  
gleung@newportbeachca.gov

**PREPARED BY:** Barbara J. Salvini, Human Resources Director - 949-644-3300,  
bsalvini@newportbeachca.gov

**TITLE:** Resolution No. 2020-2: Adjusting the Salary Schedule for the  
Positions of Assistant City Clerk and Budget Manager

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### **ABSTRACT:**

The City has been unable to fill the vacated position of Assistant City Clerk despite robust recruitment efforts. Based on a recent study of the position, staff is recommending enhancements to the minimum experience and certificate requirements in association with a salary range adjustment. The modifications to the position requirements more closely align with industry standards. The increase in salary range will improve external parity of the classification and assist with recruiting qualified candidates.

The City's Budget Manager recently retired, providing the Finance Department with an opportunity to evaluate its operational needs and recommend modifications to the Budget Manager classification's level of responsibility, accountability, span of control and supervisory authority in an effort to improve efficiencies in service delivery. It is recommended the Budget Manager salary range be adjusted down accordingly to reflect these proposed changes.

### **RECOMMENDATION:**

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Adopt Resolution No. 2020-2, *A Resolution of the City Council of the City of Newport Beach, California, Amending the Salary Schedule for the Positions of Assistant City Clerk and Budget Manager.*

### **FUNDING REQUIREMENTS:**

In the current fiscal year, there are sufficient appropriations in the City Clerk and Finance departments and significant projected salary savings from the vacant Assistant City Clerk (\$48,289) and Budget Manager (\$73,155). In future years, when the successful candidates reach the top of their range, the City Clerk's budget will have a base salary increase of \$18,281 due to the adjustment, and the Finance budget will have a base salary reduction of \$4,761. The net fiscal impact of this action will increase wages by \$13,521 (\$18,281 - \$4,761), again when both positions reach top step.

## **DISCUSSION:**

On September 10, 2019, the City initiated a recruitment for the recently vacated position of Assistant City Clerk. The Assistant City Clerk acts under the direction of the City Clerk, performing a variety of complex, specialized and highly responsible administrative support duties. There is an emphasis on records management and public records requests. Additionally, when the City Clerk is absent, the Assistant City Clerk performs the City Clerk's duties.

The City Clerk's department has undergone significant changes since the last recruitment for an Assistant City Clerk in 2016. The operational demands placed on the City Clerk's department have increased in volume and complexity; and, correspondingly, the responsibilities and expectations of the Assistant City Clerk position have grown as well. Specifically, the number and complexity of California Public Records Act requests have doubled, increasing from just under 400 requests in 2016 to over 800 requests per calendar year. On average, each request takes approximately 1.5 hours to complete; more complex requests require additional time and resources. The Assistant City Clerk's supervisory responsibilities have broadened since 2016; the position is now responsible for overseeing the Department's addition of a full-time Records Specialist and a part-time Department Assistant.

Despite robust recruitment efforts, replacing the vacated Assistant City Clerk position has proven difficult. A study was conducted by Human Resources to identify if adjustments to salary, education, experience, certifications or job responsibilities were indicated to make the position more competitive in the marketplace. The study revealed the current City of Newport Beach Assistant City Clerk salary ranks 7<sup>th</sup> out of the 8 agencies surveyed, and is over 9% below the median. In order to attract and retain for the position, staff is recommending adjusting the salary range from \$72,124 – 101,494 to \$85,122 – 119,775 and adjusting the combination of education, experience and licensing/certification requirements to more accurately reflect the competencies necessary for someone to be successful in the Assistant City Clerk position.

As noted above, the City's Budget Manager recently retired, affording the Finance Department with an opportunity to review its organizational structure and propose Departmental modifications designed to enhance operations. At the time of her retirement, the Budget Manager's scope of responsibilities included Accounts Payable, Bids, Contracts & Purchasing, Budget, Mailroom Services, Payroll and Warehouse Management. Going forward, the Department is proposing the Budget Manager oversee budget and payroll functions only. Because the proposed scope of the Budget Manager's responsibilities is narrowing in focus, there is an associated proposal to lower the salary range of the position, from \$139,130 - \$169,067 to \$132,459 - \$160,991. This proposed range accomplishes internal and external parity for the type of work being performed. Internally, the proposed salary adjustment recognizes the significant budgetary responsibilities associated with like positions, as well as the complexity surrounding the City payroll functions; but is reduced to acknowledge the redistribution of certain finance-related assignments. A high-level review of neighboring cities indicates the adjusted salary remains competitive in the marketplace.

**ENVIRONMENTAL REVIEW:**

Staff recommends the City Council find this action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

**NOTICING:**

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

**ATTACHMENT:**

Attachment A – Resolution No. 2020-2



## ATTACHMENT A

### RESOLUTION NO. 2020- 2

#### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AMENDING THE SALARY SCHEDULE FOR THE POSITIONS OF ASSISTANT CITY CLERK AND BUDGET MANAGER**

**WHEREAS**, City Charter Section 601 requires the City Council to provide the number, titles, qualifications, powers, duties and compensation of all officers and employees;

**WHEREAS**, Newport Beach Municipal Code Section 2.28.010 provides that, upon recommendation of the City Manager, the City Council may establish by resolution the salary range or rate for each position;

**WHEREAS**, due to the recent departure of the Assistant City Clerk and inability to fill the position despite an extensive recruitment process, the Human Resources Department studied the position to determine if adjustments to salary, education, experience, certifications and/or job responsibilities were necessary;

**WHEREAS**, the study findings resulted in a recommendation to adjust the salary range upward and to enhance the experience and certification requirements for the Assistant City Clerk classification;

**WHEREAS**, additionally, these adjustments will update the Assistant City Clerk job specification and place the City's position in a more competitive environment;

**WHEREAS**, the Budget Manager's recent retirement provided an opportunity for the Finance Department to evaluate its overall operational needs;

**WHEREAS**, the Finance Department has determined it is in its best interest to narrow the Budget Manager's scope of responsibility at this time;

**WHEREAS**, Human Resources is recommending adjusting the salary range downward for the Budget Manager classification due to the reduced level of responsibility, accountability, span of control and supervisory obligations while maintaining internal and external parity; and

**WHEREAS**, the City Manager has reviewed the changes to the salary schedule for the Assistant City Clerk and Budget Manager, as provided in this resolution and recommends approval.



**NOW, THEREFORE,** the City Council of the City of Newport Beach resolves as follows:

**Section 1:** The City's Salary Schedule is hereby amended to revise the salary range for the Assistant City Clerk to \$85,122 - \$119,775 annually. The revised salary range is outlined in Attachment "A", which is attached hereto and incorporated herein by reference.

**Section 2:** The City's Salary Schedule is hereby amended to revise the salary range for the Budget Manager to \$132,459 - \$160,991 annually. The revised salary range is outlined in Attachment "A", which is attached hereto and incorporated herein by reference.

**Section 3:** The recitals provided above are true and correct and incorporated into the operative part of this resolution. Any previously adopted resolution, or portion thereof, in conflict with the provisions of this resolution is hereby repealed to the extent it conflicts.

**Section 4:** The City Council finds this action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

**Section 5:** If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.



**Section 6:** This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting the resolution.

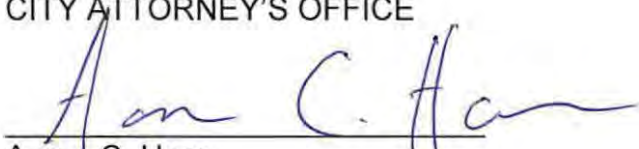
**ADOPTED** this 14th day of January, 2020.

\_\_\_\_\_  
Will O'Neill  
Mayor

**ATTEST:**

\_\_\_\_\_  
Leilani I. Brown  
City Clerk

**APPROVED AS TO FORM:**  
CITY ATTORNEY'S OFFICE

  
\_\_\_\_\_  
Aaron C. Harp  
City Attorney

Attachment: A - Salary Schedule Adjustments for Assistant City Clerk and Budget Manager

City of Newport Beach  
**SALARY SCHEDULE ADJUSTMENTS**

ATTACHMENT A

**POSITIONS: ASSISTANT CITY CLERK AND BUDGET MANAGER**  
Key Management Compensation Plan

**Establishment of New Salary Range for Assistant City Clerk**  
**Subgroup: Confidential Group**

Effective Revision Dates	Hourly Pay Rate <sup>1</sup>		Monthly Pay Rate <sup>2</sup>	
	Min	Max	Min	Max
January 18, 2020 <i>*pending City Council approval</i>	\$40.92	\$57.58	\$7,093	\$9,981
December 19, 2020 <i>*2.0% Cost of Living Adjustment</i>	\$41.74	\$58.74	\$7,235	\$10,181

**Establishment of New Salary Range for Budget Manager**  
**Subgroup: Division Management**

Effective Revision Dates	Hourly Pay Rate <sup>1</sup>		Monthly Pay Rate <sup>2</sup>	
	Min	Max	Min	Max
January 18, 2020 <i>*pending City Council approval</i>	\$63.68	\$77.40	\$11,038	\$13,416
December 19, 2020 <i>*2.0% Cost of Living Adjustment</i>	\$64.96	\$78.95	\$11,259	\$13,684

<sup>1</sup> Hourly pay rates are rounded to the nearest hundredth. Actual rate may have slight variation.

<sup>2</sup> Monthly pay rates are rounded to the nearest whole dollar. Actual rate may have slight variation.



**CITY OF**

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# **NEWPORT BEACH**

## **City Council Staff Report**

January 14, 2020  
Agenda Item No. 5

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** Seimone Jurjis, Community Development Director - 949-644-3232, [sjurjis@newportbeachca.gov](mailto:sjurjis@newportbeachca.gov)

**PREPARED BY:** Jaime Murillo, Principal Planner  
[jmurillo@newportbeachca.gov](mailto:jmurillo@newportbeachca.gov)

**PHONE:** 949-644-3204

**TITLE:** Resolution No. 2020-3: Initiation of Zoning Code and LCP Amendments Related to State Mandated Regulations for ADU and JADU Regulations (PA2019-248)

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### **ABSTRACT:**

The City Council will consider initiating amendments to Newport Beach Municipal Code (NBMC) Title 20 (Planning and Zoning) and NBMC Title 21 (Local Coastal Program Implementation Plan). The amendments relate to State mandated changes to the regulations for Accessory Dwelling Units (ADU) and Junior Accessory Dwelling Units (JADU).

### **RECOMMENDATION:**

- a) Determine this action is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to Section 15262 of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3; and
- b) Adopt Resolution No. 2020-3, *A Resolution of the City Council of the City of Newport Beach, California, Initiating Amendments to Title 20 Entitled "Planning and Zoning" and Title 21 Entitled "Local Coastal Program Implementation Plan" of the City of Newport Beach Municipal Code Related to State Mandated Regulations of Accessory Dwelling and Junior Accessory Dwelling Units (PA2019-248).*

### **FUNDING REQUIREMENTS:**

There is no fiscal impact related to this item.

### **DISCUSSION:**

Zoning Code Section 20.66.020 (Initiation of Amendment) provides that a code amendment may be initiated by the City Council with or without a recommendation from the Planning Commission. City Council Policy K-1 (General Plan and Local Coastal Program) provides that a City-sponsored amendment to the certified Local Coastal Program (LCP) shall be initiated by the City Council.

This agenda item is not a public hearing. Should the City Council choose to initiate these proposed amendments, the specific text changes will be drafted and considered by both the Planning Commission and the City Council at future public hearings. Additionally, amendments to the certified LCP will require certification by the California Coastal Commission to be effective.

Amendments Proposed for Initiation:

The California Legislature recently approved, and the Governor signed, SB 13 (Chapter 653, Statutes of 2019), AB 68 (Chapter 655, Statutes of 2019), and AB 881 (Chapter 659, Statutes of 2019), which are collectively known as the new ADU laws. Since AB 881 was the last chaptered bill signed by the Governor affecting ADU laws, it will supersede SB 13 and AB 68.

The new ADU laws amend Government Code Sections 65852.2 and 65852.22 to impose new limits on the City's regulation of ADUs and JADUs. Failure to comply with amended Government Code renders the City's current ADU and JADU ordinance null and void, as of January 1, 2020. This limits the City's ability to regulate ADUs and JADUs to the application of the few default standards provided in Government Code Sections 65852.2 and 65852.22.

One key component of the new ADU laws is that the City is now required to allow JADUs; whereas they had previously prohibited them. ADUs and JADUs are both independent living units; however, JADUs are limited to no more than 500 square feet. Additionally, JADUs are limited to an efficiency size kitchen, can have an internal access to the primary dwelling unit, and can share sanitary facilities with the primary unit.

In addition to JADUs, the new ADU laws, among other things, expand areas that allow ADUs, eliminate minimum lot size requirements, lower (and in some cases eliminate) parking requirements, establish new ADU sizes, and temporarily eliminates owner-occupancy requirements. The new ADU laws also provide the State new tools to enforce compliance with Government Code Sections 65852.2 and 65852.22. A summary of the needed changes is as follows:

Accessory Dwelling Units Development Standards	
Standard	Newport Beach Municipal Code vs New ADU Law
Location	<u>Existing NBMC</u> : Residentially zoned property improved with a single-family residence.  <u>New ADU Law</u> : Any property improved with a single-family, multiple-family, or mixed-use development.

<b>Number of Units Allowed</b>	<p><u>Existing NBMC</u>: On residentially zoned property developed with a single-unit dwelling, one ADU only.</p> <p><u>New ADU Law</u>: On single-unit developed properties, one ADU and one JADU. On multiple-unit and mixed-use developed properties, up to 25% of the existing units.</p>
<b>Minimum Lot Size</b>	<p><u>Existing NBMC</u>: 5,000 square feet.</p> <p><u>New ADU Law</u>: No Minimum lot size.</p>
<b>Maximum Unit Size</b>	<p><u>Existing NBMC</u>: ADU = 750 square feet.</p> <p><u>New ADU Law</u>: ADU = 850 square feet for studios and one-bedroom units and 1,000 square feet for two-bedroom units; JADU = 500 square feet.</p>
<b>Setbacks</b>	<p><u>Existing NBMC</u>: For garage conversions, no additional setback is required, beyond what is currently provided. For ADUs above the garage a five foot side and rear setback is required. For all others, setbacks are per the zoning code requirement for the base zone.</p> <p><u>New ADU Law</u>: For conversion and replacement of existing structures, no additional setback is required, beyond what is currently provided. Front setbacks are per the zoning code requirement for the base zone. Side and rear setbacks are per the zoning code requirement for the base zone or four feet, whichever is less.</p>
<b>Height</b>	<p><u>Existing NBMC</u>: For attached units or units above garages, the height is per the zoning code requirement for the base zone. For detached units, the maximum height is 14 feet.</p> <p><u>New ADU Law</u>: For attached units or units above garages, the height is per the zoning code requirement for the base zone. For detached units, the maximum height is 16 feet.</p>
<b>Parking</b>	<p><u>Existing NBMC</u>: One space per unit, except if property is:</p> <ol style="list-style-type: none"> <li>1) located within one-half (1/2) mile of a major transit stop;</li> <li>2) located within one (1) block of a designated car share pick up and drop off location;</li> <li>3) located within an architecturally and historically significant historic district;</li> <li>4) proposed to be converted from the existing space entirely within the primary dwelling unit or an existing accessory structure; or</li> <li>5) located in a permit parking area where on-street parking permits are required, but not offered to the occupant(s) of the accessory dwelling unit.</li> </ol>

	<p><u>New ADU Law:</u> For JADU, no parking is required.</p> <p>For ADU, one space per unit, with the same exceptions described above; however, exception 1) has been changed to <i>located within one-half (1/2) mile walking distance of public transit.</i></p>
<b>Garage Conversions</b>	<p><u>Existing NBMC:</u> When garage, carport, or covered parking is replaced/converted to ADU, parking shall be replaced in any configuration on the same lot.</p> <p><u>New ADU Law:</u> If garage, carport, or covered parking is replaced/converted to ADU, no replacement parking is required.</p>
<b>Owner-Occupancy Requirement</b>	<p><u>Existing NBMC:</u> The property owner shall live in either the primary residence or the ADU.</p> <p><u>New ADU Law:</u> For ADU, the property owner shall live in either the primary residence or the ADU. For JADU, the property owner shall live in the primary residence. However, this rule is suspended for ADUs created between 1/1/2020 and 1/1/2025, during which time no owner-occupancy requirements are required.</p>

In order to restore local regulations, as allowed under the new ADU laws, the City of Newport Beach needs to adopt new ADU and JADU ordinances. After a review of Title 20 and Title 21, staff believes code sections listed below will need to be amended to accommodate the request.

- 20.18.020, 20.22.020, 21.18.020, and 21.22.020 – Permitted Use Tables
- 20.48.200 and 21.47.200 – Accessory Dwelling Units
- 20.70.020 and 21.70.020 – Definitions

The NBMC sections identified above are anticipated to be the extent of the proposed amendments; however, as staff examines these sections within the context of their desired code changes and input is provided from residents and others, additional changes to related sections not listed may be necessary.

#### **ENVIRONMENTAL REVIEW:**

The initiation of zoning and LCP amendments are statutorily exempt from the California Environmental Quality Act (CEQA), pursuant to California Public Resources Code section 21080.17. Section 21080.17 of the Public Resource Code states the CEQA does not apply to the preparation and adoption of an ADU ordinance.



**NOTICING:**

The Municipal Code does not require notice for the initiation of amendments. Notice of this item appeared on the agenda for this meeting, which was posted at City Hall and on the City website. Should the City Council initiate the amendment, public notice will be provided for subsequent public hearings before the Planning Commission and the City Council as required by the Municipal Code. Additionally, notice of the LCP amendments will be sent to all persons and agencies on the Notice of the Availability mailing list.

**ATTACHMENT:**

Attachment A – Resolution No. 2020-3



## ATTACHMENT A

### RESOLUTION NO. 2020- 3

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, INITIATING AMENDMENTS TO TITLE 20 ENTITLED "PLANNING AND ZONING" AND TITLE 21 ENTITLED "LOCAL COASTAL PROGRAM IMPLEMENTATION PLAN" OF THE CITY OF NEWPORT BEACH MUNICIPAL CODE RELATED TO STATE MANDATED REGULATIONS OF ACCESSORY DWELLING AND JUNIOR ACCESSORY DWELLING UNITS (PA2019-248)**

**WHEREAS**, Section 20.66.020 of the Newport Beach Municipal Code ("NBMC") provides that the City Council of the City of Newport Beach ("City Council") may initiate an amendment to the Zoning Code with or without a recommendation from the Planning Commission;

**WHEREAS**, City Council Policy K-1 entitled "General Plan and Local Coastal Program" requires amendments to the City of Newport Beach certified Local Coastal Program codified in Title 21 of the NBMC to be initiated by the City Council;

**WHEREAS**, the California Legislature recently approved, and the Governor signed, Senate Bill 13 (Chapter 653, Statutes of 2019), Assembly Bill 68 (Chapter 655, Statutes of 2019), and AB 881 (Chapter 659, Statutes of 2019), which amend California Government Code Sections 65852.2 and 65852.22 to impose new limits on the City's regulation of Accessory Dwelling Units ("ADUs") and Junior Accessory Dwelling Units ("JADUs");

**WHEREAS**, Government Code Sections 65852.2 and 65852.22 conflict with the City's current regulation of ADUs and JADUs; and

**WHEREAS**, the City Council desires to amend Title 20 and Title 21 of the NBMC adopting new regulations for ADUs and JADUs that comply with Government Code Sections 65852.2 and 65852.22, to maintain local control and mitigate potential impacts to existing residential property.

**NOW, THEREFORE**, the City Council of the City of Newport Beach resolves as follows:

**Section 1:** The City Council hereby initiates amendments to Title 20 "Planning and Zoning" of the NBMC and Title 21 "Local Coastal Program Implementation Plan" of the NBMC to adopt new regulations for ADUs and JADUs.

**Section 2:** If any section, subsection, sentence, clause or phrase of this resolution is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

**Section 3:** The recitals provided in this resolution are true and correct and are incorporated into the substantive portion of this resolution.

**Section 4:** The City Council finds the adoption of this resolution is exempt from environmental review under the California Environmental Quality Act ("CEQA"), pursuant to Section 15262 of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it involves feasibility or planning studies for possible future actions which the agency, board, or commission has not approved or adopted.

**Section 5:** This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting this resolution.


**ADOPTED** this 14<sup>th</sup> day of January, 2020.

\_\_\_\_\_  
Will O'Neill  
Mayor

ATTEST:

\_\_\_\_\_  
Leilani I. Brown  
City Clerk

**APPROVED AS TO FORM:**  
CITY ATTORNEY'S OFFICE

  
\_\_\_\_\_  
Aaron C. Harp  
City Attorney





**CITY OF**

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# **NEWPORT BEACH**

## **City Council Staff Report**

January 14, 2020  
Agenda Item No. 6

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** David A. Webb, Public Works Director - 949-644-3311,  
dawebb@newportbeachca.gov

**PREPARED BY:** Andy Tran, Senior Civil Engineer, atran@newportbeachca.gov  
**PHONE:** 949-644-3315

**TITLE:** Resolution No. 2020-4: Authorizing Submittal of a Grant Funding Application to the Orange County Transportation Authority for West Coast Highway and Superior Ave./Balboa Blvd. Intersection Improvement

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### **ABSTRACT:**

As part of the on-going effort to relieve traffic congestion and enhance overall safety for pedestrians, cyclists and motorists, staff has submitted a funding application for the West Coast Highway and Superior Avenue/Balboa Boulevard Intersection Improvements, which includes a pedestrian/bicycle bridge over Coast Highway, under the Orange County Transportation Authority (OCTA) Regional Capacity Grant Program. As part of the grant funding application process, a City Council resolution approving the submittal of this grant funding application is required. Staff now requests City Council's adoption of the required supporting resolution.

### **RECOMMENDATIONS:**

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Adopt Resolution No. 2020-4, *Authorizing and Approving the Submittal of a Funding Application for an Intersection Capacity Enhancement Project to the Orange County Transportation Authority for Funding Under the Comprehensive Transportation Funding Program.*

### **FUNDING REQUIREMENTS:**

City staff actively pursues available grant funding for needed or desired capital improvement projects. For this proposed intersection improvement project, the total estimated cost to complete the concept design, environmental document, final design and necessary permitting is expected to be approximately \$1,200,000.

If successful at obtaining this grant funding, OCTA would provide \$780,000, or 65 percent of the necessary funding. In turn, the City would be required to provide \$420,000, or 35 percent of the funding as local matching funds. The City's portion of the local matching funds would be included in a future Capital Improvement Program (CIP) budget and be drawn from either/or a combination of Gas Tax, Transportation and Circulation (Traffic Impact) funds, possible secondary grants, or other transportation related funds for Council consideration.

### **DISCUSSION:**

The intersection of West Coast Highway and Superior Avenue/Balboa Boulevard is one of the busier intersections in the City with regards to traffic volumes as well as pedestrian and cyclist crossings. Staff has been reviewing various ideas and options that might be implemented to increase the capacity, operational efficiency as well as enhance the overall safety level for all users of this intersection. One of the best options to achieve these goals would be to construct two pedestrian bridges over the intersection and remove the northern and eastern crosswalks from the intersection, thus increasing the available green time to Coast Highway and removing much of the potential conflict for pedestrians and bicyclists.

In a recent but separate grant request, OCTA awarded the City \$2,349,600 for construction of a pedestrian/bicycle bridge over the Superior Avenue leg of this intersection. On November 19, 2019, City Council approved the Conceptual Design for the Superior Avenue Pedestrian/Bicycle Bridge and Parking Lot project and that project is now under design.

In August 2019, OCTA announced the opening of the 2020 CTFP Regional Capacity Grant Program (RCP) and Call for Projects. Approximately \$32 million is available from Measure M(2) funds for this RCP Call for Projects. Project applications were due on October 24, 2019, and will be evaluated and scored by OCTA in the coming months. With this opportunity becoming available, staff submitted a funding application for the West Coast Highway and Superior Avenue/Balboa Boulevard Intersection Improvement project. The grant application was for the \$1,200,000 in estimated funding needed to complete the concept design, environmental document, final design and necessary permitting for the intersection widening and pedestrian/bicycle bridge over Coast Highway. Intersection widening involves adding one additional eastbound thru lane on West Coast Highway, and converting the Superior Avenue southbound dual right-turn lanes to a free right-turn lane. Additionally, the project would construct the second pedestrian/bicycle bridge, over West Coast Highway. With the completion of both bridges, the two existing at-grade crosswalks (north and east sides) will be removed, which will significantly enhance pedestrian and bicycle safety at this busy intersection. Vehicular operations will also improve since the crosswalk push buttons will not be activated, allowing more traffic signal time for vehicular movement. Vehicular capacity will be increased with the additional eastbound thru lane on West Coast Highway and the free right-turn lane on Superior Avenue.



A draft resolution was also included with the application as required by the funding guidelines. Staff is now requesting City Council's adoption of the required supporting resolution to be submitted as a follow-up to our application.

**ENVIRONMENTAL REVIEW:**

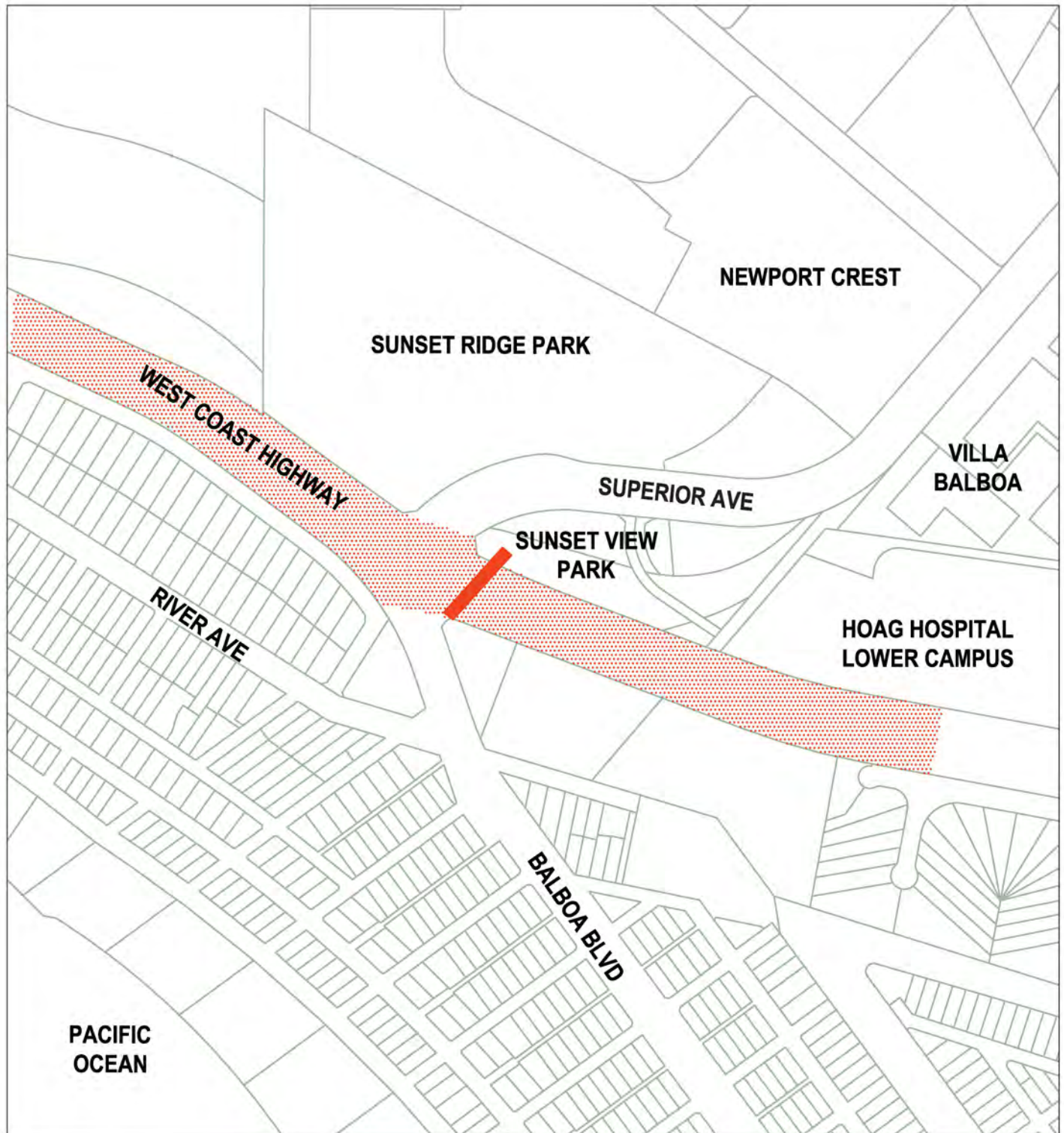
Staff recommends the City Council find this action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

**NOTICING:**

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

**ATTACHMENTS:**

Attachment A – Location Map  
Attachment B – Resolution No. 2020-4



**PROPOSED WEST COAST HIGHWAY PEDESTRIAN BRIDGE**

**PROPOSED WEST COAST HIGHWAY WIDENING**



**WEST COAST HIGHWAY AND SUPERIOR AVE /  
BALBOA BLVD INTERSECTION IMPROVEMENTS  
LOCATION MAP**

**CITY OF NEWPORT BEACH  
PUBLIC WORKS DEPARTMENT**

**1/14/20**



## ATTACHMENT B

### RESOLUTION NO. 2020- 4

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AUTHORIZING AND APPROVING THE SUBMITTAL OF A FUNDING APPLICATION FOR AN INTERSECTION CAPACITY ENHANCEMENT PROJECT TO THE ORANGE COUNTY TRANSPORTATION AUTHORITY FOR FUNDING UNDER THE COMPREHENSIVE TRANSPORTATION FUNDING PROGRAM**

**WHEREAS**, the City of Newport Beach ("City") desires to implement the Intersection Capacity Enhancement Project at West Coast Highway and Superior Avenue/Balboa Boulevard ("Project");

**WHEREAS**, the City has been declared by the Orange County Transportation Authority ("OCTA") to meet the eligibility requirements to receive revenues as part of the M2 "Fair Share" under the Comprehensive Transportation Funding Program ("Program");

**WHEREAS**, the City's Circulation Element is consistent with the Orange County Master Plan of Arterial Highways;

**WHEREAS**, the City will not use Program funds to supplant developer fees or other commitments;

**WHEREAS**, the City desires to support the funding application for the Project under the Program;

**WHEREAS**, the City must include all projects funded by Net Revenues in the seven-year Capital Improvement Program as part of the Measure M2 Ordinance eligibility requirement;

**WHEREAS**, the OCTA intends to allocate funds for transportation improvement projects within the incorporated cities and the County;

**WHEREAS**, by this resolution, the City Council of the City of Newport Beach intends to authorize a formal amendment to its seven-year Capital Improvement Program to add the Project for funding upon approval from OCTA's Board of Directors to fund the Project as part of the Program;

**WHEREAS**, should OCTA's Board of Directors approve funding the Project as part of the Program, OCTA shall provide sixty-five percent (65%) of the funding for the Project, not to exceed \$780,000;

**WHEREAS**, by this resolution, the City Council of the City of Newport Beach intends to agree to provide thirty-five percent (35%) in matching funds for the planning phase of the Project, as required by the Program's Guidelines; and

**WHEREAS**, if the Project's total costs exceed One Million Two Hundred Thousand Dollars and 00/100 (\$1,200,000.00), the City shall be responsible for any additional costs of the Project.

**NOW, THEREFORE**, the City Council of the City of Newport Beach resolves as follows:

**Section 1:** The City Council does hereby approve submission of the funding application for the Project under the Program.

**Section 2:** The City Council does hereby authorize a formal amendment to its seven-year Capital Improvement Program to add the Project for funding upon approval from OCTA's Board of Directors to fund the Project as part of the Program.

**Section 3:** The City Council does hereby agree to provide thirty-five percent (35%) in matching funds for the planning phase for the Project, as required by the Program, should the OCTA's Board of Directors approve funding the Project as part of the Program.

**Section 4:** The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

**Section 5:** If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

**Section 6:** The City Council finds the adoption of this resolution is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

**Section 7:** This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting the resolution.


**ADOPTED** this 14th day of January, 2020.

\_\_\_\_\_  
Will O'Neill  
Mayor

**ATTEST:**

\_\_\_\_\_  
Leilani I. Brown  
City Clerk

**APPROVED AS TO FORM:**  
CITY ATTORNEY'S OFFICE

  
\_\_\_\_\_  
Aaron C. Harp  
City Attorney







**CITY OF**

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# **NEWPORT BEACH**

## **City Council Staff Report**

January 14, 2020  
Agenda Item No. 7

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** David A. Webb, Public Works Director - 949-644-3311,  
dawebb@newportbeachca.gov

**PREPARED BY:** Brad Sommers, Principal Civil Engineer  
bsommers@newportbeachca.gov

**PHONE:** 949-644-3326

**TITLE:** Resolution No. 2020-5: Authorizing the Submittal of a Funding Application to the Orange County Transportation Authority for the Balboa Island/Corona del Mar Area Microtransit Feasibility Study

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### **ABSTRACT:**

At the request of the Balboa Island and Corona del Mar communities, staff reviewed potential local transit circulators, similar to the Balboa Peninsula Trolley or Free Rides Around Newport Center (FRANC) to enhance mobility and connectivity within the Balboa Island and Corona del Mar communities. Staff determined local transit circulators, or microtransit options, have been successful in other jurisdictions, but noted the emerging concept of neighborhood transit circulators warrants a feasibility study to determine if a program of this nature would benefit these communities. The topic was discussed at the September 24, 2019, City Council Study Session, with Council indicating there could be further interest in a pilot program, provided the requesting communities or organization fund the program or grant-funding match.

The Orange County Transportation Authority (OCTA) recently released a Measure M Program Call for Projects with the goal of providing funding to local agencies for community based transit circulators, including microtransit options. As an opportunity has arisen for grant funding to prepare a Feasibility Study, City staff submitted an application to study the feasibility of local transit options to increase mobility in and around the Balboa Island and Corona del Mar communities, including potential connection to Irvine Terrace and Newport Center, as well as, Balboa Village (via the Balboa Island Ferry).

Balboa Island Marketing, Inc. and Balboa Island Improvement Association support a study to review the feasibility of a local transit program and pledge to help pay the required ten percent grant Local Match.

### **RECOMMENDATION:**

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly;

- b) Adopt Resolution No. 2020-5, *A Resolution of the City Council of the City of Newport Beach, California, Authorizing and Approving Submittal of a Funding Application for the Balboa Island/Corona del Mar Microtransit Feasibility Study Project to the Orange County Transportation Authority for Funding Under the Project V Community-Based Transit/ Circulators Program*; and
- c) Authorize the City Manager to accept contribution funds from the Balboa Island Marketing, Inc., the Balboa Island Improvement Association, as well as possible Districts 5 and 6 City Council Discretionary funds, for use as required Local Match funds upon award of Orange County Transportation Authority Project V grant.

### **FUNDING REQUIREMENTS:**

There is no fiscal impact related to the adoption of Resolution to support the grant application. However, the OCTA Project V program requires a ten (10) percent Local Match of the estimated total project cost. Preparation of the Feasibility Study is estimated to cost \$65,000, which includes a requested grant allocation of \$58,500 and required Local Match of \$6,500.

To support the project and partner with the City, Balboa Island Marketing, Inc. and Balboa Island Improvement Association tentatively pledged to provide the required Local Match. District 5 Councilmember Herdman and District 6 Councilmember Brenner have also pledged to contribute Discretionary Council funds, if needed, to achieve the \$6,500 match. Upon OCTA notification of award of Project V funds, staff will acquire written commitment letters and funds prior to proceeding with the project.

### **DISCUSSION:**

In October, the Orange County Transportation Authority (OCTA) released a Project V Program call for projects with the goal of providing funding to local agencies for community based transit circulators, including microtransit options. Project V affords an opportunity to receive Measure M funding to prepare a feasibility study to review local transit options within the Balboa Island and Corona del Mar communities, including potential connection to Irvine Terrace, Newport Center, as well as, Balboa Village (via the Balboa Island Ferry). To ensure the City is eligible for this funding, City staff prepared and submitted an application prior to the December 12, 2019, deadline.

The proposed feasibility study will determine the benefits and challenges of a transit operation within these communities, consider different types of service, demands and needs of the program, and provide an opportunity to engage the community through public outreach events.

If successful, award of OCTA Project V funding requires a ten (10) percent local match of the estimated total maximum project cost of \$65,000. The funding application requests a grant allocation of \$58,500 and required Local Match of \$6,500.

As supporters of the project and grant application, Balboa Marketing, Inc. and Balboa Island Improvement Association wish to partner with the City and have tentatively pledged to cover the required Local Match. Additionally, Councilmembers Herdman and Brenner support preparing a feasibility study for a community based transit circulator to increase mobility within these areas and, if necessary, have agreed to contribute a portion of their Discretionary Council funding toward the required match.

Staff requests adoption of a Resolution to support the funding application to comply with the OCTA grant guidelines and to allow the City Manager to accept funds from Balboa Island Marketing, Inc. and Balboa Island Improvement Association, upon grant award, to be used as the required Local Match.

**ENVIRONMENTAL REVIEW:**

Staff recommends the City Council find this action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

**NOTICING:**

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

**ATTACHMENTS:**

Attachment A – Resolution No. 2020-5  
Attachment B – Proposed Project Study Area



ATTACHMENT A

RESOLUTION NO. 2020- 5

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AUTHORIZING AND APPROVING SUBMITTAL OF A FUNDING APPLICATION FOR THE BALBOA ISLAND/CORONA DEL MAR MICROTRANSIT FEASIBILITY STUDY PROJECT TO THE ORANGE COUNTY TRANSPORTATION AUTHORITY FOR FUNDING UNDER THE PROJECT V COMMUNITY-BASED TRANSIT/CIRCULATORS PROGRAM**

**WHEREAS**, the City of Newport Beach ("City") desires to implement a Balboa/Corona del Mar Microtransit Feasibility Study Project ("Project");

**WHEREAS**, the Orange County Transportation Authority's ("OCTA") Community-Based Transit/Circulators Program ("Project V Program") establishes a competitive process to enable local jurisdictions to develop community-based local transit services that complement regional transit services and meet needs in areas not adequately serviced by regional transit;

**WHEREAS**, the OCTA intends to allocate Project V funds within the incorporated cities and the County of Orange;

**WHEREAS**, the OCTA has established the procedures and criteria for reviewing applications as identified in the Project V Guidelines;

**WHEREAS**, the City has been declared by OCTA to meet the eligibility requirements to receive revenues as part of OCTA's Measure M2 ("Measure M2");

**WHEREAS**, the City's Circulation Element is consistent with the County of Orange Master Plan of Arterial Highways;

**WHEREAS**, by this resolution, the City Council of the City of Newport Beach authorizes the nomination of the Balboa Island/Corona del Mar Microtransit Feasibility Study Project;

**WHEREAS**, the City must include all projects funded by Net Revenues in the seven-year Capital Improvement Program as part of Measure M2 eligibility requirement;

**WHEREAS**, should OCTA's Board of Directors approve funding for the Project as part of the Project V Program, OCTA shall provide ninety percent (90%) of the funding for the Project, not to exceed Fifty Eight Thousand Five Hundred Dollars and 00/100 (\$58,500.00);



**WHEREAS**, by this resolution, the City Council of the City of Newport Beach intends to agree to provide ten percent (10%) in matching funds for the Project, as required by the Project V Program's Guidelines;

**WHEREAS**, if the Project's total costs exceed Sixty-Five Thousand Dollars and 00/100 (\$65,000.00), the City shall be responsible for any additional costs of the Project;

**WHEREAS**, should OCTA's Board of Directors approve the funding of the Project, by this resolution, the City authorizes a formal amendment to the seven-year Capital Improvement Program to add projects approved for funding upon approval from the OCTA Board of Directors;

**WHEREAS**, the City will comply with any applicable provisions of the Americans with Disabilities Act, and any other federal, state, and/or local laws, rules and/or regulations;

**WHEREAS**, the City will consult with OCTA regarding the need for a paratransit plan prior to starting any future operations;

**WHEREAS**, the City of Newport Beach will not use Measure M2 funds to supplant developer fees or other commitments; and

**WHEREAS**, in accordance with applicable law, the City will provide OCTA's representatives access to and the right to examine all records, books, papers or documents related to the Project.

**NOW, THEREFORE**, the City Council of the City of Newport Beach resolves as follows:

**Section 1:** The City Council does hereby approve submission of the funding application for the Balboa/Corona del Mar Microtransit Feasibility Study Project.

**Section 2:** The City Council does hereby authorize a formal amendment to its seven-year Capital Improvement Program to add the Balboa/Corona del Mar Microtransit Feasibility Study Project for funding upon approval from OCTA's Board of Directors to fund the Project.

**Section 3:** The City Council does hereby agree to provide matching funds for the Project in the amount of ten percent (10%) of Sixty-Five Thousand Dollars and 00/100 (\$65,000.00), as required by the OCTA Community-Based Transit/Circulators Program Guidelines, and the funds shall be used as supplemental funding to aid the City in the administering of the Balboa/Corona del Mar Microtransit Feasibility Study Project.

**Section 4:** The City Council does hereby agree that City shall be responsible for any additional costs of the Project, if the total cost of the Project exceeds Sixty-Five Thousand Dollars and 00/100 (\$65,000.00).

**Section 5:** The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

**Section 6:** If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

**Section 7:** The City Council finds the adoption of this resolution exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

**Section 8:** This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting the resolution.

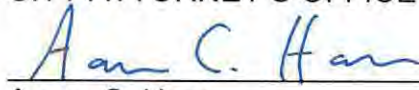
**ADOPTED** this 14th day of January, 2020.

\_\_\_\_\_  
Will O'Neill  
Mayor

**ATTEST:**

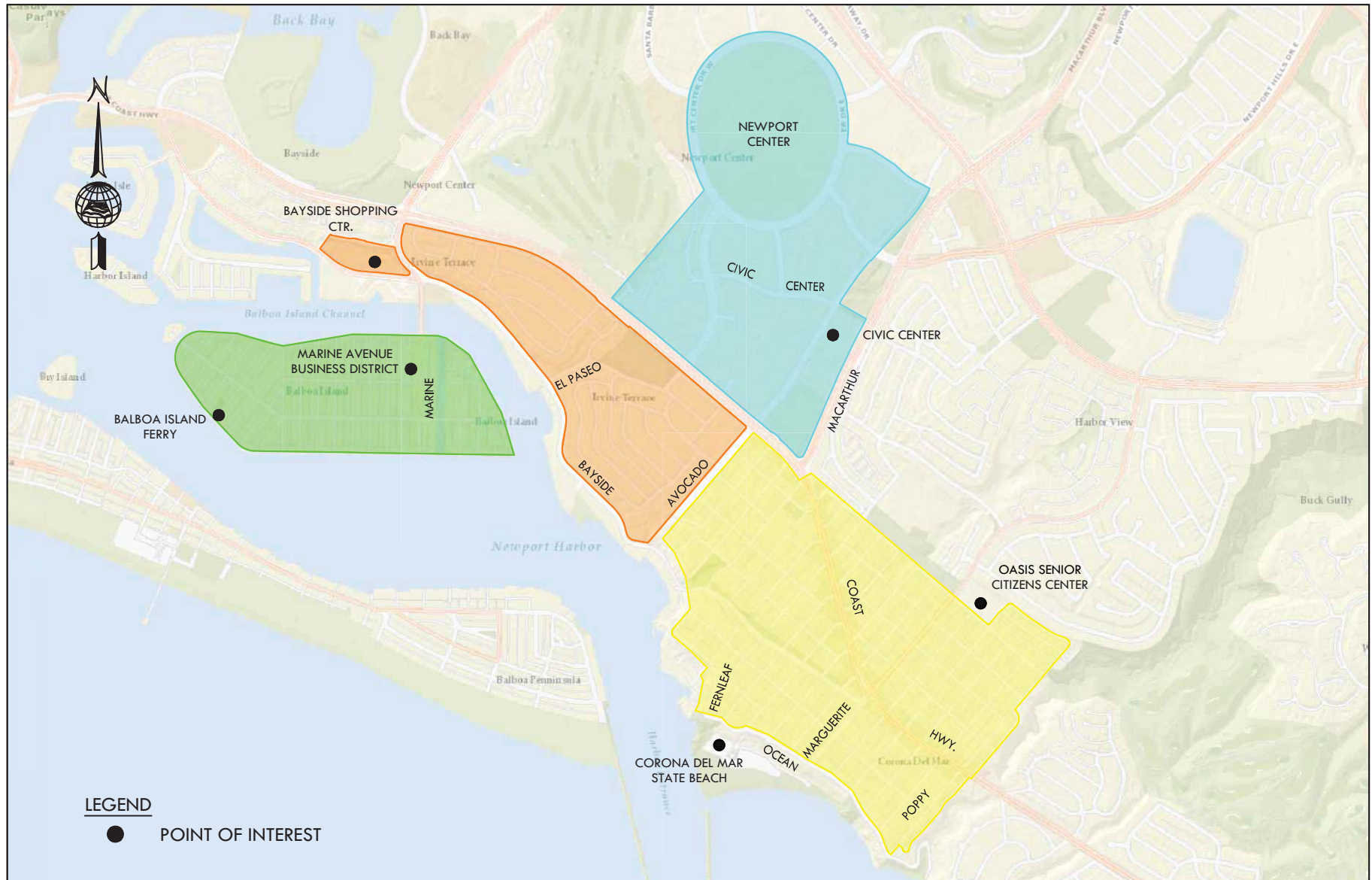
\_\_\_\_\_  
Leilani I. Brown  
City Clerk

**APPROVED AS TO FORM:**  
CITY ATTORNEY'S OFFICE

  
\_\_\_\_\_  
Aaron C. Harp  
City Attorney



# ATTACHMENT B



**BALBOA ISLAND/CORONA DEL MAR  
TRANSIT FEASIBILITY STUDY**

**PROPOSED STUDY AREA**

**CITY OF NEWPORT BEACH  
PUBLIC WORKS DEPARTMENT**

**1/14/20**



**CITY OF**

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# **NEWPORT BEACH**

## **City Council Staff Report**

January 14, 2020  
Agenda Item No. 8

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** David A. Webb, Public Works Director - 949-644-3311,  
dawebb@newportbeachca.gov

**PREPARED BY:** Patricia Kharazmi, Assistant Civil Engineer,  
pkharazmi@newportbeachca.gov

**PHONE:** 949-644-3344

**TITLE:** MacArthur Boulevard and University Drive Pavement Rehabilitation  
– Notice of Completion for Contract No. 7183-2 (18R23)

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**ABSTRACT:**

On April 9, 2019, City Council awarded Contract No. 7183-2 for the MacArthur Boulevard and University Drive Pavement Rehabilitation project to R.J. Noble Company, Inc. The work is complete and staff requests City Council acceptance and close out of the contract.

**RECOMMENDATION:**

- a) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project;
- b) Authorize the City Clerk to release the Labor and Materials Bond 65 days after the Notice of Completion has been recorded in accordance with applicable portions of Civil Code; and
- c) Release Faithful Performance Bond one year after acceptance by the City Council.

**FUNDING REQUIREMENTS:**

Funds for the construction contract were expended from the following accounts:

<u>Account Description</u>	<u>Account Number</u>	<u>Amount</u>
CIP General Fund	01201927-980000-18R23	\$ 940,907.00
Measure M Fair Share	12201-980000-18R23	\$ 935,576.45
SB1-RMRA	12601-980000-18R23	\$ 485,829.00
Water Enterprise	70101-980000-18R09	\$ 7,053.00
Water Enterprise	70101-980000-20R09	\$ 18,808.00
Contributions (CalRecycle)	13501-980000-19R02	\$ 89,588.90
Contributions (IRWD)	13501-980000-18R23	\$ 16,943.50
Contributions (Mesa)	13501-980000-18R23	\$ 2,298.00
<b>Total:</b>		<b>\$ 2,497,003.85</b>

The City was successful in obtaining grant funding to pay for a portion of the paving material under the CalRecycle Rubberized Pavement Grant Program (Program). This Program promotes the use of rubberized asphalt concrete made from recycled waste tires generated in California. The Program aims to decrease the adverse environmental impacts created by disposing and stockpiling of waste tires. Through the Program, the City will be reimbursed \$10/ton of rubberized asphalt concrete used on this project. The total amount of grant funding from this Program is \$89,588.90 for this contract.

**DISCUSSION:**

**Overall Contract Cost/Time Summary**

Awarded Contract Amount	Final Cost at Completion	Contingency Allowance	Actual Contract Change	% Due to Directed Change	% Due to Unforeseen Change
\$2,319,580.00	\$2,497,003.85	10% or less	+7.6%	-1.4%	+9.0%
Allowed Contract Time + Approved Extensions (days) =		80	Actual Time Under (-) or Over (+)		-8

This project included surface milling and overlaying the existing asphalt street pavement on MacArthur Boulevard, from Ford Road/Bonita Canyon Drive to State Route 73 (SR-73), and on University Drive, from Jamboree Road to the easterly City limit, with new rubberized asphalt concrete pavement. Deteriorated concrete sidewalks, median curbs, curbs and gutters, bus pads, and curb access ramps were also reconstructed as part of the project. Impacted utilities were adjusted to grade and new pavement signing and striping were installed.

Additionally, a short segment of roadway on Bison Avenue, from approximately 200-feet west of MacArthur Boulevard to SR-73, was added to this project during construction. The extra paving work on Bison Avenue was originally part of a separate pavement rehabilitation project that is scheduled to start in early 2020 (Bison Avenue, San Joaquin Hills Road, and San Nicolas Drive Pavement Rehabilitation – Project No. 19R21). Because construction of both paving projects will impact the busy intersection of MacArthur Boulevard and Bison Avenue, staff decided to include this short segment of Bison Avenue to avoid impacting this intersection twice. Moreover, this short segment of Bison Avenue required an encroachment permit from the California Department of Transportation (Caltrans) due to impacts to SR-73, which is similar to the work on MacArthur Boulevard and University Drive. Staff was able to streamline the Caltrans permitting process for both projects by combining this short segment of Bison Avenue with this contract.



The contracted work has now been completed to the satisfaction of the Public Works Department. A summary of the construction cost is as follows:

Original Bid Amount:	\$ 2,319,580.00
Actual Cost of Bid Items Constructed:	\$ 2,288,683.23
Total Change Orders:	\$ 208,320.62
<b>Final Contract Cost:</b>	<b>\$ 2,497,003.85</b>

The final contract cost was \$2,497,003.85, which was approximately 7.6 percent higher than the original bid amount. The actual cost of bid items constructed (\$2,288,683.23) was less than the original bid amount (\$2,319,580.00) due to the reduced quantities constructed as measured in the field. The final contract cost increase was primarily due to five change orders, totaling \$208,320.62. The change orders included costs for constructing a new concrete bus pad on University Drive per Orange County Transportation Authority's request, extending the paving limits on Bison Avenue, providing additional traffic signal detector loops, modifying the thermoplastic traffic striping application method, and other minor field changes.

A summary of the project schedule milestones is as follows:

Estimated Start of Construction per Annual Baseline Schedule	06/17/19
Actual Start of Construction Per Notice to Proceed	06/17/19
Extended Contract Completion Date Inclusive of Extra Work	10/08/19
Actual Substantial Construction Completion Date	09/26/19

#### **ENVIRONMENTAL REVIEW:**

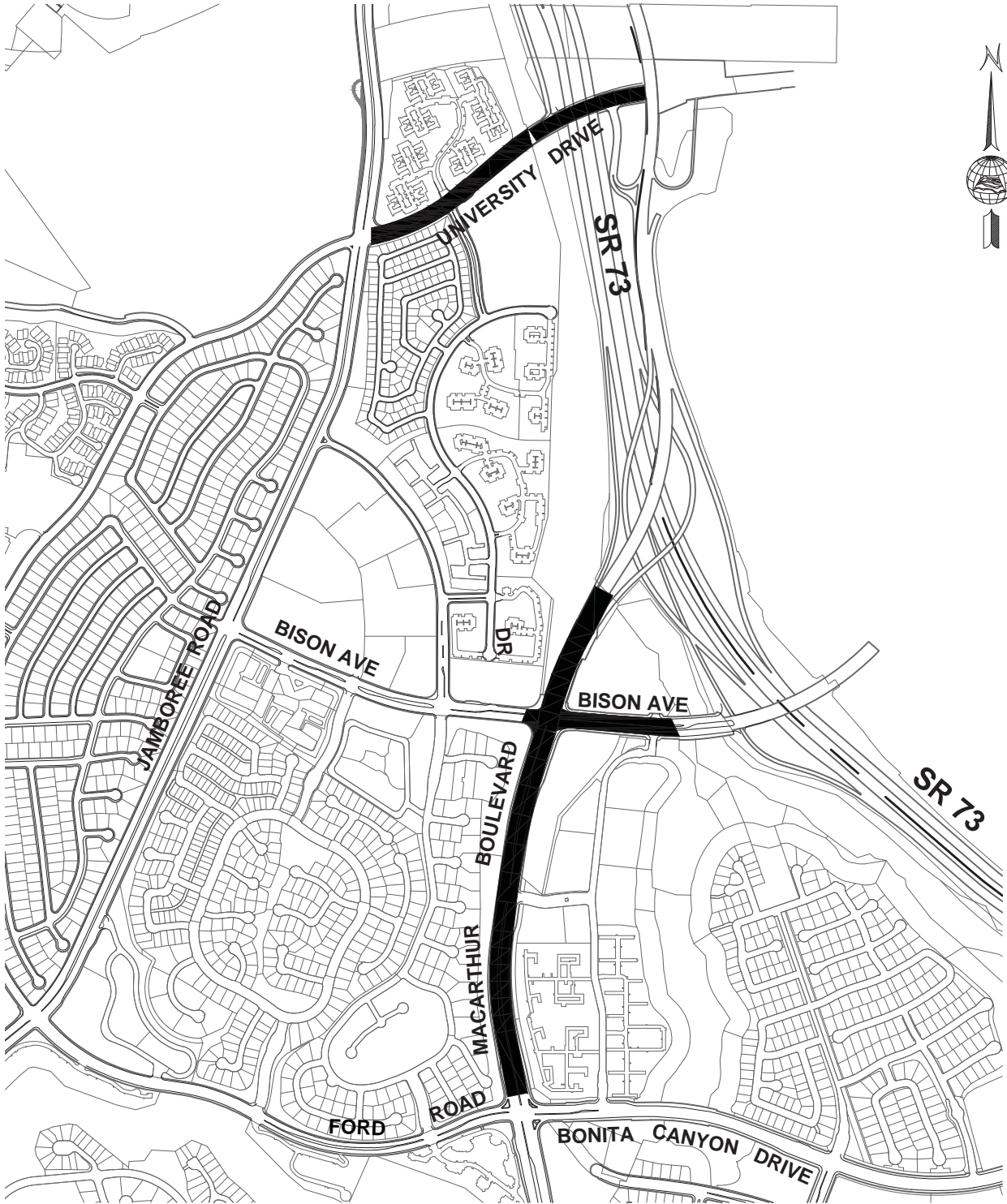
On April 9, 2019, the City Council found this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301, Class 1, (b), (c) (maintenance of existing public facilities involving negligible or no expansion of use) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment.

#### **NOTICING:**

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

#### **ATTACHMENT:**

Attachment A – Location Map



LIMITS OF WORK

MACARTHUR BLVD & UNIVERSITY DR  
PAVEMENT REHABILITATION  
LOCATION MAP

CITY OF NEWPORT BEACH  
PUBLIC WORKS DEPARTMENT

C-7183-2

1/14/2020



**CITY OF**

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# **NEWPORT BEACH**

## **City Council Staff Report**

January 14, 2020  
Agenda Item No. 9

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** David A. Webb, Public Works Director - 949-644-3311,  
dawebb@newportbeachca.gov

**PREPARED BY:** Patricia Kharazmi, Assistant Civil Engineer,  
pkharazmi@newportbeachca.gov

**PHONE:** 949-644-3344

**TITLE:** Concrete Street Pavement Reconstruction (Anade Avenue, Montero Avenue, Alvarado Place, and 6<sup>th</sup> Street) – Award of Contract No. 7184-2 (18R21)

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**ABSTRACT:**

Staff has received construction bids for the Concrete Street Pavement Reconstruction project and requests City Council's approval to award the construction contract to Aramexx Group, Inc. dba Aramexx Construction (Aramexx Construction). This project will reconstruct the deteriorated concrete pavement on Anade Avenue, Montero Avenue, and Alvarado Place from Bay Avenue to Edgewater Avenue and 6<sup>th</sup> Street from Balboa Boulevard to Bay Avenue; construct new storm drain systems on Anade Avenue, Montero Avenue, and Alvarado Place; and construct new landscaped parkways on Anade Avenue and Montero Avenue.

**RECOMMENDATIONS:**

- a) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301(b)(c) Class 1, (maintenance of existing public facilities involving negligible or no expansion of use), of the CEQA Guidelines, because this project has no potential to have a significant effect on the environment;
- b) Approve the project plans and specifications;
- c) Award Contract No. 7184-2 to Aramexx Construction, for the total bid price of \$1,369,708.00, and authorize the Mayor and City Clerk to execute the contract;
- d) Establish a contingency of \$137,000.00 (approximately 10 percent of total bid) to cover the cost of unforeseen work not included in the original contract; and
- e) Approve Budget Amendment No. 20BA-025 transferring appropriations of \$185,776.70 from the Bison Avenue Pavement Rehabilitation Project (No. 12201-980000-19R21) to the Concrete Street Repair Project (Account No. 12201-980000-18R21) within the Measure M fund.

### **FUNDING REQUIREMENTS:**

Upon approval of the proposed budget amendment, sufficient funding is available from the current project Capital Improvement Program budget for the award of this contract. The recommended Budget Amendment transfers \$185,776.70 of appropriations from the current Bison/San Joaquin Hills Rd pavement rehabilitation project (Account No. 12201-980000-19R21) to the Concrete Street Reconstruction project (Account No. 12201-980000-18R21) within the Measure M Fair Share fund.

Per staff report dated November 19, 2019 awarding contract C-7433-2 for the Bison Avenue Pavement Rehabilitation Project (19R21), the low bid was approximately \$300,000 or 10.6 percent below the engineer's estimate. Additionally, as described in further detail in the staff report for Notice of Completion on contract C-7183-2 for the McArthur Boulevard Pavement Rehabilitation Project (18R23) on the Consent Agenda for this January 14, 2020 meeting, a short segment of roadway on Bison Avenue was added to the MacArthur project. Staff moved this small portion of work to avoid impacting the busy intersection of MacArthur Boulevard and Bison Avenue twice and to streamline Caltrans permitting. As a result of these two items, the City recognized significant cost savings on the Bison project while still completing all planned work.

The project sources are as follows:

<u>Account Description</u>	<u>Account Number</u>		<u>Amount</u>
General Fund	01201927-980000-18R21	\$	299,445.40
Gas Tax	12101-980000-18R21	\$	533,277.90
Measure M Fair Share	12201-980000-18R21	\$	717,276.70
	<b>Total:</b>	<b>\$</b>	<b>1,550,000.00</b>

Proposed fund uses are as follows:

<u>Vendor</u>	<u>Purpose</u>		<u>Amount</u>
Aramexx Construction	Construction Contract	\$	1,369,708.00
Aramexx Construction	Construction Contingency	\$	137,000.00
American Geotechnical, Inc.	Materials Testing	\$	38,240.00
Various	Printing & Incidentals	\$	5,052.00
	<b>Total:</b>	<b>\$</b>	<b>1,550,000.00</b>

Staff recommends establishing \$137,000.00 (approximately 10 percent of total bid) for contingency purposes and unforeseen conditions associated with construction.

## **DISCUSSION:**

At 10 a.m. on December 17, 2019, the City Clerk opened and read the bids for this project:

	<u>BIDDER</u>	<u>TOTAL BID AMOUNT</u>
Low	Aramexx Construction	\$ 1,369,708.00
2nd	S&H Civilworks	\$ 1,519,829.00
3rd	Beador Construction Company, Inc.	\$ 1,630,600.00
4th	Nobest Inc.	\$ 1,673,857.00
5th	All American Asphalt	\$ 1,675,225.00
6th	Excel Paving	\$ 1,698,575.00
7th	Hardy & Harper, Inc.	\$ 1,760,000.00
8th	Los Angeles Engineering, Inc.	\$ 1,945,680.00
9th	HYM Engineering, Inc.	\$ 2,095,010.00
10th	Alfaro Communications Construction, Inc.	\$ 2,317,805.21

The City received 10 bids for this project. The low bid was 8.7 percent below the Engineer's Estimate of \$1,500,000.00. The low bidder, Aramexx Construction, possesses a California State Contractor's License Classification "A", as required by the project specifications. A review of references for Aramexx Construction shows satisfactory completion of similar contracts for other municipalities.

The proposed project includes removing and reconstructing the deteriorated concrete pavement, driveway and alley approaches, sidewalks, curbs, cross gutters, and curb ramps; constructing three new storm drain systems, including new catch basins, junction structures, and storm drain cleanouts; performing parkway improvements; adjusting utility boxes to grade; and restriping the concrete pavement.

As part of the City's Pavement Management Program, several concrete streets (Anade Avenue, Montero Avenue, Alvarado Place, and 6<sup>th</sup> Street) in the Central Balboa Peninsula area were scheduled for reconstruction in Fiscal Year 2019-20. These concrete streets, originally constructed around 1916, have reached the end of their useful life and are in need of replacement. Unlike typical streets, portions of the existing sidewalk on Anade Avenue and Montero Avenue are below the top of curb, which creates drainage issues. The proposed improvements will raise the sidewalks to eliminate this condition and improve the street drainage. In addition to street reconstruction, this project involves parkway beautification on Anade Avenue and Montero Avenue. City staff hosted two community meetings in May 2019 and September 2019, as well as individual meetings with residents of Anade Avenue, Montero Avenue, and Alvarado Place, to discuss and plan for the parkway improvements including the inclusion of additional street trees on some streets.

Pursuant to the Contract Specifications, the Contractor will have 100 consecutive working days to complete the work. Work is scheduled to start in February 2020. No work will be permitted between Memorial Day 2020 and Labor Day 2020.



If the Contractor is unable to complete all of the work prior to Memorial Day 2020, the Contractor will resume and complete the work immediately following Labor Day 2020.

**ENVIRONMENTAL REVIEW:**

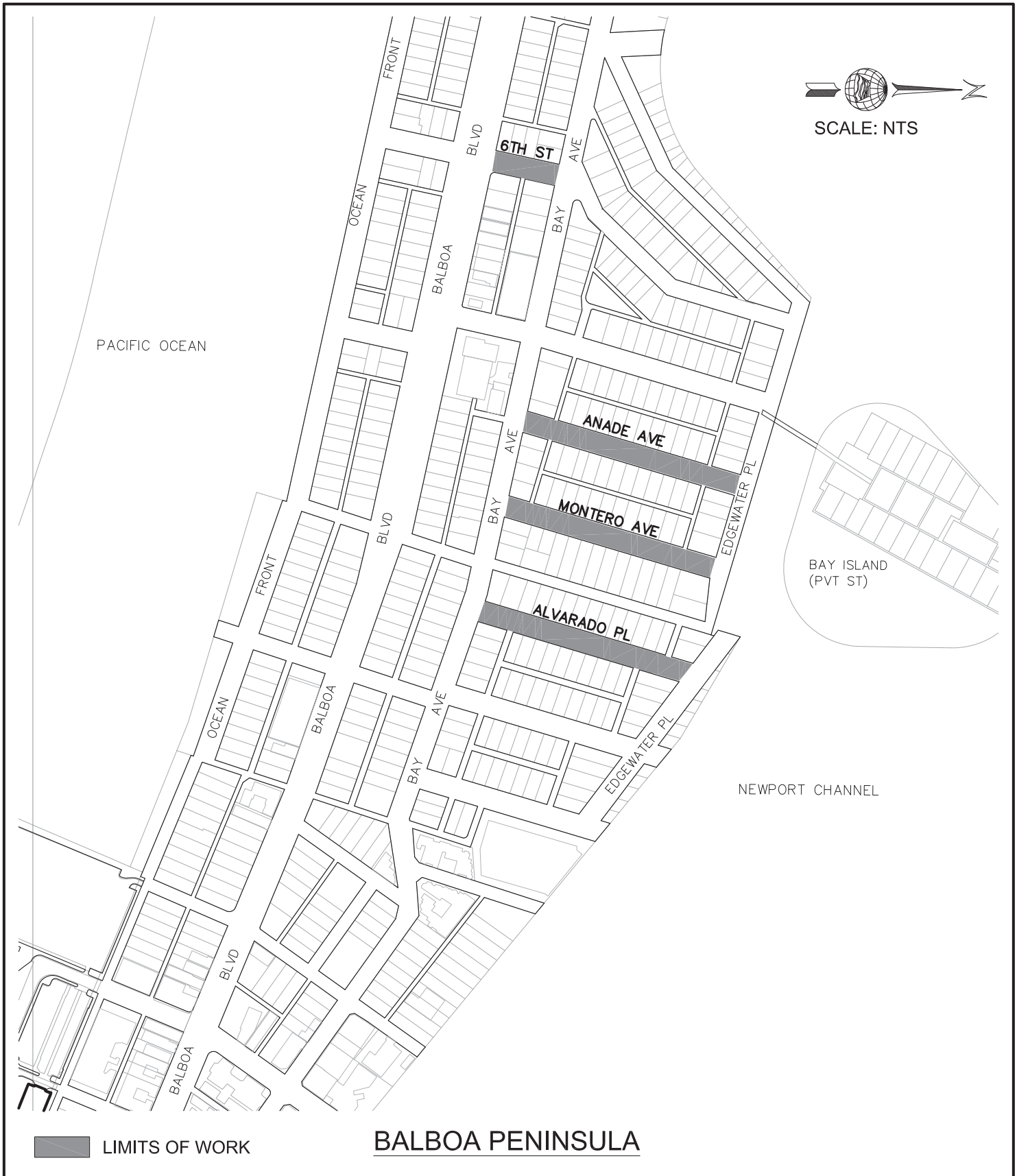
Staff recommends the City Council find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301(b)(c) Class 1, (maintenance of existing public facilities involving negligible or no expansion of use), of the CEQA Guidelines, because this project has no potential to have a significant effect on the environment.

**NOTICING:**

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

**ATTACHMENTS:**

Attachment A – Location Map  
Attachment B – Budget Amendment



**BALBOA PENINSULA CONCRETE  
PAVEMENT RECONSTRUCTION  
LOCATION MAP**

**CITY OF NEWPORT BEACH  
PUBLIC WORKS DEPARTMENT**

**C-7184-2**

**01/14/20**





**CITY OF**

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# **NEWPORT BEACH**

## **City Council Staff Report**

January 14, 2020  
Agenda Item No. 10

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** David A. Webb, Public Works Director - 949-644-3311,  
dawebb@newportbeachca.gov

**PREPARED BY:** Bob Stein, Assistant City Engineer, rstein@newportbeachca.gov  
**PHONE:** 949-644-3322

**TITLE:** Approval of Amendment No. Four to Professional Services Agreement with Stantec Consulting Services, Inc. (Stantec) for the Arches Diversion Project

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### **ABSTRACT:**

In 2016, the City issued a Request of Proposals (RFP) 16-59 for Professional Engineering Services for the Arches Diversion Project and selected Stantec Consulting Services, Inc. (Stantec) through the competitive process. Staff recommends approval of Amendment No. Four to Stantec's Professional Services Agreement to include additional project design, which will allow remote sensing of diversion flow meters and remote operation of the diversion pumps, and to provide additional technical information requested by Caltrans.

### **RECOMMENDATIONS:**

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Approve Amendment No. Four to Professional Services Agreement with Stantec Consulting Services, Inc. for design of the Arches Diversion Project to reflect additional services and to increase the not-to-exceed contract amount by \$35,200 for a total not-to-exceed amount of \$347,386, and authorize the Mayor and City Clerk to execute the agreements.

### **FUNDING REQUIREMENTS:**

Sufficient funding is available in the current Capital Improvement Program budget for the award of this contract. It will be expensed to Tidelands Maintenance account 10001-980000-16X11.

## **DISCUSSION:**

The Arches Diversion Project creates two dry-weather flow diversions, one located adjacent to Old Newport Boulevard across from the A's Restaurant, and the other located just south of Hoag Hospital. Each diversion is to capture fecal indicator bacteria loads in the storm drain and divert those bacterial loads into the sanitary sewer system, therefore preventing these bacterial loads from entering the Bay.

On November 22, 2016, City Council awarded a Professional Services Agreement for design and permitting of the Arches Diversion Project to Stantec Consulting Services, Inc. (Stantec) for an initial three year term and a not to exceed amount of \$249,786. In 2018 and 2019, the City executed Amendments No. One, Two, and Three to reflect additional services, extend the term of the agreement by one additional year, and to increase the total compensation by a total of \$62,400.

Since the original contract execution, the consultant has worked diligently with staff on the construction documents and has made numerous adjustments per City staff suggestions and in response to new requirements of the Orange County Sanitation District (OCSD) and Caltrans. As a result, the design is much improved and the estimated construction costs have been reduced. As discussed, three contract amendments have previously been approved for Stantec's design staff to implement the requested changes to the construction documents.

As anticipated construction costs have dropped significantly per the design changes and there is an opportunity to upgrade the project, per the suggestions and recommendations of City staff, OCSD and Caltrans, to include a centralized system at the Utilities Yard to remotely monitor pumps and flow meters and provide remote control of the pumps at the two diversion sites. The additional construction costs for this upgrade can be accommodated within the grant-funded construction budget of \$633,000.

At this time, staff requests approval of Amendment No. Four to increase the total compensation by \$35,200 to reflect additional design services, as well as providing supplemental technical information requested by Caltrans. With approval of this amendment, the total not to exceed amount will be \$347,386.00 over the four year term. The current adopted Capital Improvement Program budget includes sufficient funding for this amendment.

## **ENVIRONMENTAL REVIEW:**

Staff recommends the City Council find this action (consultant agreement) is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. Categorical Exemptions for Old Newport Boulevard storm drain diversion and the Hoag storm drain diversion have been filed.



**NOTICING:**

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

**ATTACHMENTS:**

Attachment A – Amendment No. Four to Professional Services Agreement with Stantec  
Consulting Services, Inc.  
Attachment B – Location Map



## ATTACHMENT A

### **AMENDMENT NO. FOUR TO PROFESSIONAL SERVICES AGREEMENT WITH STANTEC CONSULTING SERVICES, INC. FOR ARCHES DIVERSION PROJECT – DESIGN AND PERMITTING**

THIS AMENDMENT NO. FOUR TO PROFESSIONAL SERVICES AGREEMENT ("Amendment No. Four") is made and entered into as of this 14th day of January, 2020 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and STANTEC CONSULTING SERVICES, INC., a New York Corporation ("Consultant"), whose address is 38 Technology, Suite 100, Irvine, California 92618, and is made with reference to the following:

#### **RECITALS**

- A. On November 22, 2016, City and Consultant entered into a Professional Services Agreement ("Agreement") to provide a field survey, construction documents, storm drain easement, permit applications and perform flow and water quality monitoring services for the Arches Storm Drain Weather Diversion Project ("Project").
- B. On September 7, 2018, City and Consultant entered into Amendment No. One ("Amendment No. One") to the Agreement to reflect additional Services not previously included in the Agreement, extend the term of the Agreement to December 31, 2020, to increase the total compensation, and to update the "Notices" section of the Agreement.
- C. On December 12, 2018, City and Consultant entered into Amendment No. Two ("Amendment No. Two") to the Agreement to reflect additional Services not previously included in the Agreement, and to increase the total compensation.
- D. On June 20, 2019, City and Consultant entered into Amendment No. Three ("Amendment No. Three") to the Agreement to reflect additional Services not previously included in the Agreement, and to increase the total compensation.
- E. The parties desire to enter into this Amendment No. Four to reflect additional Services not included in the Agreement, as amended, and to increase the total compensation.

**NOW, THEREFORE**, it is mutually agreed by and between the undersigned parties as follows:

#### **1. SERVICES TO BE PERFORMED**

Exhibit A to the Agreement shall be supplemented to include the Scope of Services, attached hereto as Exhibit A and incorporated herein by reference ("Services" or "Work"). Exhibit A to the Agreement, Exhibit A to Amendment No. One, Exhibit A to Amendment No. Two, Exhibit A to Amendment No. Three and Exhibit A to this Amendment No. Four, shall collectively be known as "Exhibit A." The City may elect to delete certain Services within the Scope of Services at its sole discretion.

## 2. COMPENSATION TO CONSULTANT

Exhibit B to the Agreement shall be supplemented to include the Schedule of Billing Rates, attached hereto as Exhibit B and incorporated herein by reference ("Services" or "Work"). Exhibit B to the Agreement, Exhibit B to Amendment No. One, Exhibit B to Amendment No. Two, Exhibit B to Amendment No. Three and Exhibit B to this Amendment No. Four, shall collectively be known as "Exhibit B."

Section 4.1 of the Agreement is amended in its entirety and replaced with the following: "City shall pay Consultant for the Services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the Schedule of Billing Rates attached hereto as Exhibit B and incorporated herein by reference. Consultant's compensation for all Work performed in accordance with this Agreement, including all reimbursable items and subconsultant fees, shall not exceed **Three Hundred Forty Seven Thousand Three Hundred Eighty Six Dollars and 00/100 (\$347,386.00)**, without prior written authorization from City. No billing rate changes shall be made during the term of this Agreement without the prior written approval of City."

The total amended compensation reflects Consultant's additional compensation for additional Services to be performed in accordance with this Amendment No. Four, including all reimbursable items and subconsultant fees, in an amount not to exceed **Thirty Five Thousand Two Hundred Dollars and 00/100 (\$35,200.00)**.

## 3. INTEGRATED CONTRACT

Except as expressly modified herein, all other provisions, terms, and covenants set forth in the Agreement shall remain unchanged and shall be in full force and effect.

**[SIGNATURES ON NEXT PAGE]**



**IN WITNESS WHEREOF**, the parties have caused this Amendment No. Four to be executed on the dates written below.

**APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE**

Date: 12/12/2019

By: *Aaron C. Harp*  
For: Aaron C. Harp *12.11.19*  
City Attorney

**ATTEST:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Leilani I. Brown  
City Clerk

**CITY OF NEWPORT BEACH,**  
a California municipal corporation

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Will O'Neill  
Mayor

**CONSULTANT:** Stantec Consulting  
Services, Inc., a New York Corporation

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Eric Nielson  
Executive Vice President

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Jeffery P. Stone  
Assistant Secretary

**[END OF SIGNATURES]**

Attachments: Exhibit A – Scope of Services  
Exhibit B – Schedule of Billing Rates



## **EXHIBIT A SCOPE OF SERVICES**

### **1. Additional Plan Revisions and Supporting Documents**

Consultant shall provide additional engineering services, including additional coordination and research to add a larger site plan showing Caltrans Right-of-Way ("R/W") and alternate power source at Old Newport Boulevard ("ONB"), add two (2) new manhole bases with sump details, incorporate applicable precast products by Jensen and Eisel, prepare three (3) new trash rack details, make revisions to the cleanout and control box detail for the test meter installation and flow meter calibration process, add provisions for future Supervisory Control and Data Acquisition ("SCADA") expansion, specify Myers Cabinets for enhanced security, and revise the electrical plans to reflect an alternate power source at ONB site, the new cabinets, and revised site layouts.

Consultant shall assist in the coordination efforts for and preparation of the Caltrans Encroachment Permit ("EP") application, the supporting documents transfer, and EP cover letter. Prepare a Hydrology and Hydraulics Memo with supporting calculations and exhibits for inclusion with the EP application. Prepare supporting pothole information with a summary exhibit for inclusion with the EP package. Consultant shall update the Water Pollution Control Program ("WPCP") and Water Pollution Control Drawings ("WPCD") to match revisions to the ONB site layout.

### **2. SCADA Meeting, Coordination, Specifications**

Consultant shall attend coordination meetings with City staff to review remote sensing and control system options, including but not limited to, SCADA Systems. Review SCADA System specifications and coordinate with the City and the City's SCADA consultant, to review and incorporate the necessary specifications, product data, and control narrative by XiO into the respective Project Technical Appendices for each diversion site.

### **3. Civil, Electrical, & Traffic Plan Revisions**

Consultant shall prepare final civil and electrical plans and specifications for the proposed ONB and Hoag sites with SCADA system integration. Update civil and electrical base files to incorporate SCADA components and references. Implement City markups received on the 99% submittal package including but not limited to ONB cabinet relocation with access paving, revise elbows to sweeps, show additional conduit runs and spare conduits, verify cabinet size and specification for expanded SCADA equipment, provide additional coordination with Grating Pacific to revise diversion grate detail for drop in configuration, modify grate connection details, and obtain new quotes, and coordinate and revise Hoag plans to reflect power supply and maintenance conditions of the pending Agreement.

As requested by Caltrans EP review, Consultant shall revise the Traffic Control Plan for ONB to expand the closure to include the northbound shoulder of Newport Blvd. Consultant shall also define the necessary Temporary Pedestrian Access Route ("TPAR") with references to the appropriate Caltrans Standard Plan. As requested by Hoag Hospital for planning and public safety, Consultant shall prepare a Traffic Control Plan to define appropriate flagging and signage on Hoag Road.



This task includes two (2) submittals of the final ONB and Hoag sites with SCADA system integration with one (1) round of review, coordination, and incorporation of minor comments from the City, and one (1) resubmittal as required to complete the Project design phase.

#### **4. Caltrans Encroachment Permit Comment Incorporation & Processing**

Consultant shall review and incorporation of significant comments from Caltrans EP review at the ONB site. Prepare a formal response comments letter. Assemble referenced supporting informational attachments including structural calculations, product information, technical specifications, geotechnical report, standard plans, etc. Among other plan revisions, Consultant shall provide additional general notes for contaminated soils and test water disposal, dewatering and shoring requirements, references to Occupational Safety and Health Administration ("OSHA") and Caltrans specifications for trenching, paving, and site repairs, improved R/W definition, perform structural calculations for wetwell vertical stability, evaluation of cast-in-place ("CIP") wetwell invert slab, and assessment of CIP Reinforced Concrete Box ("RCB") access shaft support collar.

This task includes two (2) submittals of the final ONB site with SCADA system integration with one (1) round of review, coordination, and incorporation of minor comments from Caltrans, and one (1) resubmittal as required to complete the Project design phase.

#### **5. Additional Project Management, Coordination, and Meetings**

This task covers project management and coordination time to complete the Project. This task provides twenty (20) hours of Consultant manager time to recover attendance at Project presentation meetings and additional meetings – three (3) meetings total - with City staff and maintenance personnel.

#### **Assumptions & Exclusions**

The following assumptions are made with regard to this scope of work.

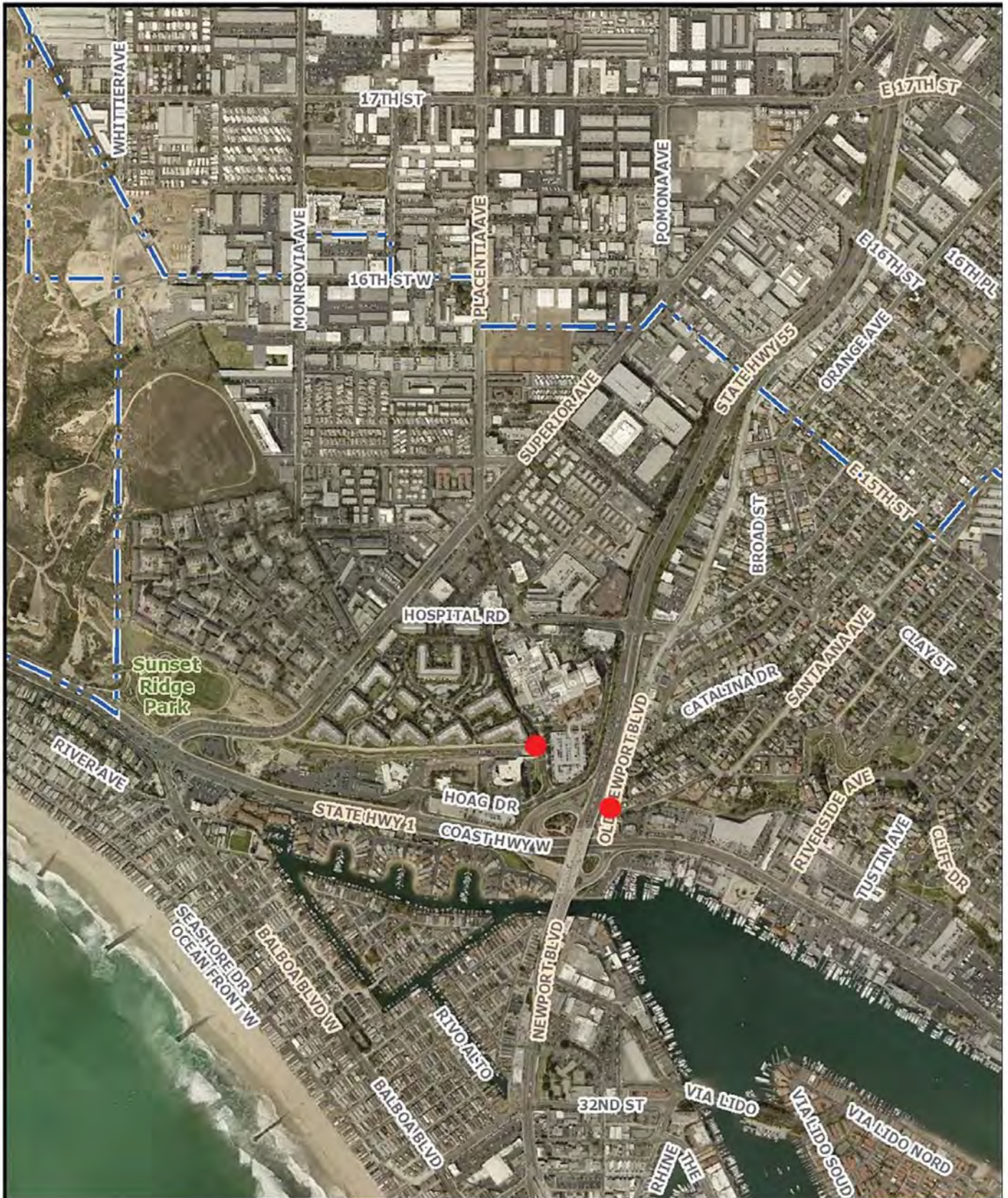
- Project specific Landscaping and Irrigation plans are not required to obtain a Caltrans EP or to complete the work at the ONB Diversion Site. The current plans incorporate and direct the Contractor to modify, maintain, and reestablish landscaping and irrigation as defined in the recent OCSD, Project No. 06-17, District 6 Trunk Sewer Relief Project.
- Project specific Landscaping and Irrigation plans are not required for the relocated Hoag Diversion Site. The previous landscaping and irrigation plans will be removed and replaced with landscaping and irrigation notes directing the Contractor to modify, maintain, and reestablish existing landscaping and irrigation to equal or better condition.

**EXHIBIT B  
SCHEDULE OF BILLING RATES**

Additional Plan Revisions and Supporting Documents	\$9,700.00
SCADA Meeting, Coordination, Specifications	\$3,400.00
Civil, Electrical, & Traffic Plan Revisions	\$12,200.00
Caltrans Encroachment Permit Comment Incorporation & Processing	\$6,300.00
Additional Project Management, Coordination, and Meetings	\$3,600.00
<b>Total Not to Exceed Amount of Amendment No. Four</b>	<b>\$35,200.00</b>



# ATTACHMENT B



ARCHES DIVERSION PROJECT  
LOCATION MAP

CITY OF NEWPORT BEACH  
PUBLIC WORKS DEPARTMENT

16X11

11/22/16







**CITY OF**

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# **NEWPORT BEACH**

## **City Council Staff Report**

January 14, 2020  
Agenda Item No. 11

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** Grace K. Leung, City Manager - 949-644-3001,  
gleung@newportbeachca.gov

**PREPARED BY:** Tara Finnigan, Deputy City Manager,  
tfinnigan@newportbeachca.gov

**PHONE:** 949-644-3035

**TITLE:** Amendment to the Professional Services Agreement with Newport Beach & Company for Video Production and Government Access Channel Management

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**ABSTRACT:**

Staff recommends approval of an amendment to the Professional Services Agreement with Newport Beach & Company to provide video production and government access channel management for Newport Beach Television (NBTv).

**RECOMMENDATION:**

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly;
- b) Authorize a waiver of Council Policy F-14 in regard to re-bidding NBTv Video Production and Channel Management and award a single-source contract to Newport Beach & Company by amending its existing contract; and
- c) Execute Amendment No. 1 to the Professional Services Agreement with Newport Beach & Company for Management of NBTv Programming and Operations, which extends the term by one year and adds \$117,208.44 for a total not-to-exceed amount of \$288,023.24.

**FUNDING REQUIREMENTS:**

The current adopted budget includes sufficient funding for this service. It will be expensed to the NBTv Operations account in the Public Information Office budget, 01020201-87104.

## **DISCUSSION:**

### **Background**

The City of Newport Beach (City) operates a government access channel called NBTv. City staff managed NBTv operations, production and programming for a number of years before outsourcing the services to Newport Beach & Company in March 2014. Following a Request for Proposals process in July 2018, the City Council approved a one-year agreement with Newport Beach & Company, which is set to expire on January 31, 2020.

### **Proposed Amendment**

Staff is recommending an amendment to the current agreement with Newport Beach & Company to add an additional one-year term. This requires Council's review and approval, as does the requested waiver of Council Policy F-14. Per Council Policy F-14 (A), the City should select professional consultants through a qualifications-based selection process. As mentioned previously, the City conducted a formal bidding process for NBTv services in July 2018. Because the RFP process was conducted fairly recently, staff does not anticipate a substantive change in the market or a marked difference in the RFP results.

During the past year, Newport Beach & Company has worked closely with City staff to streamline costs and services and provide updated content. Their team has been very responsive to the City's requests and has made a number of good suggestions on how to further enhance the quality of programming while also providing the services more efficiently. They assigned one of the existing video crew members to serve as the producer, both overseeing and working hands-on with content development and video production. This change resulted in significant cost savings as the individual supervising the video crew also shoots and edits videos. The City is also moving forward with the installation of remote-controlled video cameras in certain City facilities. The cameras will reduce the number of hours video crew members spend setting up and editing video and this change will result in further cost savings under this agreement.

The total approved amount, including a seven percent contingency, of the 2019 agreement was \$170,814.80. Due to the efficiencies previously referenced, staff estimates approximately \$35,000 - \$40,000 in savings by the end of term. Staff from the City and Newport Beach & Company recently met to review the budget and agreed that due to the savings achieved this year, the overall budget of the proposed amendment should be reduced. The table below details the costs associated with the current agreement and the proposed amendment, showing a reduction in the amount budgeted for video production and a reduced fee for the executive producer office lease share as proposed by Newport Beach & Company.

Service	Current Agreement	Proposed Amendment
City Council Meetings	\$ 10,920.00	\$ 10,920.00
Planning Commission Meetings	\$ 5,040.00	\$ 5,040.00
Monthly NBTv Admin Fee	\$ 61,680.00	\$ 61,680.00
Annual Management Fee	\$ 13,992.00	\$ 13,992.00
Executive Producer Office Lease Share	\$ 4,992.00	\$ 2,500.00
Video Production Blended Rate	\$ 63,000.00	\$ 50,400.00
7% Contingency	<u>\$ 11,174.80</u>	<u>\$ 10,117.24</u>
ANNUAL TOTAL	\$170,798.80	\$154,649.24

Due to the cost savings in the current agreement and the re-negotiated fees in the proposed amendment, the contract will require an additional \$117,208.44 to cover the cost of the term extension.

Staff and the NBTv crew have implemented changes to NBTv, but some improvements are still in progress and will be completed within the next month. These include completing improvements to the City's website to make it easier to find NBTv videos and enhancing the NBTv YouTube page. Moving forward, meetings and programs will be uploaded to both the City website and the YouTube page. The team also intends to launch one to two new programs within the first quarter of the new year. The proposed amendment includes a contingency in the event new programming ideas or unanticipated projects arise. The City's new public information manager may also wish to make further programming changes.

Staff is recommending a one-year amendment to the current agreement with Newport Beach & Company to keep the current programs and projects moving forward and due to the efficiencies and cost savings realized this year.

#### **ENVIRONMENTAL REVIEW:**

Staff recommends the City Council find this action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

**NOTICING:**

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

**ATTACHMENT:**

Attachment A – Amendment No. 1

## ATTACHMENT A

### AMENDMENT NO. ONE TO PROFESSIONAL SERVICES AGREEMENT WITH NEWPORT BEACH & COMPANY FOR MANAGEMENT OF NBTV PROGRAMMING & OPERATIONS

THIS AMENDMENT NO. ONE TO PROFESSIONAL SERVICES AGREEMENT ("Amendment No. One") is made and entered into as of this 14th day of January, 2020 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and NEWPORT BEACH & COMPANY, a California nonprofit corporation ("Consultant"), whose address is 1600 Newport Center Drive, Suite 120, Newport Beach, California 92660, and is made with reference to the following:

#### RECITALS

- A. On February 1, 2019, City and Consultant entered into a Professional Services Agreement ("Agreement") for management of NBTV programming and operations ("Project").
- B. The parties desire to enter into this Amendment No. One to extend the term of the Agreement to January 31, 2021 and to increase the total compensation.

**NOW, THEREFORE**, it is mutually agreed by and between the undersigned parties as follows:

#### 1. TERM

Section 1 of the Agreement is amended in its entirety and replaced with the following: "The term of this Agreement shall commence on the Effective Date, and shall terminate on January 31, 2021, unless terminated earlier as set forth herein."

#### 2. COMPENSATION TO CONSULTANT

2.1 Section 4.1 of the Agreement is amended in its entirety and replaced with the following: "City shall pay Consultant for the Services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the Schedule of Billing Rates attached hereto as Exhibit C and incorporated herein by reference. Consultant's compensation for all Work performed in accordance with this Agreement, including all reimbursable items and subconsultant fees, shall not exceed **Two Hundred Seventy Six Thousand Eight Hundred Forty Eight Dollars and 44/100 (\$276,848.44)**, without prior written authorization from City. Additionally, the City has allocated a contingency amount of **Eleven Thousand One Hundred Seventy Four Dollars and 80/100 (\$11,174.80)** for unexpected costs, for a total not to exceed amount of **Two Hundred Eighty Eight Thousand Twenty Three Dollars and 24/100 (\$288,023.24)**. No portion of the contingency shall be expended without prior written approval of City's Project Administrator. No billing rate changes shall be made during the term of this Agreement without the prior written approval of City."



The total amended compensation reflects Consultant's additional compensation for additional Services to be performed in accordance with this Amendment No. One, including all reimbursable items and subconsultant fees, in an amount not to exceed **One Hundred Seventeen Thousand Two Hundred Eight Dollars and 44/100 (\$117,208.44)**.

### **3. INTEGRATED CONTRACT**

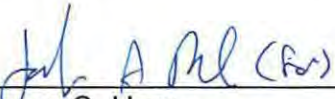
Except as expressly modified herein, all other provisions, terms, and covenants set forth in the Agreement shall remain unchanged and shall be in full force and effect.

**[SIGNATURES ON NEXT PAGE]**

**IN WITNESS WHEREOF**, the parties have caused this Amendment No. One to be executed on the dates written below.

**APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE**

Date: 12.17.19

By:   
Aaron C. Harp  
City Attorney

**ATTEST:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Leilani I. Brown  
City Clerk

**CITY OF NEWPORT BEACH,**  
a California municipal corporation

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Will O'Neill  
Mayor

**CONSULTANT:** Newport Beach &  
Company, a California nonprofit  
corporation

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Gary Sherwin  
Chief Executive Officer

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Lily Pearson  
Chief Financial Officer

**[END OF SIGNATURES]**





**CITY OF**

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# **NEWPORT BEACH**

## **City Council Staff Report**

January 14, 2020  
Agenda Item No. 12

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** Seimone Jurjis, Community Development Director - 949-644-3232, [sjurjis@newportbeachca.gov](mailto:sjurjis@newportbeachca.gov)

**PREPARED BY:** Lauren Wooding Whitlinger, Real Property Administrator, [lwooding@newportbeachca.gov](mailto:lwooding@newportbeachca.gov)

**PHONE:** 949-644-3236

**TITLE:** Lease Agreement with West Point Investment Corporation to Rent Office Space at the Balboa Yacht Basin Located at 829 Harbor Island Drive

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**ABSTRACT:**

West Point Investment Corporation is a residential real estate developer and investment company relocating their offices from San Diego to Newport Beach. The tenant is seeking the City Council's consideration for a five-year lease agreement (Attachment A) to use 790 square feet of office space at the Balboa Yacht Basin, located at 829 Harbor Island Drive.

**RECOMMENDATION:**

- a) Find this activity exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly; and
- b) Authorize the City Manager and City Clerk to execute a five-year Lease Agreement (Agreement) for use of office space at the City-owned Balboa Yacht Basin, located at 829 Harbor Island Drive, in a form substantially similar to the agreement attached to the staff report.

**FUNDING REQUIREMENTS:**

Revenues collected pursuant to the proposed Agreement, \$30,810 per year, which shall be increased annually by the percentage change in the cost of living as indicated by the Consumer Price Index, will be split between the General Fund and Tidelands Fund, and posted to Real Property accounts in the Community Development Department, 010-01050505 and 010-10050505.

## **DISCUSSION:**

### **Background**

The Balboa Yacht Basin (“BYB”) located at 829 Harbor Island Drive (Attachment B) was built in Newport Harbor in 1950 on filled state tide and submerged lands and City-owned uplands. The tidelands were granted to the City in a trust to administer and oversee via the “Beacon Bay Bill.” The BYB includes a 172-slip public marina, three residential apartments, storage garages, a restaurant, marine store and boatyard, various office spaces, public restrooms, and associated parking. Office space identified as “Suite D”, located on the second floor of the public restroom building at BYB, is divided into two separate offices of 790 square feet and 136 square feet, respectively. Pacific Metals Group, LLC leased both offices in 2016, and exercised their option to continue leasing only the smaller office when their initial lease term expired in November 2019.

The office space was advertised for lease on several commercial listing services, and while there were many offers to lease the smaller space, staff only received one offer to lease the larger space. The proposed tenant, West Point Investment Corporation (“West Point”), is a residential real estate development and investment firm and has a focus on coastal communities. West Point is relocating their business from San Diego to Newport Beach, where the company’s President resides, and requests to lease the office space at BYB for a five-year lease term, with one five-year option to extend.

### **City Council Policy F-7, Income and Other Property**

Pursuant to City Council Policy F-7, *Income and Other Property* (Attachment C), the City conducted an open bid process to select a tenant to occupy the office space. The property was advertised for lease from July 2019 through December 2019, and while there were many inquiries about the property, staff only received one proposal from a prospective tenant. In consideration of West Point’s offer to lease the office space, staff negotiated a new lease agreement. A review of recent appraisals for similar properties, and a survey of rents for comparable office spaces were used to determine the fair market rental rate for the lease agreement.

### **Summary of Terms**

The proposed terms of the Agreement are summarized below:

1. The initial term is five years, with one (1) five-year extension option, unless terminated earlier as provided by the Agreement;
2. Rent shall be set at \$30,810 per year, due in monthly installments of \$2,567.50 on the first day of each month. Rent shall be adjusted annually, upon the effective date of the Agreement, based on the percentage change in the Consumer Price Index (CPI), limited to a maximum of 2.5% per year;



3. The tenant shall obtain and maintain during the term of the Agreement all appropriate permits, licenses, and certifications that may be required by any governmental agency to operate its business;
4. The tenant shall provide certificates of insurance to the satisfaction of the City's Risk Manager, naming the City as additional insured;
5. The tenant must comply with the Balboa Yacht Basin Rules and Regulations.

The Agreement has been reviewed by the City Attorney's Office and has been approved as to form.

### **Contract Summary**

<b>Proposed Contract</b>	
Vendor Name	West Point Investment Corporation
Term	5 Years, one 5-Year option
Escalation Clause	CPI, Annually
Revenue/Year	\$30,810
Cost/Year	\$0
Cost/Contract Term (est.)	\$0
<b>Selection Process</b>	
Sole Source or RFP/RFQ	RFP
Method (QBS vs. Low Bid)	QBS
# of Respondents	1
# of Qualified Respondents	1

### **ENVIRONMENTAL REVIEW:**

Staff recommends the City Council find approval of the Agreement is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

### **NOTICING:**

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

### **ATTACHMENTS:**

Attachment A – Lease Agreement with West Point Investment Corporation  
Attachment B – Maps  
Attachment C – City Council Policy F-7, *Income and Other Property*



# **Attachment A**

Lease Agreement with West Point Investment Corporation

## **LEASE AGREEMENT**

by and between

**CITY OF NEWPORT BEACH,**

a California municipal corporation and charter city

"City"

and

**WEST POINT INVESTMENT CORPORATION,**

a California corporation

"Tenant"

Dated as of January \_\_\_\_\_, 2020



## LEASE AGREEMENT

THIS LEASE AGREEMENT ("Agreement") is made and entered into as of the \_\_\_\_ day of January, 2020 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a municipal corporation and charter city ("City") and WEST POINT INVESTMENT CORPORATION, a California corporation ("Tenant"). City and Tenant are at times individually referred to as "Party" and collectively as "Parties" herein.

### RECITALS

A. City is the owner of certain harbor frontage and tidelands, together with certain abutting upland property commonly known as the "Balboa Yacht Basin," located at 829 Harbor Island Drive, Newport Beach, California, Assessor's Parcel Number 050-210-02. The Balboa Yacht Basin includes a public marina, public restrooms, shipyard, parking lot, garage buildings used for storage, and buildings with residential apartments, offices and a restaurant ("Property"), as legally described and further depicted on Exhibit "A" attached hereto and incorporated herein by reference. The Property includes a seven hundred ninety (790) square foot office, which is depicted on Exhibit "B" attached hereto and incorporated herein by reference ("Premises").

B. City and Tenant desire to enter into this Agreement to allow Tenant to operate an office providing real estate services with a focus on coastal communities, not to include retail sales, at the Premises.

C. Pursuant to City Council Policy F-7, the City conducted a review of recent appraisals for similar office facilities, and reviewed comparable spaces on the market for rent or lease to determine the maximum or fair market value of the highest and best use rent for the Premises.

D. The uses to be made of the Premises are consistent with provisions of the Local Coastal Plan and General Plan of the City, and the terms and conditions in this Agreement are consistent with the provisions of the City Charter and the ordinances of the City.

E. The uses to be made of the Premises are consistent with provisions of the Tideland Grant pursuant to which the City obtained title to the Property.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, City and Tenant agree as follows:

#### 1. DEFINITIONS

1.1. General Definitions. As used in this Agreement, the following words and phrases shall have the following meanings:

- (a) Alteration – any addition or change to or modification of, the Premises made by Tenant, its employees, agents, and contractors including, without limitation, fixtures and signage.
- (b) Authorized Representative – any officer, agent, employee, or independent contractor retained or employed by either Party, acting within authority given by that Party.
- (c) Common Area – the areas immediately surrounding the Premises on the Property, which are available for non-exclusive use by City, Tenant, and other tenants and/or users.
- (d) Delivery Date – the date the City provides Tenant access to the Premises.
- (e) Expiration – the lapse of the time specified as the Term of this Agreement, including any extension of the Term resulting from the exercise of an option to extend.
- (f) Good Condition – neat and broom-clean and in substantially the same condition as of the Rent Commencement Date (reasonable wear and tear and casualty excepted), and is equivalent to similar phrases referring to physical adequacy in appearance and for use.
- (g) Hazardous Materials – shall mean any substance whose nature and/or quantity of existence, storage, use, manufacture, disposal or effect, renders such substance and/or the user thereof and/or the owner of real property affected thereby, subject to or controlled by federal, state or local law, or regulation because such substance is actually or potentially injurious or a threat to public health or welfare or to the environment; or because such substance under federal, state or local law requires remediation, removal, cleanup or other action to bring such substance any areas impacted into conformance with applicable law. Hazardous Materials may also include any oil, flammable explosives, asbestos, urea formaldehyde, radioactive materials or waste, or other hazardous, toxic, contaminated or polluting materials, substances or wastes, including, without limitation, any “hazardous substances”, “hazardous wastes”, “hazardous materials” or “toxic substances” under applicable federal, state and local laws, ordinances and regulations.
- (h) Law – any judicial decision, statute, constitution, ordinance, resolution, regulation, rule, administrative order, or other requirement of any municipal, county, state, federal, or other government agency or authority having jurisdiction over the Parties and/or the Premises.
- (i) Lease Year – refers to successive twelve (12) month periods, commencing with the Effective Date of this Agreement.



- (j) Maintenance or Maintain – repairs replacement, maintenance, repainting, and cleaning.
- (k) Person – one (1) or more natural persons, or legal entities, including, without limitation, partnerships, corporations, trusts, estates, associations, or a combination of natural persons and legal entities.
- (l) Provision – any term, covenant, condition, or clause in this Agreement that defines, establishes, or limits, the performance required or permitted by either Party.
- (m) Rent – includes rent, late payment penalties, interest, taxes, and other similar monetary amounts and charges payable by Tenant under the Provisions of this Agreement.
- (n) Rent Commencement Date – the date Tenant begins paying Rent, commencing the first day of the first month following the Effective Date.
- (o) Successor – assignee, transferee, personal representative, heir, or other Person succeeding lawfully, and pursuant to the provisions of this Agreement, to the rights or obligations of either Party.
- (p) Termination – the termination of this Agreement, for any reason, prior to Expiration.

## **2. LEASE OF PREMISES**

City leases the Premises to Tenant and Tenant leases the Premises from City for the Term and on the conditions contained in this Agreement. Tenant agrees to accept the Premises in an “as is” condition as tendered by City. Tenant agrees that no representations with respect to the condition or improvements of the Premises have been made by City except as specifically set forth in this Agreement, and are otherwise being delivered in an “as-is” condition. Tenant expressly accepts the Premises in such condition and acknowledges that City has made no representations or warranties as to the suitability of the Premises for Tenant’s use.

## **3. TERM**

3.1. Initial Term. The “Initial Term” of this Agreement shall be five (5) years from the Effective Date and shall expire on January \_\_\_\_, 2025, unless extended as provided in Section 3.2 below or terminated in accordance with the other provisions of this Agreement.

3.2. Option to Extend. Provided Tenant is not then in default beyond applicable notice and cure periods, and upon approval of the City, Tenant may extend the term of this Agreement for one (1) additional term of five (5) years (“Option Term”) commencing on Expiration of the Initial Term, on the same terms and conditions as contained in this Agreement. Tenant shall exercise the extension option by giving City written notice of its



intention to do so on or before one hundred twenty (120) calendar days prior to the Expiration of the Initial Term. If exercised, the Option Term shall expire on January \_\_\_\_\_, 2030.

3.3. Terms of Lease. The "Term" is defined as the Initial Term and, if exercised, the Option Term.

3.4. Hold Over. Should Tenant, upon City's written consent, hold over and continue in possession of the Premises after Expiration of the Initial Term or the Option Term, Tenant's continued occupancy of the Premises shall be considered a month-to-month tenancy subject to termination by either Party upon thirty (30) calendar days advance notice and shall be subject to all the terms and conditions of this Agreement, except the provisions of Sections 3.1 and 3.2.

3.5. Redevelopment of Property. Should City redevelop the Property or Premises during the Term of the Agreement, or any extensions thereof, which will materially interfere with Tenant's ability to occupy the Premises, City shall provide Tenant with at least one hundred eighty (180) calendar days prior written notice of termination of this Agreement.

#### 4. RENT

4.1. Rent. Tenant agrees to pay City for the use and occupancy of the Premises the sum of **Two Thousand Five Hundred Sixty-Seven Dollars and 50/100 (\$2,567.50) per month**, payable in advance on or before the first day of the each month. Tenant shall commence payment of Rent on the Rent Commencement Date.

4.2. Late Payment. Any payment due from Tenant to City under the provisions of this Agreement which is not paid within five (5) calendar days of the date due shall be subject to a ten percent (10%) late charge plus interest on the amount due at the rate of ten percent (10%) per annum from the date due and payable by the terms of this Agreement until the same shall be paid. All late charges and interest payments hereunder, shall, as incurred, become Rent due under this Agreement. City and Tenant agree that this late charge plus interest represents a reasonable estimate of such costs and expenses and is fair compensation to City for its loss suffered by such late payment by Tenant.

4.3. Rent Adjustments. Rent shall be adjusted annually, on the first day of each Lease Year, to reflect increases in the cost of living as indicated by the Consumer Price Index described below. Rent shall be adjusted if the Consumer Price Index for the Los Angeles – Long Beach – Anaheim, CA Area, All Urban Consumers, All Items ("Index"), as published by the United States Department of Labor, Bureau of Labor Statistics ("Bureau"), increases over the Base Period Index. The initial "Base Period Index" shall be the Index for the calendar month which is four (4) months prior to the month of the Effective Date. The initial Base Period Index shall be compared with the Index for the same calendar month for each subsequent Lease Year ("Comparison Index"). The Comparison Index used for a given year's adjustment calculation will become the Base Period Index for purposes of the next annual Rent adjustment calculation. If the



Comparison Index is higher than the Base Period Index, then Rent for the next Lease Year shall be increased by the amount of such percentage change, or two and one-half percent (2.5%), whichever is less. Should the Bureau discontinue the publication of the above Index, or publish the same less frequently, or alter the same in some other manner, then the Parties shall adopt a substitute Index or substitute procedure which reasonably reflects and monitors consumer prices. City shall notify Tenant in writing of any annual adjustment pursuant to this Section 4.3.

4.4. Payment Location. All payments of Rent shall be made in lawful money of the United States of America and shall be paid to City in person or by United States' mail, or overnight service, at the Cashier's Office located at 100 Civic Center Drive, P.O. Box 1768, Newport Beach, California, 92658, or to such other address as City may from time to time designate in writing to Tenant. If requested by City, Tenant shall make payments electronically (at [www.newportbeachca.gov](http://www.newportbeachca.gov)) or by wire transfer (at Tenant's cost). Tenant assumes all risk of loss and responsibility for late charges and delinquency rates if payments are not timely received by City regardless of the method of transmittal.

4.5. Additional Rent. Any provision in this Agreement that requires Tenant to pay additional amounts classified as "Additional Rent" shall be paid within ten (10) calendar days of City's written demand therefore (unless a different time for payment is expressly provided in this Agreement). Additional Rent does not reduce or offset Tenant's obligations to pay Rent.

## **5. BUSINESS PURPOSES AND USE OF PREMISES**

5.1. "Approved Use". The Premises are to be used by Tenant:

- (a) For the principal operation of a coastal community real estate office, not to include any retail sales; and
- (b) Tenant may not use the Premises for any other use except with prior written consent of the City.

5.2. Operation of Premises. Tenant shall operate and manage the Premises in a manner comparable to other high quality businesses providing similar real estate services. Tenant shall not use or permit the use of the Premises in any manner that: (a) creates a nuisance; (b) violates any Law; or (c) is not in compliance with all statutes, laws, permits, use restrictions and regulations of City applicable to the Premises, Tenant, and/or Tenant's use of the Premises. Tenant assumes the risk of and shall cause all its workmen, customers and independent contractors to also comply with all laws regarding their activities at the Premises. Prior to engaging in any conduct on the Premises which is inconsistent with the terms of this Agreement, Tenant must obtain written consent from the City Manager and any required City permits and approvals.

5.3. Sales Restrictions. Tenant shall not display, sell or store merchandise outside the defined exterior walls and permanent doorways of said Premises, and no sale by auction in, upon and from said Premises, whether said auction be voluntary, involuntary, pursuant to any assignment for benefit of creditors or pursuant to any



bankruptcy or other solvency proceedings, shall be conducted except such auctions that may be conducted by officers of a court with respect to any vessels in custody of Tenant.

5.4. Advertising Display. Tenant may, at its own expense, place signs in or upon the Premises subject to the prior written consent of the City as to the size, type, design and method of installation and in compliance with the City's sign code regulations and the deed restrictions applicable to the Premises. All signage placed by Tenant on, in or about the Premises shall remain the property of Tenant and shall be removed by Tenant upon Termination or Expiration of this Agreement at Tenant's expense; and any damage caused by removal shall be repaired at Tenant's expense.

5.5. Independent Contractor. City shall have no interest in the business of Tenant, and no liability for the business operations or sales of Tenant, whether or not caused by City's enforcement of City laws and regulations which apply to the Premises and/or Tenant. Nothing in this Agreement shall be deemed to constitute approval for Tenant or any of Tenant's employees or agents, to be the agents or employees of City.

5.6. No Distress Sales. No auction, fire, bankruptcy, "going out of business" or other distress sales of any nature may be conducted on the Premises without the prior written consent of the City Manager or his/her designee.

5.7. Parking. City grants a non-exclusive right to the use of parking area(s) on the Property as noted in Exhibit "A" attached hereto and incorporated herein by reference. City reserves the right to assign parking in the future, but agrees that any such assignment of parking shall not materially diminish access to the Premises.

5.8. Smoking and Vaping. In addition to all other uses prohibited by this Agreement, smoking or vaping is prohibited on the Property and the Premises. "Smoking" means and includes inhaling, exhaling, burning, or carrying any lighted smoking equipment for tobacco or any other weed or plant. "Vaping" means and includes inhaling or exhaling any vaporized liquid or solid, usually from a battery-operated electronic device.

5.9. Balboa Yacht Basin Rules and Regulations. Tenant shall comply with the Balboa Yacht Basin Rules and Regulations attached hereto and incorporated herein as Exhibit "C", which may be amended from time to time.

## **6. TAXES, LICENSES AND OTHER OBLIGATIONS**

6.1. Payment of Taxes. Tenant shall pay directly to the appropriate taxing authorities all taxes applicable to this Agreement, fixtures and Tenant's personal property on the Premises, that are levied or assessed against Tenant during the Term. Taxes shall be paid before delinquency and before any fine, interest or penalty is due or imposed by operation of law. Tenant shall, upon request, promptly furnish to the City satisfactory evidence of payment. City hereby gives notice to Tenant, pursuant to Revenue and Tax Code Section 107.6 that this Agreement may create a possessory interest that is the subject of property taxes levied on such interest, the payment of which taxes shall be the sole obligation of Tenant. Tenant shall advise in writing any subtenant, licensee, or third



party using the Premises of the requirements of Section 107.6. Tenant shall pay, before delinquency all taxes, assessments, license fees and other charges ("Taxes") that are levied or assessed against Tenant's interest in the Premises or any personal property installed on the Premises.

6.2. Payment of Obligations. Tenant shall promptly pay, when due, any and all bills, debts, liabilities and obligations incurred by or charged to Tenant in connection with Tenant's occupation and use of the Premises.

6.3. Challenge to Taxes. Tenant shall have the right in good faith, at its sole cost and expense, to contest the amount or legality of any Taxes including the right to apply for reduction. If Tenant seeks a reduction or contests such Taxes, Tenant's failure to pay the Taxes shall not constitute a default as long as Tenant complies with the provisions of this Section. City shall not be required to join in any proceeding or contest brought by Tenant unless the provisions of any Law require that the proceeding or contest be brought by or in the name of City or any owner of the Premises. In that case, City shall join in the proceeding or contest or permit it to be brought in City's name and if requested by Tenant, City shall execute any instrument or document necessary or advisable in connection with the proceeding or contest as long as City is not required to bear any cost nor be liable for payment of such Taxes. Tenant, on final determination of the proceeding or contest, shall immediately pay such disputed tax and also discharge any decision or judgment rendered, together with all related costs, charges, interest and penalties and provide City with a copy of Tenant's payment and the underlying bill for such Taxes being paid with Tenant's next Rent payment. Tenant shall indemnify, defend and hold harmless the City, its council members, boards, commissions, committees, officers, employees, Authorized Representatives, agents and volunteers from and against any liability, claim, demand, penalty, cost or expense (including, but not limited to, attorney's fees and judgements) arising out of or in connection with any contest by Tenant pursuant to this Section. Any such contest of Taxes by Tenant shall be concluded (meaning that such Taxes shall be fully paid or cancelled by the taxing authority) by Tenant within eighteen (18) months of starting such action, or end of the Term, if earlier.

6.4. No Rent Offset. Any payments under this Section 6 shall not reduce or offset Rent payments. City has no liability for such payments.

6.5. License. Tenant shall obtain and maintain in good standing all required licenses and permits required for operation of the business on the Premises, including but not limited to a City business license as required by the Newport Beach Municipal Code.

## **7. UTILITIES AND REFUSE COLLECTION**

7.1. Basic Utilities. City shall pay for electricity, gas, water, and trash service. Tenant shall make all arrangements for and pay for all other utilities furnished to or used on the Premises, including, without limitation, telephone service, cable television, and janitorial service. Tenant bears all risk of interruption, cancellation and/or disruption of utility services on the Premises.



7.2. Refuse Collection. Refuse collection may occur between 7:00 a.m. and 6:00 p.m. on non-holiday weekdays.

## **8. ALTERATIONS TO THE PREMISES**

8.1. Alterations Requiring Building Permits. Any Alteration that requires a building permit from City shall require the written consent of the City Manager or his/her designee, which shall not be unreasonably withheld so long as Tenant's Approved Use is not thereby being changed.

8.2. Non-Structural Alterations Costing Less than \$10,000. Tenant shall have the right to make, at its sole expense, such non-structural changes, Alterations, improvements and additions, costing less than \$10,000 in and to the interior of the buildings, and Tenant may install therein such trade fixtures and equipment as it may deem advisable for the conduct of its business for the Approved Use of the Premises. Any Alteration costing more than \$10,000 requires the prior written consent of the City Manager or his or her designee.

8.3. Quality of Work Performed. All work shall be performed in a good and workmanlike manner, shall substantially comply with the plans and specifications submitted to City and shall comply with all applicable governmental permits and Laws in force at the time permits are issued. All work shall be performed between 7:00 a.m. and 6:00 p.m. on non-holiday weekdays. Any contractors hired by Tenant shall be fully licensed, bonded, and insured.

8.4. Payment of Costs. Tenant shall pay all costs related to the construction of any Alterations by Tenant or its agents. Tenant shall keep the Premises free and clear of all mechanics' liens resulting from construction performed at the direction of Tenant.

8.5. Indemnification and Insurance. Tenant shall indemnify, defend, and hold harmless City, its elected or appointed officers, agents, officials, employees, and volunteers, and any person or entity owning or otherwise in legal control of the Property, except for Tenant, from any and all liability, losses, penalties, damage, costs, attorney fees, expenses, causes of action, claims, or judgments with respect to any damage or damages related to any work performed on the Premises by Tenant. Tenant's contractors and any subcontractors shall obtain insurance in an amount and form to be approved by City's Risk Manager, including workers' compensation insurance as required by law, general liability, automobile liability and builder's risk insurance covering improvements to be constructed, all pursuant to standard industry custom and practice. City, its elected or appointed officers, agents, officials, employees, volunteers, and any person or entity owning or otherwise in legal control of the property shall be named as an additional insured on the contractor's and any subcontractor's policies. City shall promptly provide Tenant with a copy of any claim filed by any third party with respect to work performed by Tenant. City has no obligation to or liability to Tenant incident to City's approval of Tenant's plans or issuance of permits for any improvements to the Premises.

8.6. Disposition of Alterations at Expiration or Termination. Any Alterations made to the Premises shall remain on, and be surrendered with, the Premises on



Expiration or Termination of this Agreement (excluding Tenant's fixtures, equipment, furniture, and movable decorations). However, City may elect, not less than thirty (30) calendar days prior to Expiration or Termination of this Agreement, to require Tenant to remove, at Tenant's sole cost, any Alterations that Tenant has made to the Premises, except those Alterations existing as of the Effective Date of this Agreement or approved by City. If City requires removal of Alterations, Tenant shall, at its sole cost, remove the Alterations and restore the Premises to its condition prior to installation of such Alterations, ordinary wear and tear excepted, before the last day of the Term, or within thirty (30) calendar days after notice is given, whichever is later. Prior to Expiration or within fifteen (15) calendar days after Termination of this Agreement, Tenant may remove any movable partitions, machinery, equipment, furniture, and trade fixtures previously installed by and solely paid for by Tenant, provided that Tenant repairs any damage to the Premises cause by removal and the structural future of the foundation and bulkhead areas of the Premises are not thereby worsened by such Tenant removal.

## **9. REPAIRS AND MAINTENANCE OF PREMISES**

9.1. Maintenance and Repair by Tenant and City. Tenant agrees that it shall keep the non-structural portion of the Premises in Good Condition throughout the Term at its sole cost, and without expense to the City. City may perform Maintenance or repairs in the event Tenant fails to commence required Maintenance or repairs within the time provided by City in the written notice requesting such maintenance or repair (which shall not be less than five (5) calendar days unless and in case of emergency or urgent situation). Absent an emergency or urgent situation, should the Maintenance or repair required by the City's written notice require more than five (5) calendar days to commence or complete, Tenant must provide City with adequate assurance of due performance within five (5) calendar days of receipt of City's written notice requesting such Maintenance or repair or City may commence such requested repairs or Maintenance. The cost of any Maintenance or repairs by the City pursuant to this Subsection shall be payable as Additional Rent upon billing by City with the Tenant's next monthly Rent payment.

9.2. Entry by City. City and its Authorized Representatives may enter upon and inspect the Premises at any reasonable time for any lawful purpose. In case of emergency, City or its Authorized Representatives may enter the Premises by the master key if Tenant is not present to open and permit an entry. During entry, City and its Authorized Representatives shall exercise reasonable care relative to the Premises and to Tenant's property. Any entry to the Premises by City shall not be construed as a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Tenant from the Premises or any portion thereof.

## **10. LIENS**

Tenant shall not permit to be enforced against said Premises, or any part thereof, any mechanics', materialman's, contractors' or other liens arising from, or any claims for damages growing out of, any work or repair or Alteration (except from the actions of City),



and Tenant shall pay or cause to be paid said liens and claims before any action is brought to enforce the same against Tenant or the Premises, or shall adequately indemnify City and the Premises by payment bonds acceptable to City and as provided for by Law. Tenant agrees to protect, defend, indemnify and hold harmless City and hold the Premises free and harmless from all liability for any and all such liens and claims and all costs and expenses in connection therewith. Tenant shall give City notice in writing before commencing construction of any kind on the Premises and provide any additional Tenant insurance required by this Agreement.

## **11. INDEMNITY AND EXCULPATION; INSURANCE**

11.1. Hold Harmless Clause. Tenant agrees to indemnify, defend and hold harmless the City, its Council, Boards, Commissions, Committees, officers, agents, officials, employees, volunteers and any person or entity owning or otherwise in legal control of the Property, excluding Tenant, (collectively the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, actions, causes of action, suits, judgments, fines, penalties, liabilities, losses, damages, costs and expenses (including, without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever (individually, a "Claim"; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to this Agreement, the Tenant, Tenant's employees, contractors or subcontractors, or agents on the Premises, or the occupation and use of the Premises, specifically including, but not limited to, any claim, liability, loss, or damage arising by and Tenant assumes all corresponding risk because of:

- (a) The death or injury of any Person caused or allegedly caused by the condition of the Premises or an act or omission of Tenant or an agent, contractor, employee, servant, sublessee or concessionaire of Tenant;
- (b) Any work performed on the Premises or materials furnished to the Premises at the request of Tenant or any agent or employee of Tenant, with the exception of Maintenance performed by City; or
- (c) Tenant's failure to perform any provision of this Agreement or to comply with any requirement of Law or any requirement imposed on the Premises by any duly authorized governmental agency or political subdivision.

Tenant's obligation pursuant to this subsection shall not extend to any claim, loss, liability, damages, costs or fees that are proximately caused by the sole gross negligence, willful misconduct, or unlawful or fraudulent conduct on the part of the Indemnified Parties.

11.2. Exculpation of City. Except as otherwise expressly provided in this Agreement, City shall not be liable to Tenant for any damage to Tenant or Tenant's property goodwill, increased Tenant operating costs, or loss of business or income by Tenant from any cause other than the sole gross negligence or willful acts of the Indemnified Parties. Except as otherwise expressly provided in this Agreement, Tenant



waives all claims against the Indemnified Parties for damages arising for any reason other than the sole gross negligence or willful acts of the Indemnified Parties. City shall not be liable to Tenant for any damage to the Premises, Tenant's property, Tenant's goodwill, or Tenant's business income, caused in whole or in part by acts of nature including, without limitation, waves, wind and tidal flows.

11.3 Insurance. Tenant shall maintain insurance in the types and amounts specified in Exhibit "D," attached hereto and incorporated herein by this reference.

## **12. DAMAGE OR DESTRUCTION OF PREMISES**

12.1. Destruction of Premises. If the Premises are totally or partially destroyed, rendering the Premises or any portion thereof totally or partially inaccessible or unusable, Tenant shall restore the Premises, at Tenant's sole cost and effort, to substantially the same condition as immediately prior to such destruction (including all trade fixtures, personal property, improvements and Alterations as are installed by Tenant, which shall be replaced by Tenant at its expense). Alternatively, Tenant may elect to terminate this Agreement, provided the damage was not caused by Tenant, without any liability from the City, by giving written notice of such election to City within sixty (60) calendar days after the date of the occurrence of any casualty if the cost of the restoration exceeds the amount of any available insurance proceeds, if the damage has been caused by an uninsured casualty or event, or if Tenant reasonably estimates that repairs of the Premises will take more than six (6) months. Upon such termination, insurance proceeds applicable to reconstruction of the Premises (excluding Tenant's personal property therein) shall be paid to City and Tenant shall have no further liability or obligations, excluding any indemnification or hold harmless provisions under this Agreement.

12.2. Replacement of Tenant's Property. In the event of the damage or destruction of improvements located on the Premises not giving rise to Tenant's option to terminate this Agreement, Tenant shall, at its own expense, replace and repair all Tenant's trade fixtures, equipment, machinery, furnishings, furniture and inventory as soon as reasonably possible to permit the prompt continuation of Tenant's business at the Premises for the Approved Use.

12.3. Destruction of Property. In the event that all or a portion of the Property or access to the Property in areas to be maintained by the City either under this Agreement or because City owns such other areas, is damaged, deteriorates or destroyed by fire or any other casualty not attributable to Tenant nor covered by Tenant insurance and as a result the Premises or a material portion of the Premises becomes inaccessible or commercially unusable for the Approved Use, and the damage or destruction cannot reasonably be repaired within twelve (12) months after the date of the casualty, City shall have the right, by notice to Tenant within sixty (60) calendar days of such casualty, to either:

- (a) Terminate this Agreement by giving Tenant written notice (which notice shall be given, if at all, within thirty (30) calendar days following



the date of the casualty), in which case this Agreement shall be terminated thirty (30) calendar days following such City notice;

- (b) Confirm City's intention to repair such damage as soon as reasonably possible at City's expense, in which event this Agreement shall continue in full force and effect; however, Rent shall be abated in accordance with the procedures set forth in Section 13, below. Tenant may terminate this Agreement by giving City written notice at any time prior to the commencement of repairs if City agrees to repair the Property pursuant to this Section 12.3(b) and City fails to commence repairs within one hundred twenty (120) calendar days after giving Tenant written notice of its intention to repair. In such event, this Agreement shall terminate as of the date of notice from Tenant to City, and City shall have no further liability to Tenant under this Agreement; or
- (c) City has no liability to Tenant concerning such casualty or City election to repair or not repair except solely arising under Section 12.1, above.

### **13. ABATEMENT OF RENT**

General Rule. In the event of damage or destruction of the Premises or damage to the Property that impacts the Premises and this Agreement is not terminated, Tenant shall continue to utilize the Premises for the operation of its business for the Approved Use to the extent it may be practicable and commercially reasonable. Rent shall abate in proportion to the area of the Premises that is rendered unusable for the Approved Use. The abatement of Rent shall commence on the date that use of the Premises is impacted and continue until the completion of those repairs necessary to restore full use of the Premises and Tenant's re-opening of the Premises. Tenant's obligation to pay taxes, assessments, license fees and other charges pursuant to this Agreement shall not be abated or reduced. Rent shall not abate if the damage or destruction to the Premises is the result of the negligence or willful act or omission of Tenant or its employees, officers, or agents. Tenant's right to abatement of Rent is contingent on payment of insurance proceeds, if any, equal to the amount of Rent pursuant to coverage required by Section 11, above.

### **14. PROHIBITION AGAINST VOLUNTARY ASSIGNMENT, SUBLETTING AND ENCUMBERING**

14.1. Prohibition of Assignment. City and Tenant acknowledge that City is entering into this Agreement in reliance upon the business experience and abilities of Tenant to operate the Premises for the Approved Use. Consequently, Tenant shall not voluntarily delegate, assign or encumber its interest in this Agreement or in the Premises, or sublease substantially all or any part of the Premises, or allow any other person or entity to occupy or use all or any part of the Premises without the prior written consent of



City. City's consent to any assignment or other transfer is subject to Tenant providing City with evidence reasonably satisfactory to City that the: (a) proposed transferee has financial strength and experience comparable to Tenant; (b) the use of the Premises by the proposed transferee is consistent with the terms of this Agreement and is for the Approved Use or a use approved by the City; (c) proposed transferee agrees to assume all current and future Tenant obligations and agrees that the City is not in default of the Agreement; and (d) Tenant is not then in material default of this Agreement. Except as otherwise expressly provided herein, any dissolution, merger, consolidation, reorganization of Tenant, or the sale or other transfer resulting in a transfer of a controlling percentage of the capital stock of Tenant, shall be deemed a voluntary assignment requiring City's consent above. However, the sale or transfer of a controlling percentage of the capital stock of Tenant pursuant to a public offering(s) of equity or debt instruments issued by Tenant, or other transfers of publicly traded capital stock or debt instruments shall not constitute a voluntary assignment and shall not require City's consent or approval if there is no change in the management of Tenant's business and if such successor otherwise maintains the Approved Use and satisfies the prior experience and business expertise tests above and is at least as creditworthy as Tenant at the time this Agreement is signed. The phrase "controlling percentage" means the ownership of, or the right to vote, stock possession of at least fifty percent (50%) of the total combined voting power of all classes of Tenant's capital stock issued, outstanding, and entitled to vote for the election of directors, except for ownership of publicly traded shares, warrants or similar equity interests in Tenant traded on a national exchange or over-the-counter markets.

14.2. Exceptions. Notwithstanding the foregoing paragraphs or anything to the contrary contained herein, City's consent shall not be required for a transfer or assignment of any stock or interest by a shareholder or member if the Approved Use of the Premises is maintained, if such transfer is to a spouse, children or grandchildren or an assignment or subletting to an Affiliate, Subsidiary, or Successor of Tenant defined as follows:

- (a) An "Affiliate" is any corporation or other entity which directly or indirectly controls or is controlled or is under common control with Tenant (for purposes of this Section, "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such corporation or other entity, whether through the ownership of voting securities or by contract or otherwise);
- (b) A "Subsidiary" shall mean any corporation or other entity not less than twenty five percent (25%) of whose outstanding stock shall, at the time, be owned directly or indirectly by Tenant and which is at least as creditworthy as Tenant; and
- (c) A "Successor" shall mean a corporation or other entity in which or with which Tenant is merged or consolidated, in accordance with applicable statutory provisions for merger or consolidation of



corporations or a corporation or other entity acquiring a substantial portion of the property and assets of Tenant.

14.3. Continuing Effect. City's consent to any assignment, encumbrance, or sublease shall not relieve Tenant from its obligations or liabilities under this Agreement nor act as a waiver of the requirement that such consent be obtained to any subsequent assignment, encumbrance or sublease.

## **15. TENANT'S DEFAULT/CITY'S REMEDIES**

15.1. Default by Tenant. The occurrence of any one (1) or more of the following events shall constitute a default and material breach of this Agreement by Tenant:

- (a) Failure of Tenant to pay Rent or any other payment required by this Agreement, as and when due, when such failure shall continue for a period of ten (10) calendar days after written notice of default from City to Tenant;
- (b) Except as specified in 15.1(a) above, the failure of Tenant to observe or perform any of the covenants, conditions or provisions of this Agreement to be observed or performed by Tenant where such failure shall continue for a period of thirty (30) calendar days after written notice thereof from City to Tenant; provided, however, that if the nature of Tenant's default is such that more than thirty (30) calendar days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within said thirty (30) calendar day period and thereafter diligently prosecutes such cure to completion;
- (c) Tenant becomes a "debtor" as defined in 11 U.S.C. Section 101 or any successor statute thereto, or should any adjudications in bankruptcy be rendered against Tenant, or should Tenant take or have taken against it, in any court pursuant to any statute either of the United States or of any State, a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of Tenant's property, and should the same not be dismissed within sixty (60) calendar days thereafter;
- (d) The making by Tenant of any general arrangement or assignment for the benefit of creditors;
- (e) The vacating or abandonment of the Premises by Tenant for a period of thirty (30) successive calendar days, without the prior written permission of the City's Authorized Representative; excluding closures caused by any force majeure, casualty, or condemnation, or by remodeling, reconstruction, alteration, repairs or permitted closures set forth under this Agreement);

- (f) The appointment of a trustee or receiver to take possession of substantially all of the assets of Tenant's assets located at the Premises or of Tenant's interest in this Agreement, where such appointment is not discharged within sixty (60) calendar days; or
- (g) The attachment, execution or the judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in the Agreement, where such seizure is not discharged within sixty (60) calendar days.

#### 15.2. Remedies.

- (a) Cumulative Nature of Remedies. If any default by Tenant shall continue without cure beyond the time permitted under this Agreement, City shall have the remedies described in this Section in addition to all other rights and remedies provided by law or equity, to which City may resort to cumulatively or in the alternative.
- (b) Re-entry without Termination. City may re-enter the Premises, and, without terminating this Agreement, re-let all or a portion of the Premises. City may execute any agreements made under this provision in City's name and shall be entitled to all rents from the use, operation, or occupancy of the Premises. Tenant shall nevertheless pay to City on the dates specified in this Agreement the equivalent of all sums required of Tenant under this Agreement, plus City's expenses in conjunction with re-letting, less the proceeds of any re-letting or atonement. No act by or on behalf of City under this provision shall constitute a termination of this Agreement unless City gives Tenant specific written notice of termination.
- (c) Termination Agreement. City may terminate this Agreement by giving Tenant written notice of termination with a specified termination date. In the event City terminates this Agreement, City may recover possession of the Premises (which Tenant shall surrender and vacate upon demand) and remove all persons and property. City shall be entitled to recover the following as damages:

15.2.c.1. The value of any unpaid Rent or other charges that are unpaid at the time of Termination;

15.2.c.2. The value of the Rent and other charges that would have accrued after termination less the amount of Rent and charges the City received or could have received through the exercise of reasonable diligence as of the date of the award, provided, however, that City shall use its best efforts to re-lease the Premises and upon the City's re-leasing the



Premises Tenant shall be released from all further liability for Rent and other charges that would have accrued after termination;

15.2.c.3. Any other amount necessary to reasonably compensate City for the detriment proximately caused by Tenant's failure to perform its obligations under this Agreement; and

15.2.c.4. At City's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time-to-time by applicable California law. City shall be entitled to interest at the rate of ten percent (10%) per annum on all Rent and other charges from the date due or the date they would have accrued. City shall also be entitled to an award of the costs and expenses incurred by City in maintaining or preserving the Premises after default, preparing the Premises for re-letting, or repairing any damage caused by an act or omission of Tenant.

15.2.c.5. City may exercise any other right or remedy which City may have at law or equity.

15.3. Use of Tenant's Personal Property. In the event Tenant is in default past applicable notice and cure periods, City may use Tenant's personal property and any trade fixtures located on the Premises or any of such property and fixtures without compensation or liability to Tenant for use or damage. In the alternative, City may store the property and fixtures at the cost of Tenant.

15.4. City's Right to Cure Tenant's Default. Upon continuance of any default beyond applicable notice and cure periods, City may, but is not obligated to, cure the default at Tenant's cost. If City pays any money or performs any act required of, but not paid or performed by, Tenant after notice, the payment and/or the reasonable cost of performance shall be due as Additional Rent not later than ten (10) calendar days after service of a written demand accompanied by supporting documentation upon Tenant. No such payment or act shall constitute a waiver of default or of any remedy for default or render City liable for any loss or damage resulting from performance.

15.5. Waiver of Rights. Tenant waives any right of redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 or 1179, or under any other present or future law, in the event Tenant is evicted or City takes possession of the Premises by reason of any default by Tenant.

## **16. CONDEMNATION**



16.1. Termination of the Agreement. Tenant or the City shall have the right to terminate this Agreement as of the date a public agency with lawful authority to condemn obtains possession or title to ten percent (10%), or more of the land area at the Premises, or the condemnation materially affects the conduct of Tenant's business in the Premises, or the Premises will no longer be suitable for the conduct of Tenant's business for the Approved Use. In the event of Termination pursuant to this subsection, Rent shall be prorated to the date of Termination, any unearned Rent shall be refunded to Tenant and Tenant shall have no further obligations under this Agreement. Tenant shall not grant a right of entry to any condemnor without the written consent of City.

16.2. No Termination of Agreement. If this Agreement is not terminated under Section 16.1, above, then this Agreement shall terminate as to the portion of the Premises taken upon the date which possession of said portion is taken, but this Agreement shall continue in force and effect as to the remainder of the Premises. Tenant shall, in the event of a taking of any portion of the Premises, be entitled to a reduction in the Rent in reasonable proportion to the area of the Premises so taken verses its impact on Tenant's continued operations for the Approved Use.

16.3. Allocation of Award. In the event that an award is made for an entire or partial taking or for damage to the Premises or any interest therein in any action in direct or inverse condemnation or in the event of a taking under the power of eminent domain, the Parties hereto agree that their respective rights to the award or compensation paid shall be as follows:

- (a) City shall be entitled to that Portion of the award received for the taking of the real property within the Premises, the value of this leasehold, including all buildings and other improvements to which City is entitled on Expiration or Termination of this Agreement, and for severance damages.
- (b) Tenant shall be entitled to any award that may be made for the taking of or injury to Tenant's business and profits, including any amount attributable to Tenant's personal property, fixtures, installations, or improvements in or on the Premises, Tenant's relocation expenses, but excluding any "bonus value" attributable to this Agreement.
- (c) Any interest payable on the total award shall be divided between City and Tenant in the same ratio as are the awards granted to them pursuant to the other provisions of this Section.

## **17. SUBJECT TO STATE LANDS COMMISSION GRANT**

The Premises are located on property that may be the subject of a grant from the State of California to the City that is administered by the State Lands Commission. Tenant



shall not take any action that would cause the City to be in violation of any provisions of that grant. If the State Lands Commission terminates this grant for any reason or prevents the Premises from being used for the Approved Use, this Agreement terminates as a result and the Parties shall be released from all liabilities and obligations, excluding any outstanding Rent, indemnification or hold harmless provisions, under this Agreement.

## **18. WASTE OR NUISANCE**

Tenant shall not commit or permit the commission of any waste on the Premises. Tenant shall not maintain, commit, or permit any nuisance as defined in Section 3479 of the California Civil Code on the Premises. Tenant shall not use or permit the use of the Premises for any unlawful purpose.

## **19. NO CONFLICTS OF USE, HAZARDOUS MATERIALS**

Tenant shall not use, occupy or permit any portion of the Premises or Property to be used or occupied in violation of any Law. City represents and warrants that, to the best of City's knowledge: (i) Tenant's use of the Premises does not conflict with applicable Laws, and City knows of no reason why Tenant would be unable to obtain all required permits, licenses and approvals from the appropriate governmental authorities; (ii) the Premises is not in violation of any environmental laws, rules, or regulations and Tenant's contemplated uses will not cause any such violation; and (iii) the Premises is free of any and all Hazardous Materials as of the Delivery Date. In the event that the presence of any Hazardous Materials not caused by Tenant is detected at the Property at any time during the Term of this Agreement and any Option Term, all remedial work shall be performed by City at City's expense. Tenant's obligation to pay Rent shall be abated pursuant to Section 13 to the extent Tenant is unable to conduct its business upon the Premises as a result of any remedial work that is performed subsequent to Tenant opening for business. Tenant shall have the right (but not the obligation) to terminate this Agreement, upon thirty (30) calendar days advance written notice to City in the event that Hazardous Materials, not caused by Tenant, are detected at the Premises and the presence or the remediation materially affects Tenant's ability to conduct its business at the Premises.

## **20. EVENT OF BANKRUPTCY**

20.1. Assignment. If this Agreement is assigned to any Person or entity pursuant to the provisions of the Bankruptcy Code, 11 U.S.C. Sections 101 *et seq.* or any similar or successor statute ("Bankruptcy Code"), any and all monies or other consideration payable or otherwise to be delivered in connection with such assignment shall be paid or delivered to City, shall be and remain the exclusive property of City and shall not constitute property of Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code. Any and all monies or other consideration constituting City's property under this Section not paid or delivered to City shall be held in trust for the benefit of City and be promptly paid or delivered to City.



20.2. Assumption of Obligations. Any Person or entity to which this Agreement is assigned pursuant to the provisions of the Bankruptcy Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Agreement and any Amendments on and after the date of such assignment.

## **21. NOTICES**

Any notice, demand, request, consent, approval or communication that either party desires or is required to give shall be in writing and shall be deemed given three (3) calendar days after deposit with the United States Postal Service, postage prepaid, by registered or certified mail, return receipt requested or upon delivery if personally served. Unless notice of a different address has been given in accordance with this Section, all notices shall be addressed as follows:

If to City:

City of Newport Beach  
Attention: Real Property Administrator  
100 Civic Center Drive  
P.O. Box 1768  
Newport Beach, CA 92658

If to Tenant:

West Point Investment Corporation  
Kevin Hayes  
829 Harbor Island Drive, Suite D1  
Newport Beach, CA 92660

## **22. SURRENDER OF PREMISES**

At the expiration or earlier termination of this Agreement, Tenant shall surrender, at no cost to City, the possession of the Premises. Tenant shall leave the surrendered Premises, required personal property and fixtures in good and broom-clean condition, reasonable wear and tear excepted. All property that Tenant is not required to surrender, but that Tenant does abandon shall, at City's election, become City's property at expiration or termination. City shall owe no compensation to Tenant for any personal property or fixtures left at the Premises by Tenant more than fifteen (15) calendar days after the expiration or termination of this Agreement.

## **23. COMPLIANCE WITH ALL LAWS**

Tenant shall at its own cost and expense comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted and relating in any way to the Premises and/or this Agreement.

## **24. WAIVERS**

The waiver by either party of any breach or violation of any term, covenant or condition of this Agreement, or of any ordinance, law or regulation, shall not be deemed to be a waiver of any other term, covenant, condition, ordinance, law or regulation, or of any subsequent breach or violation of the same or other term, covenant, condition, ordinance, law or regulation. The subsequent acceptance by either party of any fee, performance, or other consideration which may become due or owing under this Agreement, shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, condition or covenant of this Agreement, or any applicable law, ordinance or regulation.

## **25. SEVERABILITY**

If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

## **26. CONFLICT**

In case of conflict, the more specific provision of this Agreement shall control. If any conflicts arise between the terms and conditions of this Agreement, and the terms and conditions of the attached exhibits or the documents expressly incorporated by reference, the terms and conditions of this Agreement shall control.

## **27. APPLICABLE LAW**

This Agreement shall be construed in accordance with the laws of the State of California. Any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.

## **28. ENTIRE AGREEMENT; AMENDMENTS**

28.1. The terms and conditions of this Agreement, all exhibits attached, and all documents expressly incorporated by reference, represent the entire agreement of the parties with respect to the subject matter of this Agreement.

28.2. This Agreement shall supersede any and all prior agreements, oral or written, regarding the subject matter between Tenant and City.

28.3. No other agreement, promise or statement, written or oral, relating to the subject matter of this Agreement, shall be valid or binding, except by way of a written amendment to this Agreement.

28.4. The terms and conditions of this Agreement shall not be altered or modified except by a written amendment to this Agreement signed by Tenant and the Authorized City Representative and approved as to form by the City Attorney.



28.5. Any obligation of the parties relating to monies owed, as well as those provisions relating to limitations on liability and actions, shall survive termination or expiration of this Agreement.

28.6. Each party has relied on its own inspection of the Premises and examination of this Agreement, the counsel of its own advisors, and the warranties, representations, and covenants in this Agreement. The failure or refusal of either party to inspect the Premises, to read this Agreement or other documents, or to obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on such reading, inspection, or advice.

## **29. TIME IS OF THE ESSENCE**

Time is of the essence for this Agreement.

## **30. SUCCESSORS**

Subject to the provisions of this Agreement on assignment and subletting, each and all of the covenants and conditions of this Agreement shall be binding on and shall inure to the benefit of the heirs, successors, executors, administrators, assigns, and personal representatives of the respective parties.

## **31. INTERPRETATION**

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

## **32. HEADINGS**

The captions of the various sections of this Agreement are for convenience and ease of reference only and do not define, limit augment, or describe the scope, content, or intent of this Agreement.

## **33. NO BROKERS**

Each party warrants to and for the benefit of the other than it has had no dealings with any real estate broker or other agent (attorneys excepted) in connection with the negotiation or making of this Agreement, and that no commission, fee or other compensation is owed regarding this Agreement by such other Party.

## **34. GENDER; NUMBER**

The neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the neuter, and each includes

corporation, partnership, or other legal entity whenever the context requires. The singular number includes the plural whenever the context so requires.

### **35. EXHIBITS**

All exhibits to which reference is made in this Agreement are incorporated by reference. Any reference to "this Agreement" includes matters incorporated by reference.

### **36. CITY BUSINESS LICENSE**

Tenant shall obtain and maintain during the duration of this Agreement, a City business license as required by the Newport Beach Municipal Code.

### **37. NO ATTORNEYS' FEES**

The prevailing party in any action brought to enforce the terms and conditions of this Agreement, or arising out of the performance of this Agreement, shall not be entitled to recover its attorneys' fees.

### **38. NONDISCRIMINATION**

Tenant, for itself and its successors, agrees that in the performance under this Agreement, Tenant shall not discriminate against any person because of the marital status or ancestry, gender, sexual orientation, etc. of that person or any characteristic listed or defined in Section 11135 of the Government Code.

### **39. MEMORANDUM OF LEASE AGREEMENT**

A Memorandum of Lease Agreement, in a form and content similar to that contained in Exhibit "E" shall be recorded by the parties promptly upon execution of this Agreement. Upon execution by both parties, the Memorandum of Lease Agreement shall be recorded against the Premises in the office of the Orange County Clerk-Recorder, as required by Government Code Section 37393.

### **40. NO THIRD PARTY BENEFICIARIES**

City (both as a lessor and as the City of Newport Beach) and Tenant do not intend, by any provision of this Agreement, to create in any third party, any benefit or right owed by one party, under the terms and conditions of this Agreement, to the other party.

### **41. LAWS**

It shall be the obligation of Tenant to comply with all laws, statutes, rules, and regulations relating in any way to the Premises including, but not limited to, State of California labor laws, rules and regulations and the parties agree that the City shall not



be liable for any violation by Tenant (or Tenant's agent, sublessee or any party affiliated with Tenant) thereof.

#### **42. NO DAMAGES**

Tenant acknowledges that City would not enter this Agreement if it were to be liable for damages (including, but not limited to, actual damages, economic damages, consequential damages, lost profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use) under, or relating to, this Agreement or any of the matters referred to in this Agreement, including, without limitation, any and all plans, permits, licenses or regulatory approvals, and CEQA documents. Accordingly, Tenant covenants and agrees, except as otherwise provided herein, on behalf of itself and its successors and assigns, not to sue City (either in its capacity as lessor in this Agreement or in its capacity as the City of Newport Beach) for damages (including, but not limited to, actual damages, economic damages, consequential damages, lost profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use) or monetary relief for any breach of this Agreement by City or for any dispute, controversy, or issue between City and Tenant arising out of or connected with this Agreement or any of the matters referred to in this Agreement, including, without limitation, any and all plans, permits, licenses or regulatory approvals, CEQA documents, or any future amendments or enactments thereto, and the parties expressly agree that declaratory relief, injunctive relief, mandate and specific performance shall be Tenant's sole and exclusive judicial remedies.

#### **43. GOVERNMENT CLAIMS ACT**

Tenant and City agree that in addition to any claims filing or notice requirements in this Agreement, Tenant shall file any claim that Tenant may have against City in strict conformance with the Government Claims Act (Government Code sections 900 *et seq.*), or any successor statute.

#### **44. COUNTERPARTS**

This agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

**[SIGNATURES ON NEXT PAGE]**



**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date first written above.

**APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE**

Date: 1/2/20

By:   
Aaron C. Harp  
City Attorney  
*01-02-20  
dmz*

**ATTEST:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Leilani I. Brown  
City Clerk

**CITY OF NEWPORT BEACH,**  
a California municipal corporation

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Grace K. Leung  
City Manager

**TENANT: WEST POINT INVESTMENT  
CORPORATION**, a California corporation

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Kevin John Hayes  
Chief Executive Officer/  
Chief Financial Officer

Attachments: Exhibit A – Property Legal Description and Depiction  
Exhibit B – Premises Depiction  
Exhibit C – Balboa Yacht Basin Rules and Regulations  
Exhibit D – Insurance Requirements  
Exhibit E – Memorandum of Lease

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE

CITY OF NEWPORT BEACH,  
a California municipal corporation

Date: 1/2/20

Date: \_\_\_\_\_

By: [Signature]  
Aaron C. Harp  
City Attorney  
01.02.20  
Cmt

By: \_\_\_\_\_  
Grace K. Leung  
City Manager

ATTEST:

TENANT: WEST POINT INVESTMENT  
CORPORATION, a California corporation

Date: \_\_\_\_\_

Date: JANUARY 3, 2020

By: \_\_\_\_\_  
Leilani I. Brown  
City Clerk

By: [Signature]  
Kevin John Hayes  
Chief Executive Officer/  
Chief Financial Officer

Attachments: Exhibit A – Property Legal Description and Depiction  
Exhibit B – Premises Depiction  
Exhibit C – Balboa Yacht Basin Rules and Regulations  
Exhibit D – Insurance Requirements  
Exhibit E – Memorandum of Lease

**EXHIBIT “A”**  
**Property Legal Description and Depiction**

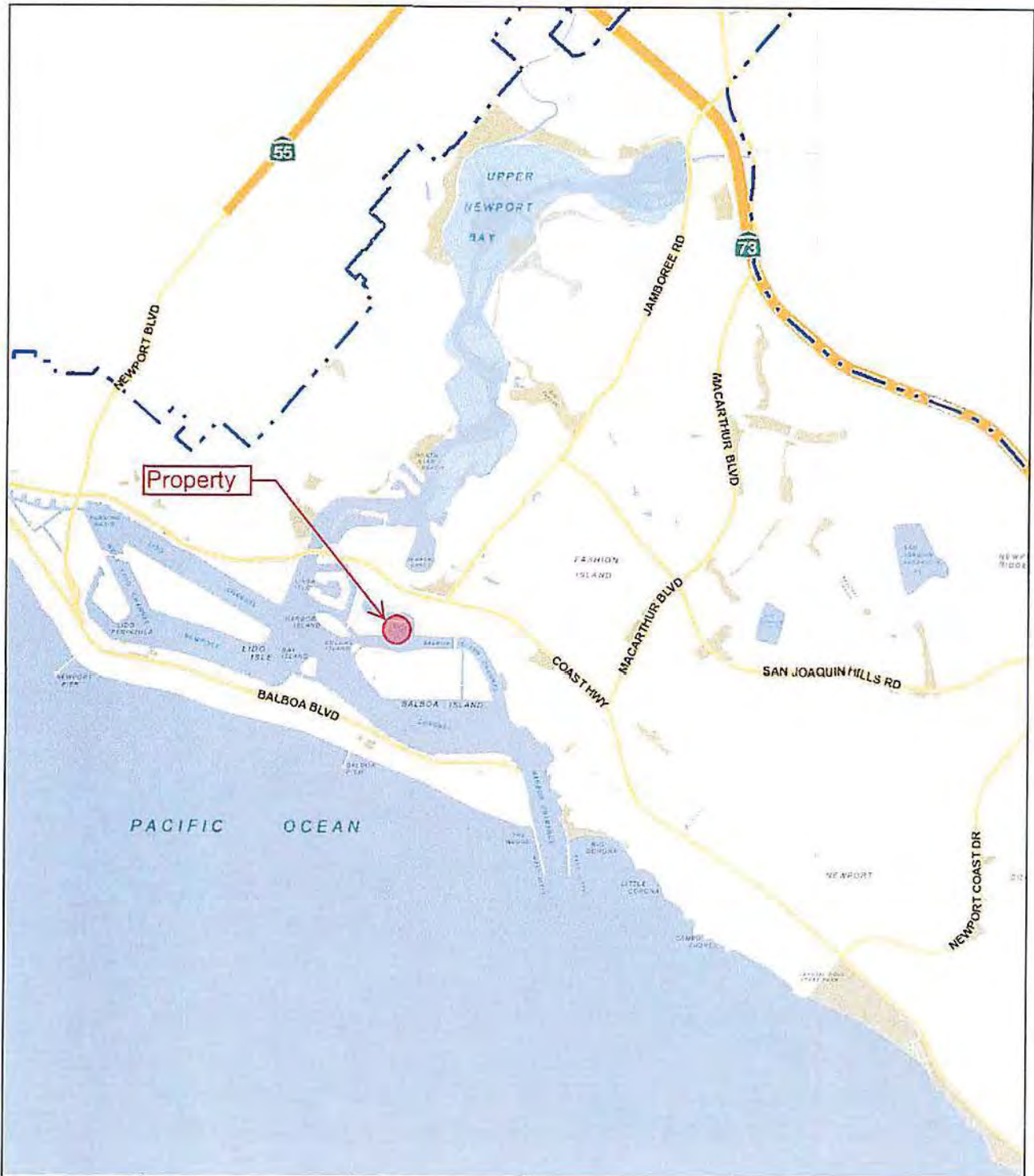


## **EXHIBIT "A"**

### **Property Legal Description and Depiction**

A parcel of land situated in the Northwest quarter (NW 1/4) of Section Thirty Five (35), Township Six (6) South, Range Ten (10) West, S.B.B. & M., Orange County, California, more particularly described as follows, to-wit:

Beginning at a point in the U.S. Bulkhead line between Station No. 200 and Station No. 101 as shown upon a map entitled "Harbor Lines, Newport Bay Harbor, California," approved May 2, 1936, by the Secretary of War, and on file in the office of the U.S. District Engineer at Los Angeles, California, said point of beginning being East 754.25 feet of said bulkhead Station No. 200, running thence North 424.71 feet to a point in the Northerly line of that certain parcel of land conveyed to City of Newport Beach by the Irvine Company, as described in a deed recorded September 25, 1929, in Book 306, Page 375, of official records of Orange County, California; thence South 85° 43' East 772.15 feet to the Northeasterly corner of the last mentioned parcel of land; thence South along the Easterly line of the last mentioned parcel of land 367.01 feet to a point in said U.S. Bulkhead line between Station No. 200 and Station No. 101, thence West along said bulkhead line 770 feet to the point of beginning, containing approximately seven (7) acres.



Newport  
Beach  
GIS



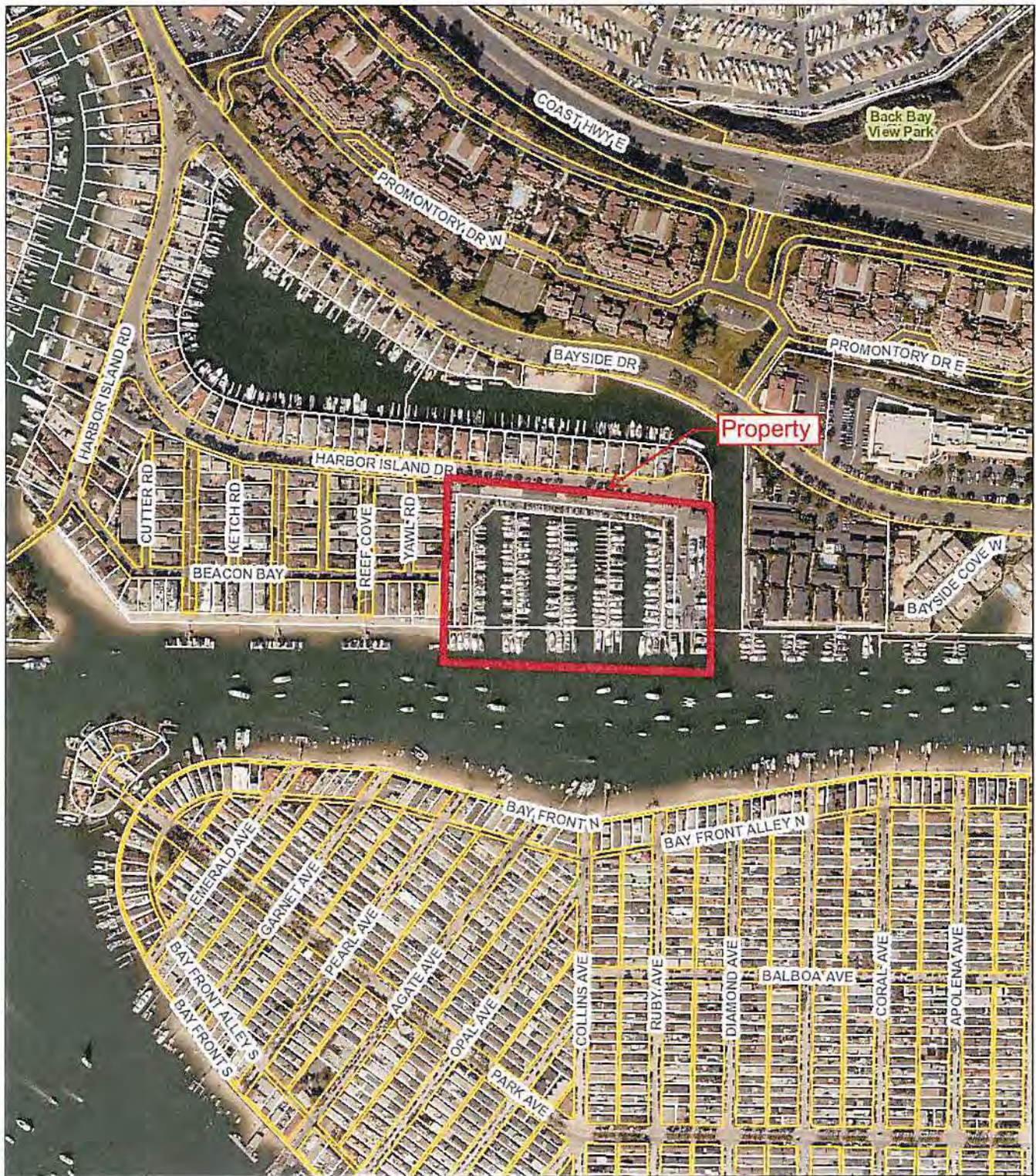
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Disclaimer: Every reasonable effort has been made to assure the accuracy of the data provided, however, The City of Newport Beach and its employees and agents disclaim any and all responsibility from or relating to any results obtained in its use.

Imagery: 2009-2011 photos provided by Eagle Imaging [www.eagleaerial.com](http://www.eagleaerial.com)

11/7/2013





Newport  
Beach  
GIS



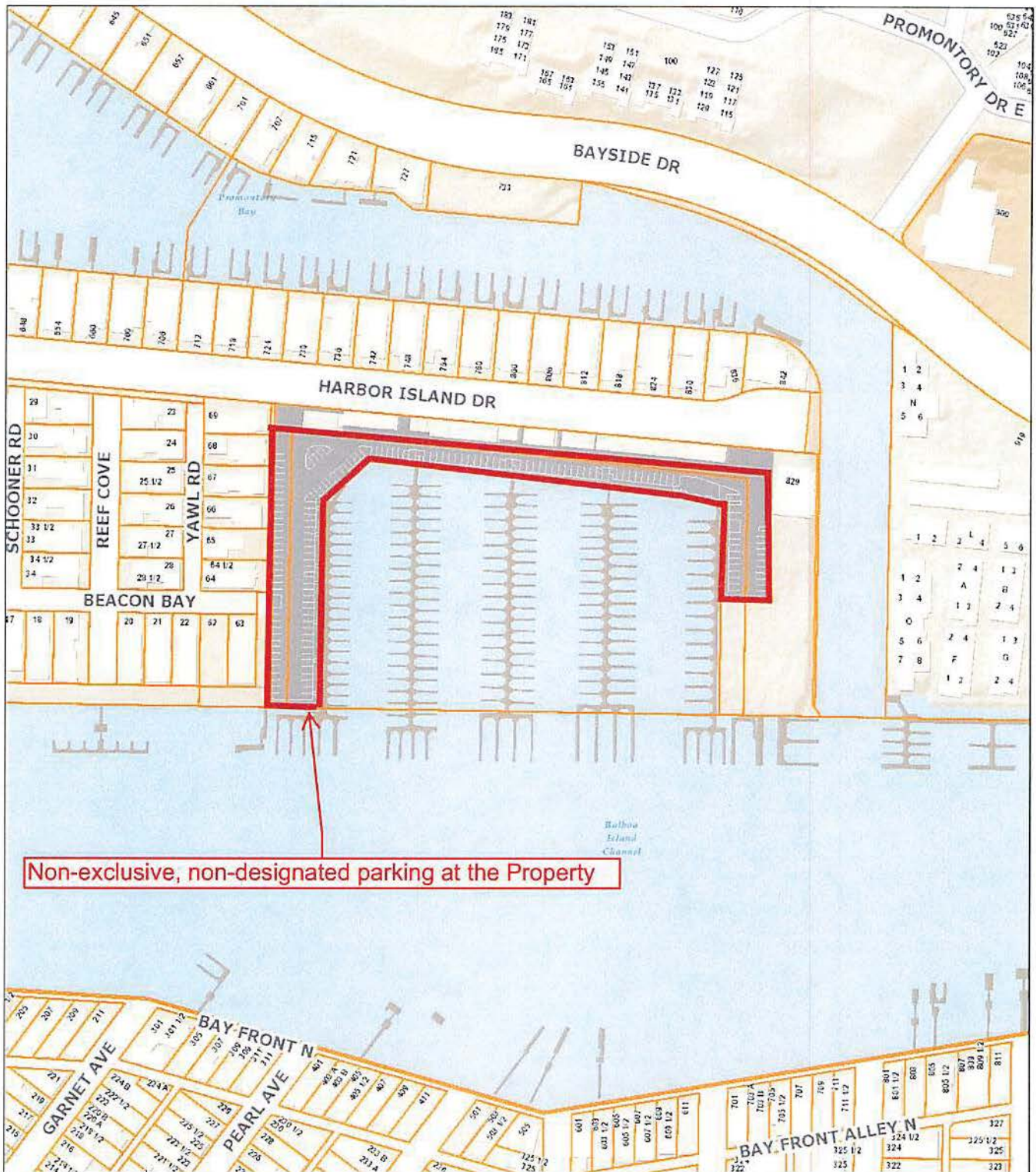
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Disclaimer: Every reasonable effort has been made to assure the accuracy of the data provided, however, The City of Newport Beach and its employees and agents disclaim any and all responsibility from or relating to any results obtained in its use.

Imagery: 2009-2013 photos provided by Eagle Imaging [www.eagleaerial.com](http://www.eagleaerial.com)

4/12/2016





Non-exclusive, non-designated parking at the Property

Newport  
Beach  
GIS



0 200 400  
Feet

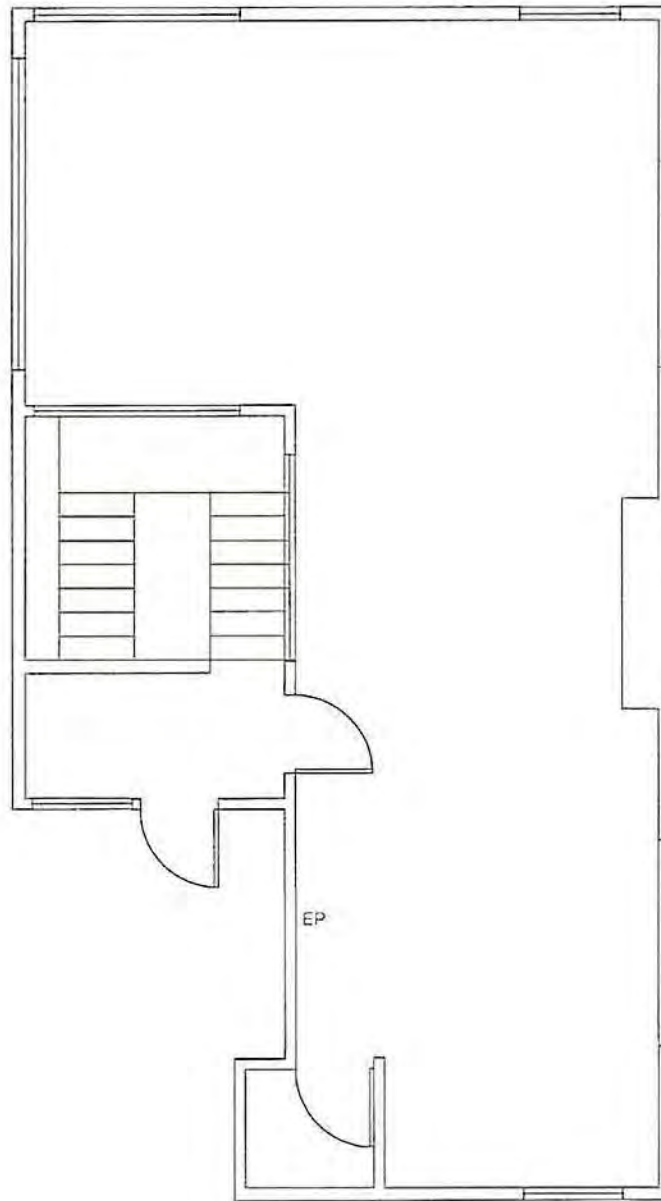
Disclaimer: Every reasonable effort has been made to assure the accuracy of the data provided, however, The City of Newport Beach and its employees and agents disclaim any and all responsibility from or relating to any results obtained in its use.

Imagery: 2009-2013 photos provided by Eagle Imaging [www.eagleaerial.com](http://www.eagleaerial.com)

10/5/2016

**EXHIBIT “B”**  
**Premises’ Depiction**

EXHIBIT B

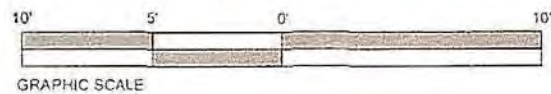


Office

RSF: 790 sf

SCALE: 1/2" = 1'-0"

SHEET SIZE: 11x17



1614

829 Harbor Island Drive  
Newport Beach, CA



WorkspacePlans

kim@workspaceplans.com jill@workspaceplans.com



**EXHIBIT “C”**  
**Balboa Yacht Basin Rules and Regulations**



**BALBOA YACHT BASIN**  
**829 Harbor Island Drive**  
**Newport Beach, CA 92660**  
**(949) 673-0360**

## **Rules and Regulations**

When a boat enters the Balboa Yacht Basin ("BYB"), it immediately comes under the jurisdiction of BYB and shall be berthed only where ordered and maneuvered as directed. Vessels may be relocated within BYB at City's discretion. The City ordinances, rules and regulations, summarized herein and as amended from time to time, and all other regulations established by regulatory bodies having jurisdiction at BYB, shall form a part of all Slip Rental Agreements as though printed thereon.

The Balboa Yacht Basin is owned by the City of Newport Beach ("City") and managed by Basin Marine Inc., located onsite at 829 Harbor Island Drive.

There is no warranty of any kind as to the condition of the floats, walks, gangways, ramps or mooring gear, nor shall City be responsible therefore, or for injuries to persons or property occurring thereon or for any other reason, whether herein specifically stated or not.

1. No Vessel may be moored at the BYB unless a current Slip Rental Agreement or Temporary Slip Rental Agreement (collectively, the "Agreements") is in effect between Vessel Owner and City. All defined terms herein shall have the same meaning as in the Agreements.
2. Only the Vessel described in the Agreements and registered to Vessel Owner may occupy the assigned Slip. Only one boat is permitted to occupy a slip at any one time, unless otherwise approved by the Marina Manager.
3. Use of boats moored at BYB for unauthorized commercial purposes is prohibited.
4. No major repairs or complete overhauls shall be made on boats in BYB. Extent of the permitted repairs shall be at the discretion of the City. Disc sanding and spray painting are strictly forbidden.
5. Supplies, materials, accessories or gear of all kinds shall not be stored within BYB except in approved lockers. No additional locker boxes shall be placed on the docks by Vessel Owner. Maximum weight in lockers shall not exceed 70 pounds.
6. City reserves the right to inspect all boats to determine if they are properly identified and equipped for safe operation in accordance with Coast Guard and other applicable regulations.
7. No Vessel Owner shall throw, discharge, pump or deposit from any boat or float any refuse, oil, spirits, flammable liquid, or other polluting matter into BYB. All such matter shall be deposited in appropriately marked containers within BYB.



8. Use of boat toilets not equipped with storage devices approved by the state or local health departments is not permitted within BYB. City reserves the right to inspect all boats for installation and proper operation of such devices and holding tanks.
9. Unnecessary operation of engines in berths is not permitted. No excessive noise is allowed. Halyards should be tied away from masts.
10. Except for entering or leaving slips, marine engines, power generating equipment or other noise making machinery shall not be operated between the hours of 5:00 P.M. and 9:00 A.M. Engines may not be operated in gear while boats are secured to dock.
11. Water or power lines shall not cross main walks.
12. All boats shall be moored by Vessel Owner in a safe manner, on cleats, with strong and adequate lines.
13. The speed limit within BYB shall be dead slow, or wakeless speed, whichever is slower.
14. Fishing from the slips is not allowed. No cleaning of fish is permitted in BYB.
15. There shall be no laundering or drying of wearing apparel on the docks or on the dock or rigging of a boat in BYB.
16. Restrooms will remain locked at all times. All keys must be returned to the Marina Manager office upon termination of the Agreement. If not returned, the Key Deposit will be retained by the City. Keys must not be duplicated.
17. Vessel Owner shall notify the Marina Manager when they expect Vessel to be away from the Slip for any period in excess of thirty (30) days. Vessel Owner shall not sublet or otherwise grant others the use of the Slip. During any absence of the Vessel, City may use the Slip for any purpose without credit or compensation to Vessel Owner.
18. For security reasons, no dinghy, sabot, float or other similar boat shall be permitted to cruise up and down the fairways. All such boats must be kept on Vessel. The use of another slip at any time, for ANY non-emergency reason is not permitted.
19. The maximum distance by which any boat (including all projections such as transom platforms, booms, gait tanks, bowsprits, etc.) may extend beyond the end of the berth may not be more than ten percent (10%) of the length of the Slip beyond the end of the Slip. No part of the Vessel shall at any time extend over any portion of any dock at BYB. No part of any boat shall extend over the main walkway.
20. All equipment and electrical connections made by Vessel Owner must be approved by the Marina Manager.
21. No fueling or transferring of fuel from docks shall be permitted at any time.
22. Vessel Owner shall be responsible for any oil, paint, or other materials spilled, dripped or otherwise applied to the concrete fingers or walks adjacent to the boat slip.



23. Boat boarding steps shall be a maximum of one-half (1/2) the width of the finger and shall be of lightweight, open construction. No storage will be allowed under the boarding steps.
24. No dinghies, masts, bicycles, hibachis, etc. shall be stored on the docks. Items left or stored on the docks will be confiscated.
25. Trash containers are provided. Vessel Owners shall not place their own trash containers on the docks.
26. No cleats, dock wheels or other accessories shall be installed by Vessel Owner. The dockmaster should be contacted if additional accessories are necessary.
27. Any paint, varnish, etc. spilled on the docks or lockers shall be cleaned up immediately. If the spill cannot be removed by Vessel Owner, he should contact the Marina Manager for assistance.
28. Vessel Owner is encouraged to inform the Marina Manager of any leaks or other malfunctions with water or electricity, etc., so that they may be corrected as soon as possible.
29. ANIMALS SHALL BE LEASHED AT ALL TIMES. Should the size or temperament of a pet disturb others or should the pet commit any nuisance on the property of BYB, such animal shall be removed from BYB by Vessel Owner.
30. Children under twelve (12) years of age are not permitted on docks without the immediate presence of a parent or other responsible adult.
31. Disorderly or discourteous conduct by Vessel Owner or guests that might injure a person, cause damage to property or harm the reputation of BYB shall be cause for termination of the Vessel Owner's Agreement.
32. Vessel Owner shall park vehicles in areas designated for Basin parking. Parking areas shall not be used for storage of trailers without City's consent.
33. Vessel Owners are advised that it will be unlawful for any unauthorized person to solicit business or to offer goods, wares, merchandise or services for sale on the premises of BYB without the consent of the City.
34. "For Sale" or other unauthorized advertising signs are prohibited in BYB.
35. City is not responsible for any losses or damage to boats at BYB. Each Vessel Owner is responsible for damage which he and/or his boat may cause to other boats or improvements in BYB.
36. No swimming is permitted in BYB waters.
37. The City will not provide space for the storage of dinghies or miscellaneous Vessel Owner equipment on Basin property.

38. Hydro-lift hoists will not be allowed in BYB.
39. The Marina Manager may ascertain that strangers aboard yachts are authorized by Vessel Owner to be aboard.
40. Riding of skateboards, bicycles or motorcycles on the docks is not permitted.

Slip Fees specified in the Agreement are determined by the size of the slip space or vessel size and permitted overhang. Rent is due in advance, payable by the first of the month. Electricity is charged for the previous month's use. Vessel is subject to impound if the account is delinquent. Vessel Owner will be liable for any cost of impounding and collection of account.

These rules and regulations are subject to change upon five day's notice.

**Dave New**  
**Balboa Yacht Basin Manager**  
[Dave1@BasinMarine.com](mailto:Dave1@BasinMarine.com)  
(949) 673-0360

Revised February 4, 2013

**EXHIBIT “D”**  
**Insurance Requirements**



## EXHIBIT "D"

### Insurance Requirements

Without limiting Tenant's indemnification of City, Tenant shall obtain, provide, and maintain at its own expense during the Term of this Agreement, a policy or policies of insurance of the type, amounts, and form acceptable to City. The policy or policies shall provide, at a minimum, those items described below.

1. Provision of Insurance. Without limiting Tenant's indemnification of City, and prior to commencement of work on Premises by Tenant or Tenant's agents, representatives, consultants, contractors and/or subcontractors, Tenant shall obtain, provide and maintain at its own expense during the term of this Agreement policies of insurance of the type and amounts described below and in a form satisfactory to City. Tenant agrees to provide insurance in accordance with requirements set forth here. If Tenant uses existing coverage to comply and that coverage does not meet these requirements, Tenant agrees to amend, supplement or endorse the existing coverage.
2. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the insurance commissioner to transact business of insurance in the State of California, with an assigned policyholders' rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.
3. Coverage Requirements.
  - A. Workers' Compensation Insurance. Tenant and Tenant's agents, representatives, consultants, contractors and/or subcontractors, shall maintain Workers' Compensation Insurance, statutory limits, and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000) each accident for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California, Section 3700 of the Labor Code.

Tenant and Tenant's agents, representatives, consultants, contractors and/or subcontractors, shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees and volunteers.
  - B. General Liability Insurance. Tenant and Tenant's agents, representatives, consultants, contractors and/or subcontractors, shall maintain commercial general liability insurance, and if necessary umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than one million dollars and 00/100 (\$1,000,000) per occurrence, two million dollars and 00/100 (\$2,000,000) general aggregate. The policy shall cover liability arising from premises, operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) with no



endorsement or modification limiting the scope of coverage for liability assumed under a contract.

- C. Fire and Extended Coverage. Tenant shall maintain fire and extended coverage insurance, together with insurance against vandalism, theft and malicious mischief, on the improvements and fixtures, alterations, trade fixtures, signs, equipment, personal property and inventory on or upon the Premises from loss or damage to the extent of their full replacement value.
- D. Loss of Rent. Tenant shall maintain loss of rent insurance insuring that the Rent will be paid to City for a period up to six (6) months if the Premises are destroyed or rendered unusable or inaccessible for commercial purposes by a risk insured under a special form property coverage policy including vandalism and malicious mischief endorsements.
- E. Automobile Liability Insurance. Tenant and Tenant's consultants, contractors and/or subcontractors shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of Tenant or all activities of Tenant's consultants, contractors and/or subcontractors arising out of or in connection with work to be performed on the Premises, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars and 00/100 (\$1,000,000) combined single limit each accident.
- F. Builder's Risk Insurance. During construction, Tenant shall require that Tenant's construction contractors and subcontractors maintain Builders Risk insurance or an installation floater as directed by City, covering damages to the work for "all risk" or special causes of loss form with limits equal to one hundred percent (100%) of the completed value of the work, with coverage to continue until final acceptance of the work by Tenant and City. City shall be included as an insured on such policy, and Tenant shall provide City with a copy of the policy.
- G. Pollution Liability Insurance. Tenant shall require that Tenant's construction contractors and subcontractors maintain a policy providing contractor's pollution liability ("CPL") coverage with a total limit of liability of no less than one million dollars and 00/100 (\$1,000,000) per loss and in the aggregate per policy period dedicated to this project. The CPL shall be obtained on an occurrence basis for a policy term inclusive of the entire period of construction. If all or any portion of CPL coverage is available only on a claims-made basis, then a 10-year extended reporting period shall also be purchased. The CPL policy shall include coverage for cleanup costs, third-party bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed, resulting from pollution conditions caused by contracting operations. Coverage as required in this paragraph shall apply to sudden and non-sudden pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, waste materials, or other irritants, contaminants, or pollutants. The CPL shall also provide coverage for transportation and off-site disposal of materials.



The policy shall not contain any provision or exclusion (including any so-called "insured versus insured" exclusion or "cross-liability" exclusion) the effect of which would be to prevent, bar, or otherwise preclude any insured or additional insured under the policy from making a claim which would otherwise be covered by such policy on the grounds that the claim is brought by an insured or additional insured against an insured or additional insured under the policy.

4. Endorsements: Policies shall contain or be endorsed to contain the following provisions:
  - A. Additional Insured Status. City, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as an additional insured under all general liability and pollution liability policies with respect to liability arising out of Tenant's activities related to this Agreement and with respect to use or occupancy of the Premises. City, its elected or appointed officers, officials, employees, agents and volunteers shall be named as an additional insured on any of Tenant's contractor's and subcontractor's policies.
  - B. Primary and Non Contributory. Policies shall be considered primary insurance as respects to City, its elected or appointed officers, officials, employees, agents and volunteers as respects to all claims, losses, or liability arising directly or indirectly from Tenant's operations. Any insurance maintained by City, including any self-insured retention City may have, shall be considered excess insurance only and not contributory with the insurance provided hereunder.
  - C. Liability Insurance. Liability insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.
  - D. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Tenant or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Tenant hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its consultants, contractors or subcontractors.
  - E. Reporting Provisions. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its elected or appointed officers, officials, employees, agents or volunteers.
  - F. Notice of Cancellation. The insurance required by this Agreement shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) calendar days (ten (10) calendar days' written notice of non-payment of premium) written notice has been received by City. It is Tenant's obligation to ensure that provisions for such notice have been established.



- G. Loss Payee. City shall be included a loss payee under the commercial property insurance.

5. Additional Requirements.

- A. In the event City determines that (i) the Tenant's activities on the Property creates an increased or decreased risk of loss to the City, (ii) greater insurance coverage is required due to the passage of time, or (iii) changes in the industry require different coverage be obtained, Tenant agrees that the minimum limits of any insurance policy required to be obtained by Tenant or Tenant's consultants, contractors or subcontractors, may be changed accordingly upon receipt of written notice from City. With respect to changes in insurance requirements that are available from Tenant's then-existing insurance carrier, Tenant shall deposit certificates evidencing acceptable insurance policies with City incorporating such changes within thirty (30) calendar days of receipt of such notice. With respect to changes in insurance requirements that are not available from Tenant's then-existing insurance carrier, Tenant shall deposit certificates evidencing acceptable insurance policies with City, incorporating such changes, within ninety (90) calendar days of receipt of such notice.
- B. Any deductibles applicable to the commercial property or insurance purchased in compliance with the requirements of this section shall be approved by City.
- C. Tenant and Tenant's consultants, contractors and/or subcontractors shall be subject to the insurance requirements contained herein unless otherwise specified in the provisions above or written approval is granted by the City. Tenant shall verify that all consultants, contractors and/or subcontractors maintain insurance meeting all the requirements stated herein, and Tenant shall ensure that City is an additional insured on insurance required from contractors, consultants and/or subcontractors.
- D. For General Liability coverage, contractors, consultants and/or subcontractors shall provide coverage with a format at least as broad as provided by Insurance Services Office form CG 203 80413.
- E. If Tenant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the tenant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.
- F. Tenant shall give City prompt and timely notice of any claim made or suit instituted arising out of or resulting from Tenant or Tenant's agents, representatives, consultants, contractors or subcontractors performance under this Agreement.
- G. Tenant shall provide certificates of insurance, with original endorsements as required above, to City as evidence of the insurance coverage required herein. Insurance certificates must be approved by City prior to

commencement of work or issuance of any permit. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement.

- H. All required insurance shall be in force on the Effective Date, and shall be maintained continuously in force throughout the term of this Agreement. In addition, the cost of all required insurance shall be borne by Tenant or by Tenant's consultants, contractors or subcontractors.
- I. If Tenant or Tenant's consultants, contractors or subcontractors fail or refuse to maintain insurance as required in this Agreement, or fail to provide proof of insurance, City has the right to declare this Agreement in default without further notice to Tenant, and City shall be entitled to exercise all available remedies.
- J. Tenant agrees not to use the Premises in any manner, even if use is for purposes stated herein, that will result in the cancellation of any insurance City may have on the Premises or on adjacent premises, or that will cause cancellation of any other insurance coverage for the Premises or adjoining premises. Tenant further agrees not to keep on the Premises or permit to be kept, used, or sold thereon, anything prohibited by any fire or other insurance policy covering the Premises. Tenant shall, at its sole expense, comply with all reasonable requirements for maintaining fire and other insurance coverage on the Premises.

**EXHIBIT "E"**  
**Memorandum of Lease**



## **EXHIBIT "E"**

### **Memorandum of Lease**

RECORDING REQUESTED AND  
WHEN RECORDED RETURN TO:

City Clerk's Office  
City of Newport Beach  
100 Civic Center Drive  
Newport Beach, CA 92660

---

[Exempt from Recordation Fee - Govt. Code Sec. 6103]

#### **MEMORANDUM OF LEASE AGREEMENT**

This Memorandum of Lease Agreement ("Memorandum") is dated \_\_\_\_\_, 2020, and is made between City of Newport Beach, a California municipal corporation and charter city ("City") and West Point Investment Corporation, a California corporation ("Tenant"), concerning the Property and Premises as legally described and depicted in Attachment "A" attached hereto and by this reference made a part hereof.

For good and adequate consideration, City leases the Premises to Tenant, and Tenant leases the Premises from City, for the term and on the provisions contained in the Agreement dated \_\_\_\_\_, 2020, including without limitation provisions prohibiting assignment, subleasing, and encumbering said leasehold without the express written consent of City in each instance, all as more specifically set forth in said Agreement, which said Agreement is incorporated in this Memorandum by this reference.

The term is five (5) years, beginning \_\_\_\_\_, 2020, and ending \_\_\_\_\_, 2025, and one (1) elective additional successive "Option Term" of five (5) years, on the same terms and conditions contained in the Agreement.

This Memorandum is not a complete summary of the Agreement. Provisions in this Memorandum shall not be used in interpreting the Agreement's provisions. In the event of conflict between this Memorandum and other parts of the Agreement, the other parts of the Agreement shall control. Execution hereof constitutes execution of the Agreement itself.

**[SIGNATURES ON NEXT PAGE]**

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum as of the date first written above.

**APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Aaron C. Harp  
City Attorney

**CITY OF NEWPORT BEACH,  
a California municipal corporation**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Grace K. Leung  
City Manager

**ATTEST:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Leilani I. Brown  
City Clerk

**TENANT: WEST POINT INVESTMENT  
CORPORATION, a California corporation**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Kevin John Hayes  
Chief Executive Officer/  
Chief Financial Officer

**[END OF SIGNATURES]**

ATTACHMENTS: Attachment A — Legal Description and Depictions of Property and Premises

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of \_\_\_\_\_ } ss.

On \_\_\_\_\_, 20\_\_\_\_ before me, \_\_\_\_\_,

Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature

(seal)

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of \_\_\_\_\_ } ss.

On \_\_\_\_\_, 20\_\_\_\_ before me, \_\_\_\_\_,

Notary Public, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature

(seal)

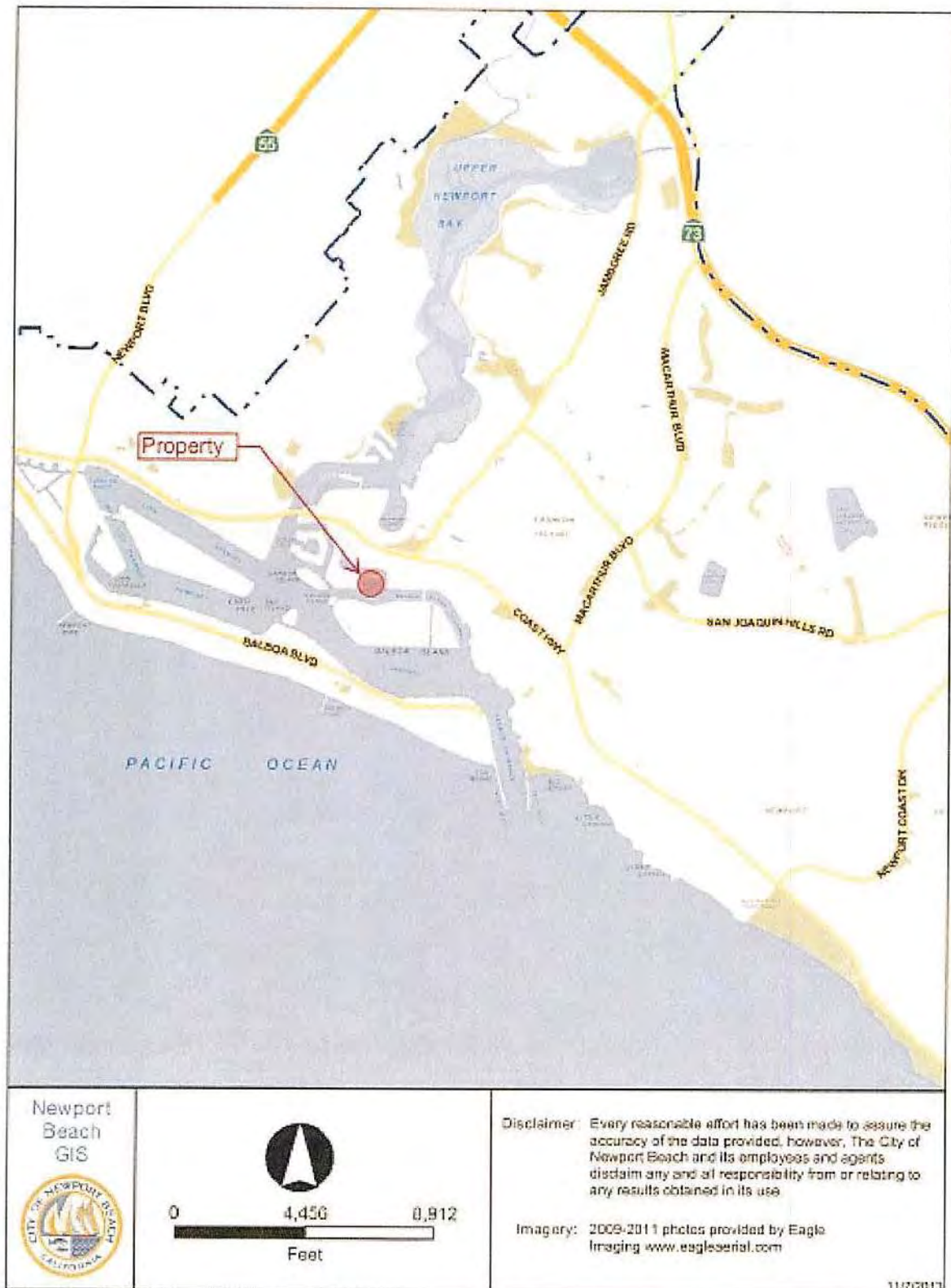


## **ATTACHMENT A**

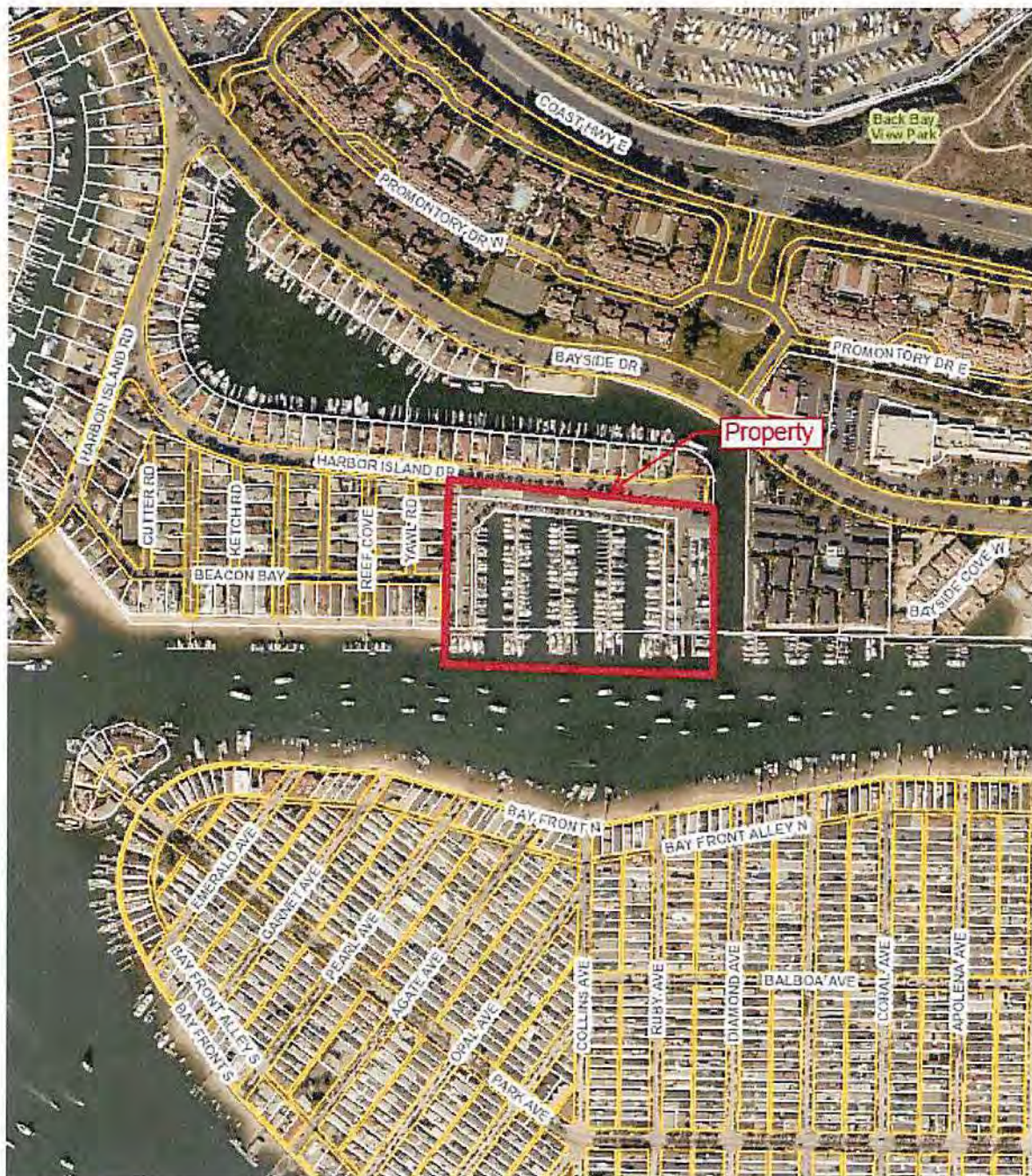
### **PROPERTY AND PREMISES DESCRIPTION AND DEPICTIONS**



A parcel of land situated in the Northwest quarter (NW 1/4) of Section Thirty Five (35), Township Six (6) South, Range Ten (10) West, S.B.B. & M., Orange County, California, more particularly described as follows, to-wit:

Beginning at a point in the U.S. Bulkhead line between Station No. 200 and Station No. 101 as shown upon a map entitled "Harbor Lines, Newport Bay Harbor, California," approved May 2, 1936, by the Secretary of War, and on file in the office of the U.S. District Engineer at Los Angeles, California, said point of beginning being East 754.25 feet of said bulkhead Station No. 200, running thence North 424.71 feet to a point in the Northerly line of that certain parcel of land conveyed to City of Newport Beach by the Irvine Company, as described in a deed recorded September 25, 1929, in Book 306, Page 375, of official records of Orange County, California; thence South 85° 43' East 772.15 feet to the Northeasterly corner of the last mentioned parcel of land; thence South along the Easterly line of the last mentioned parcel of land 367.01 feet to a point in said U.S. Bulkhead line between Station No. 200 and Station No. 101, thence West along said bulkhead line 770 feet to the point of beginning, containing approximately seven (7) acres.

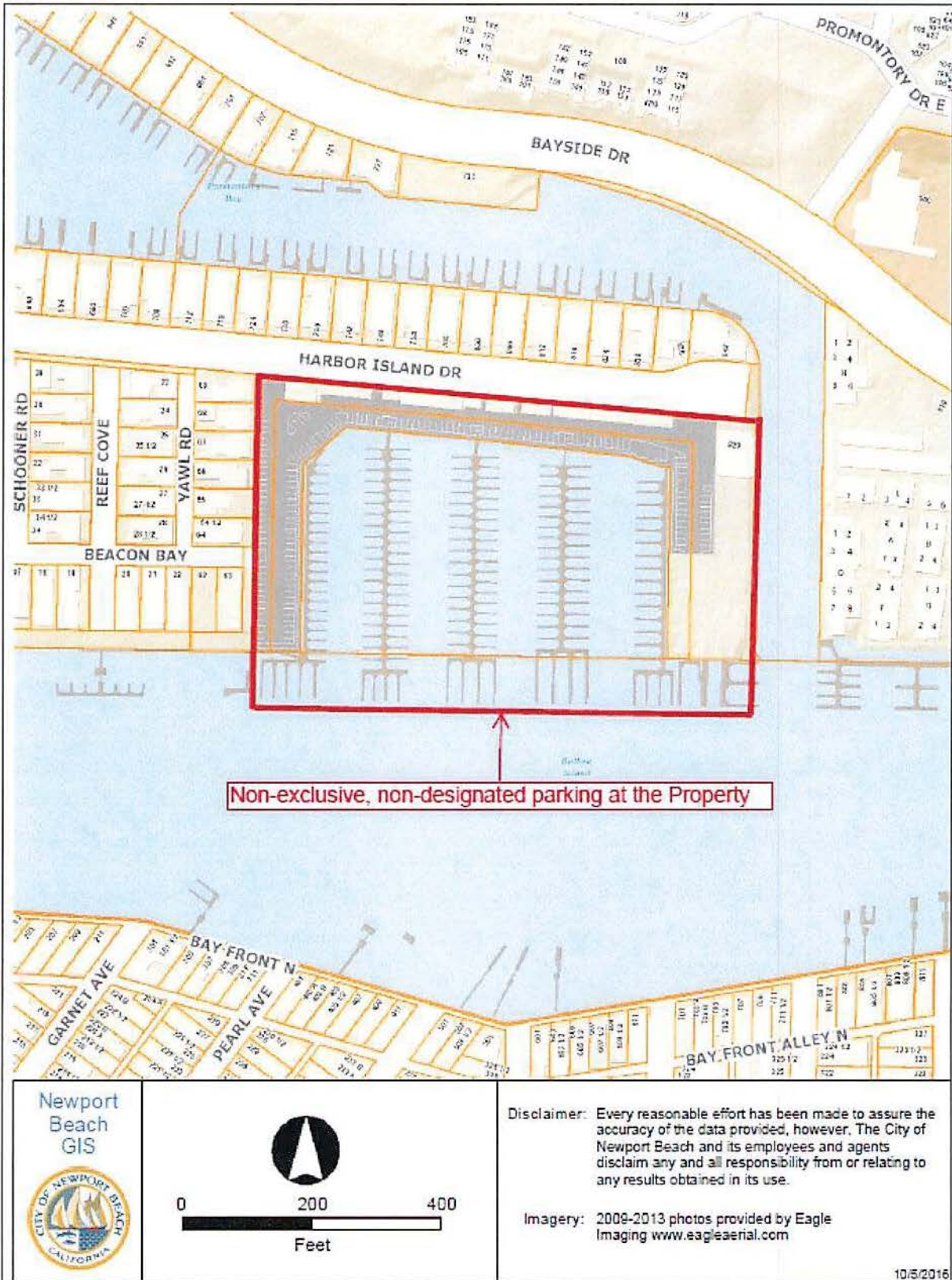


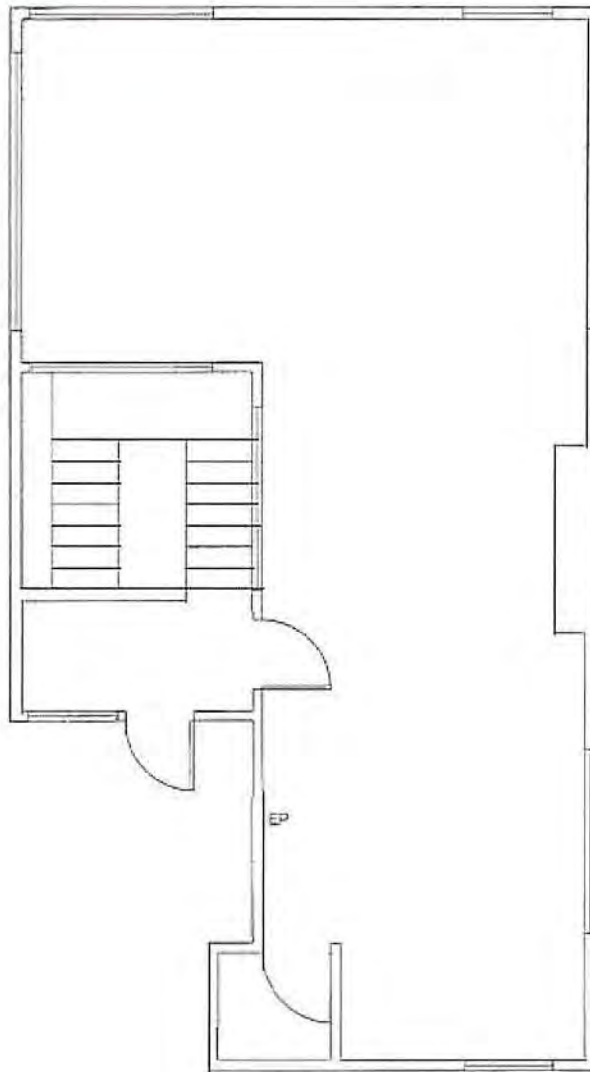




<p>Newport Beach GIS</p> 	 <p>0 417 833</p> <p>Feet</p>	<p>Disclaimer: Every reasonable effort has been made to assure the accuracy of the data provided, however, The City of Newport Beach and its employees and agents disclaim any and all responsibility from or relating to any results obtained in its use.</p> <p>Imagery: 2009-2013 photos provided by Eagle Imaging <a href="http://www.eagleaerial.com">www.eagleaerial.com</a></p> <p>4/12/2016</p>
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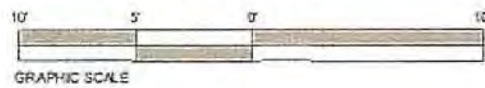


# Office

RSF: 790 sf

SCALE: 1/2" = 1'-0"

SHEET SIZE: 11x17



1614

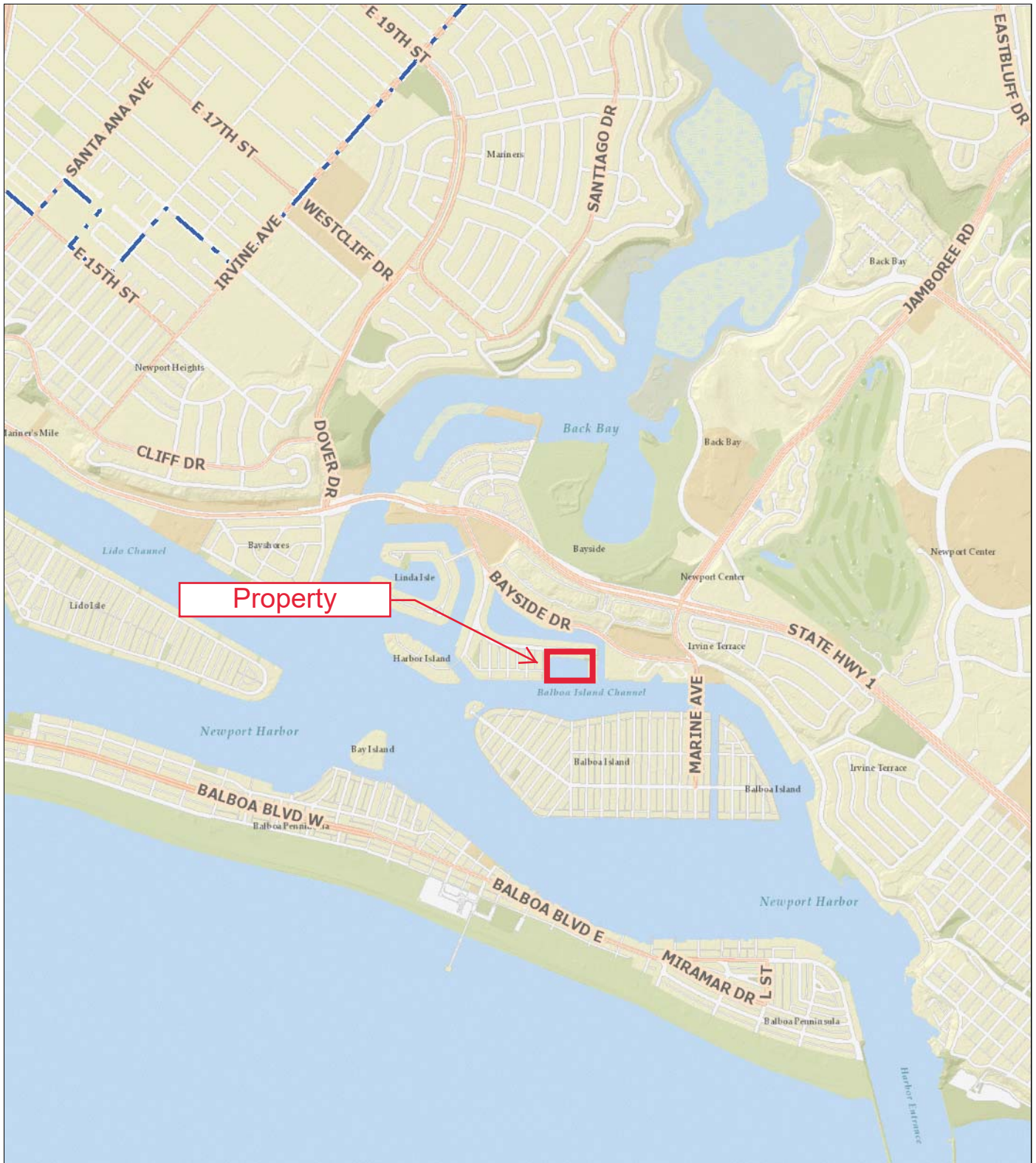
829 Harbor Island Drive  
Newport Beach, CA

 **WorkspacePlans**  
kim@workspaceplans.com jill@workspaceplans.com

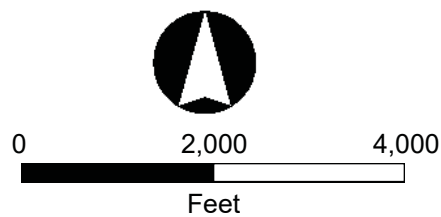
# **Attachment B**

## Maps





**NBGiS**  
NEWPORT BEACH



**Disclaimer:**  
Every reasonable effort has been made to assure the accuracy of the data provided, however, The City of Newport Beach and its employees and agents disclaim any and all responsibility from or relating to any results obtained in its use.

12/16/2019





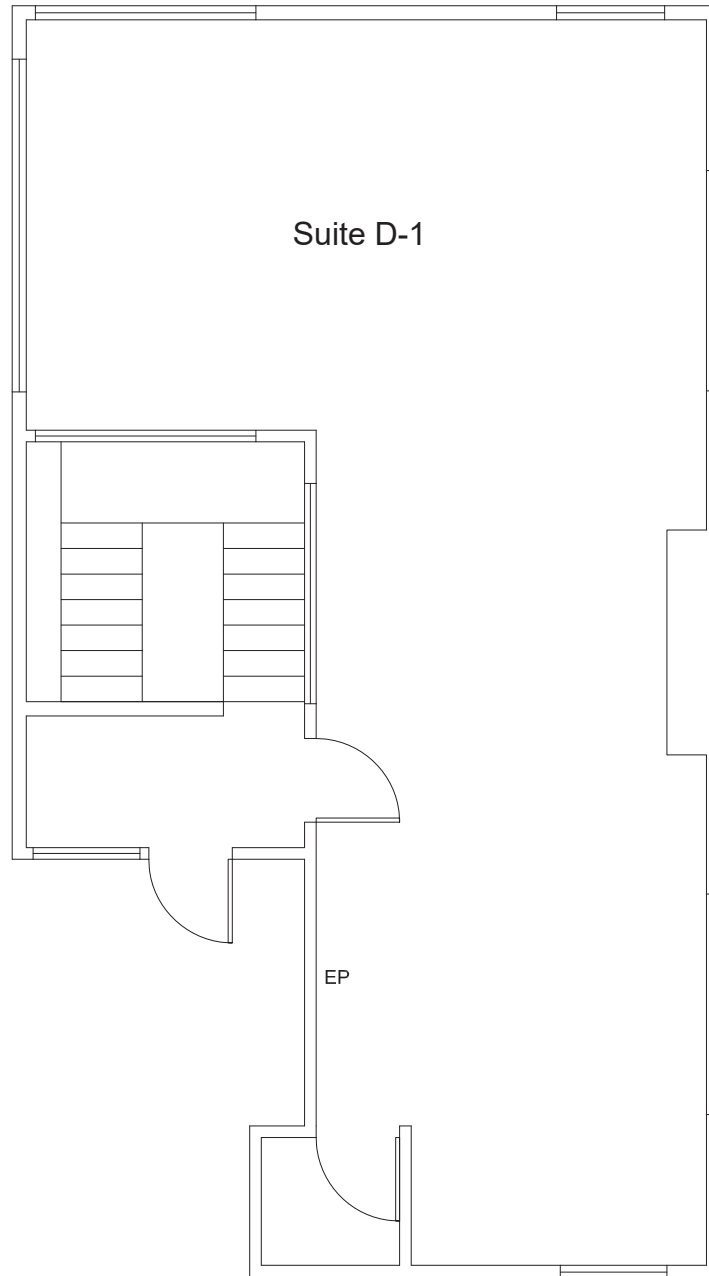
**NBGiS**  
NEWPORT BEACH



0 200 400  
Feet

Disclaimer:  
Every reasonable effort has been made to assure the accuracy of the data provided, however, The City of Newport Beach and its employees and agents disclaim any and all responsibility from or relating to any results obtained in its use.

12/16/2019

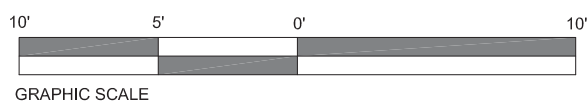


## Office #1

RSF: 790 sf

SCALE: 1/2" = 1'-0"

SHEET SIZE: 11x17



1614

829 Harbor Island Drive  
Newport Beach, CA



# **Attachment C**

City Council Policy F-7 – *Income and Other Property*

### INCOME AND OTHER PROPERTY

The City owns and manages an extensive and valuable assortment of property including streets, parks, beaches, public buildings and service facilities. The City also owns or ground leases and/or operates a yacht basin, resort hotel and apartment property, a luxury residential development and various other income-producing properties. Much of the income property is tidelands, filled tidelands or waterfront. Unencumbered fee value of income property is substantial.

As owner/manager of property, the City is the steward of a public trust, and state law requires the City to maximize its returns on state-managed property or be subject to a charge of making a gift of public funds. Nevertheless, the City Council recognizes the importance of this property not only as a revenue generator, but also as a means to provide otherwise financially less feasible uses and facilities that benefit the community.

In managing its property, the City will continually evaluate the potential of all City owned property to produce revenue. This may include leasing or licensing unused land, renting vacant space, and establishing concessions in recreation areas or other similar techniques. The City Council will evaluate the appropriateness of establishing new income generating opportunities on City controlled areas using sound business principles and after receiving input from neighbors, users and the public.

The policy of the City Council is that income and other property be held and managed in accordance with the following:

- A. Whenever a lease, license, management contract, concession or similar action regarding income property is considered by the City, an analysis shall be conducted to determine the maximum or open market value of the property. This analysis shall be conducted using appraisals or other techniques to determine the highest and best use of the property and the highest income generating use of the property.
- B. All negotiations regarding the lease, license, management contract, concession, or similar action regarding income property shall include review of an appraisal or analysis of the use being considered for the property conducted by a reputable and independent professional appraiser, real estate consultant, or business consultant.
- C. The City shall seek, whenever practical and financially advantageous, both in the short and long term, to operate or manage all property and facilities directly with City staff or contractors, provided staff have the expertise needed to competently do so, or to oversee the work of contractors.

- D. In most negotiations regarding the lease, license, management contract, concession, or similar action regarding an income or other property, the City shall seek revenue equivalent to the open market value of the highest and best use; and, whenever practicable the City shall conduct an open bid or proposal process to ensure the highest financial return.
- E. However, in some circumstances the City may determine that use of a property by the public for recreational, charitable or other nonprofit purpose is preferred and has considerable public support, in which case the City may determine that non-financial benefits justify not maximizing revenue from such property. In such circumstances, the City has a vested interest in ensuring that the lessee of such property operates the activities conducted on or from the property in the manner that has been represented to the City throughout the duration of any lease or contract with the City.
- F. Whenever less than the open market or appraised value is received or when an open bid process is not conducted, the City shall make specific findings setting forth the reasons thereof.

Such findings may include but need not be limited to the following:

- 1. The City is prevented by tideland grants, Coastal Commission guidelines or other restrictions from converting the property to another use.
- 2. Redevelopment of the property would require excessive time, resources, expertise and costs, which would outweigh other financial benefits.
- 3. Converting the property to another use or changing the operator, manager, concessionaire, licensee, or lessee of the property would result in excessive vacancy, relocation or severance costs, real estate commissions, tenant improvement allowances, expenses or rent concessions which would outweigh other financial benefits.
- 4. Converting residential property to another use or opening residential leases to competitive bid would create recompensable liabilities and other inequities for long-term residents.
- 5. The property provides an essential or unique service to the community or a clearly preferred use that enjoys substantial support in the community that might not otherwise be provided were full market value of the property be required.



6. The property serves to promote other goals of the City such as affordable housing, preservation of open space, uses available to the public or marine related services.
  7. If the lessee is not (a) a statewide or national nonprofit organization, or (b) a public entity or subdivision thereof, then the City finds that the By-Laws and charter documents of such lessee (i) establishes a procedure wherein the election of directors of such lessee is accomplished by an open, democratic and transparent process that allows members to vote, (ii) has a governance and operational structure that is consistent with best practices for non-profit public benefit corporations as determined by the City Council, and (iii) cannot be amended to affect subparts (i) or (ii) without the prior written consent of the City as lessor.
- G. Generally, lengths of licenses, leases, management contracts, concessions, or similar agreements will be limited to the minimum necessary to meet market standards or encourage high quality improvements and will contain appropriate reappraisal and inflation protection provisions. Also, all agreements shall contain provisions to assure complete audits periodically through their terms.
  - H. All negotiations regarding the license, lease, management contract, concession or similar action regarding income property shall be conducted by the City Manager or his/her designee under the direction of any appropriate City committees.
  - I. To provide an accurate accounting of actual net revenues generated by the City's income property, all costs directly attributable or allocable to the management of a specific income property shall be charged against the gross revenues collected on that property in the fiscal year the costs are incurred. Costs so chargeable include, but are not limited to, property repairs and maintenance, property appraisals, and consultant fees, as authorized by the City Council, City Manager, or by this Income Property Policy.
  - J. The City Manager or his/her designee is authorized to sign a license, lease, management contract, concession, or similar agreement or any amendment thereto, on behalf of the City. Notwithstanding the foregoing, the City Manager or his/her designee, or a City Council member, may refer any license, lease, management contract, concession or similar agreement or any amendment thereto, to the City Council for its consideration and/or action.
  - K. The City's portfolio of quality income producing properties adds an element of diversification to a portfolio otherwise invested primarily in financial assets. Certain of those income properties are restricted from sale by their terms of grant, state agency regulations or rules, other federal and state guidelines, private

covenant or agreement or otherwise. For those properties not so restricted from sale, an analysis shall be prepared to determine the following prior to such income producing property being offered for sale:

1. The maximum open market value of the City's interest in the property in its as is condition.
2. If the property is in an important location, a determination of the possible future consequences of the City no longer controlling that property.
3. If the current rent is contractually low and significant rent increases are likely within a finite period.
4. The likelihood of significant increases in the ability of the property to generate income after the expiration of any current lease of the property.
5. The likelihood of a lease extension being requested by the tenant and the ability to substantially increase rents or require significant improvements to enhance the utility and the value of the property as consideration for granting such an extension.
6. The value of the revenue stream from (i) lease income over the life of an existing lease and/or (ii) likely lease revenue if an existing lease were to be renewed or the property re-let to a different tenant; and/or (iii) lease income from the property if it were to be converted to its highest and best use, compared with the financial benefits of the use of the proceeds of a sale and if, considering the totality of the circumstances, such use of the proceeds of a sale is preferable to retaining the property in question.

**Adopted - July 27, 1992**

**Amended - January 24, 1994**

**Amended - February 27, 1995**

**Amended - February 24, 1997**

**Amended - May 26, 1998**

**Amended - August 11, 2009**

**Amended - May 14, 2013**

**Amended - February 12, 2019**

**Formerly F-24**







**CITY OF**

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# **NEWPORT BEACH**

## **City Council Staff Report**

January 14, 2020  
Agenda Item No. 13

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** Jeff Boyles, Fire Chief - 949-644-3101, jboyles@nbfd.net

**PREPARED BY:** Mike Halphide, Chief Lifeguard, mhalphide@nbfd.net

**PHONE:** 949-644-3046

**TITLE:** Acceptance of a Hoag Memorial Hospital Presbyterian Community Benefit Program Grant for the Newport Beach-Surfer Awareness in Lifesaving Techniques Program

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**ABSTRACT:**

The Hoag Memorial Hospital Presbyterian Community Benefit Program provides grants to community organizations that strive to meet the health and social service related needs of the Orange County community. The Newport Beach Fire Department, Lifeguard Operations Division has been awarded a grant to teach local surf team members and resident surfers how to respond safely and effectively to life threatening incidents with training focused on water safety, cardiopulmonary resuscitation and bleeding control.

**RECOMMENDATIONS:**

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly;
- b) Accept the Hoag Memorial Hospital Presbyterian Community Benefit Program grant funding of \$15,000 to be used in support of the Fire Department's Newport Beach-Surfer Awareness in Lifesaving Techniques (NB-SALT) program; and
- c) Approve Budget Amendment No. 20-027 to increase revenue estimates by \$15,000 and increase expenditure appropriations by \$15,000 in Fire Department, Lifeguard Operations NB-SALT Program.

**FUNDING REQUIREMENTS:**

The proposed Budget Amendment increases revenue estimates by \$15,000 from the Hoag Memorial Hospital Presbyterian (Hoag) Community Benefit Program grant and appropriates \$15,000 in related increased expenditures for the Newport Beach-Surfer Awareness in Lifesaving Techniques (NB-SALT) program. The entire program is anticipated to cost \$16,879. The current adopted budget includes sufficient funding for the program beyond the revenue received from the Hoag grant. An estimated \$1,879 in program related expenditures can be absorbed by existing appropriations in the Fire Department, Lifeguard Operations division.

## **DISCUSSION:**

Hoag's Community Benefit Program (CBP) is focused on meeting the unique needs of Orange County residents with particular emphasis for the disadvantaged and underserved. Each year, Hoag's CBP provides grants to community organizations that strive to meet the health and social service related needs of the Orange County community (Attachment B).

The Newport Beach Fire Department's (NBFD) Lifeguard Operations Division will use the grant funding for the Newport Beach-Surfer Awareness in Lifesaving Techniques (NB-SALT) program, which is congruent with the CBP's 2020 focus area: Prevention and management of chronic disease. This newest public education endeavor originated with the Huntington Beach Fire Department Lifeguards, which encouraged the duplication of the program in Newport Beach. The NBFD Lifeguards have enhanced the program to include bleeding control and hands-only cardiopulmonary resuscitation (CPR) training.

The NB-SALT program goals are to teach community members lifesaving skills to provide emergency care prior to the arrival of first responders. This timely intervention can reduce the likelihood of death or disability from an ocean-related injury. The NB-SALT training will be provided by Newport Beach Fire Department lifeguard personnel and consists of the following three elements:

1. Ocean safety education and basic rescue techniques. The ocean safety education component aims to reduce the likelihood of injury or death by creating awareness of ocean hazards. The basic rescue technique training will demonstrate how to safely intervene and assist a person in aquatic distress to prevent drowning or exacerbating a spinal injury.
2. Bleeding control. Uncontrolled bleeding is the number one cause of preventable death from trauma. Instruction in bleeding control will provide students the tools to intervene and minimize this threat.
3. Hands-only CPR. CPR empowers students with the skills necessary to help a drowning victim or a person suffering cardiac arrest.

NB-SALT students will learn how to successfully respond to an emergency in a marine environment. The skills learned will be useful for many life-threatening events such as a drowning in a backyard pool, injury in a traffic accident, or when someone is in cardiac arrest and can be applied during any emergency situation.

The program's target audience are local surf teams, classes, and ocean enthusiasts. The goal is to teach 12, five-hour classes throughout the year to train an estimated 325 students. The program will take place at the Benjamin M Carlson Lifeguard Headquarters and on the adjacent beach area. A Newport Beach Fire Department lifeguard officer will lead the program's instruction with the assistance of seasonal, part-time ocean lifeguards. The grant application includes additional details about the program (Attachment C).

In compliance with Hoag's CBP grant, lifeguard staff will produce an outcome report documenting the number of students trained and will gauge the effectiveness of the program with pre- and post-training surveys completed by the students.

**ENVIRONMENTAL REVIEW:**

Staff recommends the City Council find this action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

**NOTICING:**

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

**ATTACHMENTS:**

Attachment A – Budget Amendment  
Attachment B – Grant Award Letter  
Attachment C – Grant Application





# City of Newport Beach

## BUDGET AMENDMENT

2019-20

ATTACHMENT A

BA#: 20-027

Department: Fire

Requestor: Jeff Boyles

ONE TIME: ☒ Yes ☐ No

☐ CITY MANAGER'S APPROVAL ONLY

☒ COUNCIL APPROVAL REQUIRED

### Approvals

Prepared by: Walid Harding

Finance Director: [Signature]

Date 1-3-20

City Clerk: \_\_\_\_\_

Date \_\_\_\_\_

### EXPLANATION FOR REQUEST:

To increase revenue estimates and expenditure appropriations from the approval and acceptance of the Hoag Memorial Hospital Presbyterian Community Benefit Program grant to support the Fire Department's Newport Beach Surfer Awareness in Lifesaving Techniques (SALT) program.

- ☐ from existing budget appropriations
- ☒ from additional estimated revenues
- ☐ from unappropriated fund balance

### REVENUES

Fund #	Org	Object	Project	Description	Increase or (Decrease) \$
	01040406	561061	G2010	Lifeguard Operations - Hoag NB SALT	\$15,000.00
				-	
				-	
				-	
				-	
				-	
				-	
				Subtotal	\$15,000.00

### EXPENDITURES

Fund #	Org	Object	Project	Description	Increase or (Decrease) \$
	01040406	711002	G2010	Lifeguard Operations - Salaries Safety	\$12,450.00
	01040406	871002	G2010	Lifeguard Operations - Advert & Pub Relations	\$2,550.00
				-	
				-	
				-	
				-	
				-	
				Subtotal	\$15,000.00

### FUND BALANCE

Fund #	Object	Description	Increase or (Decrease) \$
		-	
		-	
		-	
		-	
		-	
		-	
		Subtotal	

No Change In Fund Balance

## ATTACHMENT B



HOAG MEMORIAL HOSPITAL PRESBYTERIAN  
One Hoag Drive, PO Box 6100  
Newport Beach, CA 92658-6100

December 4, 2019

Mr. Michael Halphide  
Newport Beach Fire Department - Lifeguard Operations  
100 Civic Center Drive  
Newport Beach, CA 92660

Dear Mr. Halphide,

Congratulations! We are pleased to inform you that the lifeguard grant in the amount of **\$15,000.00** has been approved by Hoag Memorial Hospital Presbyterian Community Benefit Program for the grant term 2020 for the project titled ***Newport Beach-Surfer Awareness in Lifesaving Techniques (NB-SALT)***.

Our mission as a nonprofit, faith-based hospital is to provide the highest quality health care services to the communities we serve. We are excited to partner with your lifeguard agency in fulfilling our mission and the unmet needs of our community. Acceptance of this grant acknowledges agreement to the following:

- The 2020 grant term: January 1, 2020 – December 31, 2020 (12 months)
- The funds must be used specifically for the designated project listed above as outlined in your 2020 grant application.
- Maintain your records to show and account for the uses of grant funds.
- Your organization must notify us immediately if there is any change in your public charity status.
- We will be sending a request for a final outcomes report (January 2021) in the months to come.
  - We are requesting that your agency consults with William Koon to review/discuss your program's evaluation plan. Below are his available dates/times – please follow up with him to schedule.
    - Thursday, December 5<sup>th</sup> 8-12PM
    - Friday, December 6<sup>th</sup> 1-3PM
    - Monday, December 9<sup>th</sup> 1-4PM
    - Tuesday, December 10<sup>th</sup> Flexible
    - Wednesday, December 11<sup>th</sup> 8-12PM
    - Thursday, December 12 Flexible

Your organization will receive a check in the mail for **\$15,000.00** to be used for ***Newport Beach-Surfer Awareness in Lifesaving Techniques (NB-SALT)*** by late January 2020.

**Please note, the check will be mailed to the address indicated on your government W-9, as per Hoag's Accounting policy. Please send an email acknowledging receipt of your check to [CommunityBenefitGrants@hoag.org](mailto:CommunityBenefitGrants@hoag.org).**



HOAG MEMORIAL HOSPITAL PRESBYTERIAN  
One Hoag Drive, PO Box 6100  
Newport Beach, CA 92658-6100

Additionally, Hoag's Marketing and Corporate Communications Department has developed a Community Benefit Grant Seal/Logo specific to each grant cycle. This seal can be utilized on any website, presentation, etc. They are requesting that the seal be used to replace any representation/usage of the Hoag logo that may have been used in the interim.

**Attached you will find a pdf with guidelines for the Community Benefit Seal, as well as different image files of the same Community Benefit Seal 2020.**

Please note, that all usage of the seal must be shared with Hoag's Marketing and Corporate Communications Department for final approval, prior to publishing. You can contact **Heidi Pallares** with any usage requests or questions concerning the seals. Below is her title and contact information:

**Heidi Pallares**

**Director | Marketing & Corporate Communications**

**Hoag Memorial Hospital Presbyterian**

**(949) 764-6939 / [Heidi.Pallares@hoag.org](mailto:Heidi.Pallares@hoag.org)**

Please be sure to thoroughly review the guidelines for additional details regarding the seal and its usage. If you have any questions, feel free to reach out.

Once again, congratulations on this recognition of the great work you do to serve the community. We look forward to working with you during the coming year.

Sincerely,

Minzah Malik, MPH, MBA

Manager, Community Benefit Program

Lauren Tabios, MPH

Specialist, Grants & Special Projects



## ATTACHMENT C

# COMMUNITY BENEFIT GRANTS PROGRAM REVIEWER PROGRAM SUMMARY SHEET 2020

**Organization** Newport Beach Fire Department - Lifeguard Operations  
**Program Title:** Newport Beach-Surfer Awareness in Lifesaving Techniques (NB-SALT)  
**Funding Request:** \$15,000.00

### ORGANIZATION INFORMATION

#### Organization

Newport Beach Fire Department -  
Lifeguard Operations  
Newport Beach

#### Contact

Michael Halphide  
  
Assistant Chief - Lifeguard Operations

#### **Geographical Area Organization Serves**

Newport Beach

#### Background

##### **Mission Statement**

Protect life, property and the environment with innovative professionalism and organizational effectiveness using highly trained professionals committed to unparalleled service excellence.

##### **Brief Summary of Agency's Operations**

The Newport Beach Fire Department provides Fire Suppression, Emergency Medical Service and Marine Safety services to 80,000 residents and 10 million visitors. The department staff consists of 135 Firefighters, 12 Administrative staff members, 15 permanent Lifeguards and 225 Seasonal Ocean Lifeguards.

##### **Current Public Education and Outreach Activities**

The Lifeguard Operation division's largest public education program is our Junior Lifeguard program that teaches beach and ocean safety to 1350 children from 9-15 years of age. We provide safety lectures to schools, college classes, scout programs and other groups that request information about beach safety and lifeguard operations. Our division provides "CPR in the Schools" training to teach lifesaving skills to high school students at Newport Harbor High School.

Our newest public education endeavor is teaching the Surfer Awareness in Lifesaving Techniques (SALT). This program originated with the Huntington Beach Lifeguards who encouraged us to duplicate the program in Newport Beach. The class teaches surfers about beach hazards, how to recognize a swimmer or surfer in distress and how to assist safely.

In Spring 2019, we initiated our first SALT classes, teaching three classes to the local high school's surf team and surfing classes. The class was a success based on the feedback we received from the students coaches and teachers. We plan to expand the training to more surf teams, classes and the general surfing public.

##### **Potential Conflict of Interest**

The Newport Beach Fire Department contracts with William Koon, Project Wipeout Program Coordinator-Community Health to provide statistical analysis and produce an annual report of lifeguard activities and statistics.

In addition, the Newport Beach Fire Department and the Newport Lifeguards have a long history of collaborating with Hoag Memorial Hospital Presbyterian on a variety of projects: including our paramedic program and Hoag's Project Wipeout.

## **PROGRAM INFORMATION**

### **Program Information**

#### **Program Title**

Newport Beach-Surfer Awareness in Lifesaving Techniques (NB-SALT)

#### **Program Description**

*Please provide a detailed description/outline of your program(s). Please include program's:*

- *Core components and elements of program(s) (e.g. target population, what the problem/goal is, timeline of programming)*
- *Identify what inputs/resources are required (e.g. staff, materials, transportation)*
- *Describe broadly the activities/interventions of the program(s) to address problem/achieve goal (e.g. workshops, care coordination, staff training, treatment)*
- *Identify outputs - direct results or products of programming (e.g. community trained, activities conducted)*

### **CORE COMPONENTS AND ELEMENTS OF NB-SALT PROGRAM**

The target population is school surf classes, school surf teams and local surfers.

The problem this program addresses is when lifeguards are not on duty in an area, surfers and body-boarders are often the first to render assistance in an aquatic emergency. Bystander response can be the difference between life and death. Untrained individuals are often hesitant to intervene out of fear for their own safety. Additionally bystanders are uncertain about what to do or are worried about liability for a wrong action. This program aims to change that. This grant will facilitate the training and education of surfers and body boarders to recognize and intervene in aquatic emergencies.

This training has two primary goals:

1. Increases the probability of a positive outcome for the person in distress.
2. Decrease the potential for rescuer injury or death while assisting.

The plan is to teach eight classes in 2020 to surf teams and surf classes (local colleges, high schools and a middle school) and provide four additional classes, open to the public. Each class is 5 hours in duration and will be divided into three modules. A total of a dozen, five-hour classes would be provided annually to the surfers and body boarders that frequent Newport Beach and Southern California beaches.

### **INPUTS/RESOURCES REQUIRED**

A Newport Beach Lifeguard Officer will lead the instruction and oversee the instructional/safety staff. Seasonal Ocean Lifeguards will assist in the instruction and hands-on skill training in first aid and rescue technique.

The class will utilize a multi-modal learning environment with interactive lectures, printed materials, and hands-on skills training. The training will take place at Newport Beach Lifeguard Headquarters and utilize the department training materials and equipment. A stretch goal for this project would be to support the learning with a e-learning components to reinforce the information presented during the course.

### **ACTIVITIES/INTERVENTIONS OF THE PROGRAM TO ADDRESS PROBLEM/ACHIEVE GOAL**

The 5-hour training will include:

- Lecture and audio-visual presentations on emergency response procedures, ocean safety skills, recognition and response to aquatic distress (1.5 hours)
- Instruction of CPR, C-Spine immobilization, bleeding control and communicable disease transmission. (1.75 hours)
- Practical skills in proper ocean entry and exit, rescue techniques, spinal immobilization. (1.75 hours)

#### PROGRAM OUTPUTS

The desired outcome of NB-SALT training will be a greater recognition of marine hazards and an increased understanding of how to respond safely to aquatic emergencies for the students. The program will train 300-350 individuals to be safely respond to aquatic emergencies when lifeguards are not on duty. This should lead to better outcomes, and decreased disability and death for distressed victims in the ocean in Newport Beach and other Orange County beaches.

#### Hoag's Priority Health Issue: Prevention and Management of Chronic Disease

Program Budget	Request Amount	Program Budget Ratio
\$16,879.00	\$15,000.00	88.87%

#### Budget Narrative

*Please provide an overview detailing how grant funding would be utilized, and how it correlates with the implementation of the program(s).*

The funds from the Hoag Grant would be used to hire off duty Ocean Lifeguards to provide twelve classes, each five hours in duration. Every class would have a Newport Beach Lifeguard Officer as a lead instructor and one seasonal lifeguard per every five students. The personnel costs for the Lead and assistant instructors would be \$12,140. The instructors and assistant instructors would provide 442 total hours of instruction/safety in 2020.

The Hoag Grant will be used to purchase \$2,860 of material to be used in the classes. These materials include printed sheets provided to the students, printed ridged poster board to be used for instruction, 500 printed completion certificates, banners to advertise the program and rashguards, for the students and instructors to provide identification and organization.

Program overhead consists of scheduling and oversight by a Lifeguard Battalion Chief and reporting by the Chief Lifeguard. The time estimated for these activities is 23 hours at a cost of \$1,484. The overhead funds would come from the Newport Beach Fire Department - Lifeguard Operations budget (fiscal year 2019 & 2020).

#### Additional Sources of Funding (if applicable)

For 2020 any additional costs above the Grant amount would come from the Newport Beach Fire Department - Lifeguard Operations budget. Once the program becomes established we will seek out other funding sources to sustain the program in future years.

#### Program Narrative

##### Need/Problem Program Addresses

At peak staffing during summer days, the Newport Beach Fire Department employs 85 lifeguards to patrol and protect seven miles of oceanfront. During the winter, typical staffing levels can be five to seven full-time lifeguards to cover the beach. Between 6 pm and 7 am, lifeguards are not staffed but instead respond on a call back basis with a 5-15 minute response time. During times of low or no



staffing, there are often surfers on the beach and in the water.

If we were able to train these people to recognize and respond to a person in distress in the ocean, we could prevent deaths that result from submersion. Early SALT trained bystander intervention has the potential to limit the level of disability of someone who suffers an aquatic spinal injury. In 2018, the Newport Lifeguards treated 41 people who suffered suspected spinal cord injuries in the ocean. When properly extricated and treated, these individuals can have a good prognosis with little long-term impact to their major life functions. If improperly handled, these patients can suffer a debilitating injury that affects their life, their family, and can lead to significant costs to provide care and a shortened life expectancy.

In addition to aquatic rescue and traumatic spinal-cord field treatment, the class teaches hands-only CPR and bleeding control. These skills address two causes of preventable death and disability that can be easily remedied with limited training and equipment.

### **Organizational Capacity to Address Need**

The Newport Beach Fire Department - Lifeguard Operations is well qualified to teach this course due to the expertise in aquatic rescue and extrication, as well as having certified CPR instructors to lead the class. The SALT program was originated by the Huntington Beach Fire Department's Lifeguards and they have encouraged us to use their curriculum and teach the class. We have added bleeding control and CPR training to the class to better prepare the students to be able to confidently and safely respond to the most life threatening ocean emergencies.

The Lifeguard Officers who will lead the class are trained and certified CPR and First Aid instructors, accomplished marine safety instructors who teach in our Basic Lifeguard Academy and have completed Fire Service Instructor training. The Seasonal Ocean Lifeguards selected to assist in the class are experienced lifeguards. They have experience mentoring, are skilled at instruction and experienced in teaching for the Newport Beach Junior Lifeguard program.

All employees working in the program have passed background screening and are supervised by a Lifeguard Battalion Chief.

### **Challenges/Barriers**

One barrier is getting insurance clearance for the public classes. We are working with the City's recreation department staff and with the City's risk management to determine the insurance needs to conduct the training. The students in the courses taught to school groups or teams are covered by the insurance through their educational institution.

Another challenge will be promoting this program so that regular ocean users, will understand the value of this class and be willing to attend. To address this concern, we will develop a marketing plan that will use the City of Newport Beach's social media assets and our local media contacts to advertise the program and promote interest by showcasing the value to the surfing community.

The safety concerns for the class will be addressed as follows:

- For the in water skills portion, a minimum of 5:1 student to lifeguard ratio will be adhered to while the students are in or near the ocean.

- For the classes taught to surfing teams or classes the coach or instructor will be able to verify the basic swimming ability and suitability for the NB-SALT training prior to the in water portion of the class.

-In the public classes, the students will be asked to complete a short ocean swim with lifeguards lining the course to assess for the minimum swimming proficiency to participate in the water skills portion of the class.

-Any student who expresses a concern about their swimming skill or who does not demonstrate sufficient aquatic ability will be allowed to participate if they wear a provided Personal Flotation Device (PFD) or life-jacket while in the water.

### **Number of People Expected to Reach**

335

### **Area Served**

Costa Mesa;Newport Beach;Orange;Santa Ana

### **Age Group**

All Ages

### **Gender**

Males and Females

### **Ethnicity**

All of the Above

### **Objectives/Outcomes**

#### **Objective #1**

Develop comprehensive curriculum and teaching materials that combines the Surfer Awareness in Lifesaving Techniques training with "Hands Only" CPR and bleeding control. The curriculum should be relevant and engaging for the target audiences of youths to adult active ocean users.

#### **Objective #2**

Deliver eight NB-SALT classes, 5 hours in duration to local surf teams, Middle school, high school and community college surfing and ocean safety classes covering water safety, lay person distress recognition and response, proper spinal immobilization and extrication techniques for bystanders, bleeding control training and "Hands Only" CPR classes for 325-350 students.

#### **Objective #3**

Deliver four NB-SALT classes, 5 hours in duration to the general public covering water safety, lay person distress recognition and response, proper spinal immobilization and extrication techniques for bystanders, bleeding control training and "Hands Only" CPR classes for 325-350 students.

### **Evaluation**

#### **Description of how to track if meeting program objectives**

*What information will you be able to report about your program? Considerations for components of a basic monitoring and evaluation plan:*

- Number of classes
- Class/course details - dates of classes, location
- Number of participants (Is demographic information available? Grades? Age? Gender?)

*Is a baseline or follow up survey possible?*

Please describe your plan to track if you are meeting your program objectives.

The plan is to teach:

One public class and two surf team/surf class courses in the first quarter of the year (January -

March)

One public classes in the second quarter of the year (April-June)

Three surf team/surf class courses in the first quarter of the year (July - September)

Two public classes and two surf team/surf class courses in the first quarter of the year (October-December).

Prior to each class, students will be given a survey to gather demographic data as well as a pretest to assess their existing knowledge. At the end of each class, students take an assessment to gauge their understanding of the class and the effectiveness of instruction. The students will complete a survey to assess their satisfaction with the various instructional modules and offer feedback about the curriculum, learning environment and instruction.

### **Program Implementation**

#### **Key Collaborative Partners**

This program will be primarily staffed with Newport Beach Lifeguard personnel. We plan to collaborate with other members of the Newport Beach Fire Department including our Fire Suppression, Emergency Medical Services (EMS) and Community Education staff.

The Newport Beach Fire Department's Lifeguard Operations staff has a long partnership with The Orange Coast College Surfing and Ocean Safety Class taught by Laird Hayes Ed.D. and we will be teaching the SALT program to this college class.

in 2019 We have taught the SALT class for the Newport Harbor High School Surf Team and Surf Class lead by Matt Barnes.

In 2018 the Corona Del Mar (CDM) High School Surf team received a shorter version of this training from the Huntington Beach Lifeguards. We have had discussions with CDM Surfing team Coach Steve Conti about delivering the training to the team in the fall of 2019.

We have reached out to other Orange County surf teams and are waiting until the fall semester starts in August and September to confirm commitments for the training in 2019 from Mater Dei High School in Santa Ana, Calvary Chapel High School in Santa Ana and Horace Ensign Middle School in Newport Beach.

We will work with the Newport Beach Recreation and Senior Services program to promote our public classes in the Newport navigator list of recreation classes for the Spring and Fall of 2020. We will use the resources of our City's Public Information Office as well as promote the program by producing a public service announcement suitable for the Web and cable TV distribution in collaboration with NBTv.com.

#### **Program Sustainability for the Next 3 Years**

We started with a small pilot program in 2019. The teaching staff and students had a positive reaction to the class and have both expressed interest in continuing and expanding the program to reach more ocean users.

The financial backing for this program will initially be supported by the Hoag grant and allow us to successfully establish the program and develop demonstrable results that could assist us in developing more financial backing going forward.



The program would be sustained through 2023 from the Newport Beach Fire Department's Community Education budget, from Lifeguard Operations training budget and by soliciting financial support from the Ben Carlson Foundation and the Newport Beach Ocean Lifeguard Association.

The grant from Hoag will allow us to successfully establish the program as effective by producing measureable and verifiable results that would allow us to develop sustainable financial support to continue and expand the NB-SALT program in future years.

**If not funded, how will the program be supported**

If the Hoag grant funding is not approved, we would continue the program but on a reduced scale. Without the Hoag grant funding, we would expect to be able to support training 75-90 students in 2020. We would attempt to secure other funding from Newport Beach Fire Department's Community Education budget, from Lifeguard Operations training budget and by soliciting financial support from the Ben Carlson Foundation and the Newport Beach Ocean Lifeguard Association.





**CITY OF**

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# **NEWPORT BEACH**

## **City Council Staff Report**

January 14, 2020  
Agenda Item No. 14

**TO:** HONORABLE COUNCIL MEMBER AND MEMBERS OF THE CITY COUNCIL

**FROM:** Leilani I. Brown, City Clerk - 949-644-3005,  
lbrown@newportbeachca.gov

**PREPARED BY:** Leilani I. Brown, City Clerk

**TITLE:** Annual Mayoral Appointments

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**ABSTRACT:**

City Council Policy A-2 (*Boards, Commissions and Committees*) provides for the Mayor to annually appoint individuals, subject to City Council confirmation, to serve on the various City Council Committees, City Council/Citizens Committees, Citizens Advisory Committees, and Joint Governmental Committees, for those appointive terms which will expire during the calendar year.

**RECOMMENDATION:**

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Confirm Mayor Will O'Neill's appointments under City Council Policy A-2, as provided in this staff report.

**FUNDING REQUIREMENTS:**

There is no fiscal impact related to this item.

**DISCUSSION:**

The following are Mayor Will O'Neill's appointments and require City Council confirmation:

**I. COUNCIL COMMITTEES (Standing or Ad Hoc)**

**A. Affordable Housing Task Force**

- 1. Mayor Pro Tem Brad Avery - Chair
- 2. Mayor Will O'Neill
- 3. Council Member Kevin Muldoon



**II. CITY COUNCIL/CITIZENS COMMITTEES (Standing or Ad Hoc)**

**A. Aviation Committee**

1. Council Member Jeff Herdman - Chair
2. Mayor Pro Tem Brad Avery - Vice Chair

**III. CITIZENS ADVISORY COMMITTEES (Standing or Ad Hoc)**

**A. Balboa Village Advisory Committee (BVAC)**

1. Council Member Diane Dixon - Chair
2. Mayor Pro Tem Brad Avery

**B. Environmental Quality Affairs Committee (EQAC)**

1. Council Member Duffy Duffield

**C. Finance Committee**

1. Mayor Will O'Neill - Chair
2. Council Member Diane Dixon
3. Council Member Joy Brenner

**D. Newport Coast Advisory Committee**

1. Mayor Will O'Neill
2. Council Member Joy Brenner

**E. Water Quality/Coastal Tidelands Committee**

1. Council Member Jeff Herdman - Chair
2. Council Member Duffy Duffield - Vice Chair

**IV. JOINT GOVERNMENTAL COMMITTEES (Permanent or Standing)**

**A. Association of California Cities – Orange County (ACC-OC)**

1. Council Member Diane Dixon
2. Council Member Joy Brenner (Alt.)

**B. Hazardous Waste Material - Joint Powers Authority**

1. Council Member Duffy Duffield

**C. Inter-City Liaison Committee**

1. Council Member Diane Dixon
2. Mayor Will O'Neill

**D. League of California Cities (LCC)**

1. Council Member Joy Brenner
2. Mayor Will O'Neill (Alt.)
3. Council Member Kevin Muldoon (Alt.)

**E. Orange County Coastal Coalition**

1. Council Member Kevin Muldoon

**F. Orange County Housing Commission - Advisory Committee**

1. Community Development Department Staff Member Melinda Whelan
2. Community Development Department Staff Member Gregg Ramirez (Alt.)

**G. Orange County Mosquito and Vector Control District Board of Trustees**

1. Council Member Jeff Herdman\*

**H. Orange County Sanitation District (OCSD)**

1. Mayor Pro Tem Brad Avery\*
2. Council Member Joy Brenner (Alt.)\*

**I. San Joaquin Hills Transportation Corridor Agency Board of Directors**

1. Mayor Will O'Neill\*
2. Council Member Jeff Herdman (Alt.)\*

**J. Santa Ana River Flood Protection Agency**

1. Council Member Jeff Herdman
2. Council Member Kevin Muldoon (Alt.)

**K. Southern California Association of Governments (SCAG)**

1. Council Member Kevin Muldoon\*
2. Council Member Joy Brenner (Alt.)\*

**L. Watershed Executive Committee**

1. Council Member Duffy Duffield
2. Council Member Jeff Herdman (1<sup>st</sup> Alt.)
3. City Manager Grace K. Leung (2<sup>nd</sup> Alt.)

In the previous listings, names that are underlined are individuals who are not members of the City Council.

\* Per FPPC Regulation 18702.5(b)(3), the appointed positions identified above with an asterisk (\*) may receive compensation and are reported on FPPC Form 806 (Agency Report of Public Official Appointments) and posted on the City's website.

**ENVIRONMENTAL REVIEW:**

Staff recommends the City Council find this action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

**NOTICING:**

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).





**CITY OF**

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# **NEWPORT BEACH**

## **City Council Staff Report**

January 14, 2020  
Agenda Item No. 15

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** Laura Detweiler, Recreation and Senior Services Director  
ldetweiler@newportbeachca.gov

**PREPARED BY:** Sean Levin, Recreation and Senior Services Deputy Director  
slevin@newportbeachca.gov

**PHONE:** 949-644-3159

**TITLE:** Newport Beach Wine and Food Festival Request for Waiver of City Council Policy B-13

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**ABSTRACT:**

Request from Newport Beach Wine and Food Festival (NBWFF) to waive Council Policy B-13 to allow alcoholic beverages to be permitted at Peninsula Park for the NBWFF. (Attachment A)

**RECOMMENDATION:**

- a) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15304 under Class 4 (Minor Alterations to Land), because it has no potential to have a significant effect on the environment; and
- b) Recommend approval to waive Council Policy B-13, Regulations and Restrictions, Section A1, Use of Alcohol to allow for NBWFF to be conducted at Peninsula Park. Approval of waiver would allow the NBWFF to move forward with the Special Event Permit Process. Event approval would be contingent upon Special Event Permit approval.

**FUNDING REQUIREMENTS:**

There is no fiscal impact related to this item.

**DISCUSSION:**

Staff has worked closely with the NBWFF over the past six years to permit and house the festival each October at the Newport Beach Civic Center. The event provides challenges annually at the Civic Center location due to the multiday set up and take down that impacts City business and creates significant wear and tear on the facility.

City staff and NBWFF staff have met multiple times over the past few months exploring the concept of moving the event and agree that Peninsula Park is the desired location. Moving the event to Peninsula Park would require a waiver of Council Policy B-13 to allow for use of alcohol during the event.

Approval of this waiver would allow NBWFF to move forward with the planning of the 2020 event. As part of the special event permitting process, an alcohol service plan would continue to be required, outlining guidelines that include limiting the number of alcohol service locations, containers sizes, types of alcohol, security personnel, adherence to state (ABC) restrictions, and required training of alcohol service personnel. The NBWFF has adhered to the restrictions of the alcohol service plan in past years.

### **ENVIRONMENTAL REVIEW:**

This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15304 under Class 4 (Minor Alterations to Land) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment.

Class 4 exemptions consist of minor public or private alterations in the condition of land, water, and/or vegetation that do not involve removal of healthy, mature, scenic trees except for forestry or agricultural purposes, including the minor temporary use of land having a negligible or no permanent effect on the environment. This proposal is to waive Council Policy B-13 to allow alcoholic beverages to be permitted at Peninsula Park for the Newport Beach Food and Wine Festival, a once-a-year, weekend-long event, and thus qualifies for the Class 4 exemption.

The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

### **NOTICING:**

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

### **ATTACHMENTS:**

Attachment A – Letter from NBWFF dated 11/21/19

Attachment B – City Council Policy B-13



Dear Sean,

November 21, 2019

We just completed our sixth and most successful year of the Newport Beach Wine & Food Festival, and I would like to thank the Council and Staff of the City of Newport Beach for allowing us to host the Newport Beach Wine & Food Festival at the Civic Center once again this past year.

The Grand Tasting is our main event of the 16 events we hold over the four-day weekend, and the event that we have been holding at the Civic Center for the past six years. We would like to move the Grand Tasting portion of the event to Peninsula Park on the beach next year. Besides showcasing the stunning beaches of Newport, the location has twice as much space and a very large adjacent parking lot. Next year our event dates are October 8<sup>th</sup> to 11<sup>th</sup>, 2020 with set up starting October 6<sup>th</sup>. Venue will be torn down by October 13<sup>th</sup> at 10pm.

Moving the event will not only allow us to continue growing, but it will end the toll it takes each year on the grass and hardscape at the Civic Center.

I am requesting a waiver of section A, 1 (Use of Alcohol) in the Public Use Of City Facilities rules. Please see below.

A. Use of Alcohol. 1. Alcoholic beverages are prohibited and shall not be permitted in or on any municipal facilities operated by the Department, except beer and wine may be served for special occasions at the OASIS Senior Center, Newport Theatre Arts Center (NTAC), Newport Coast Community Center (NCCC), Civic Center Community Room (CCCR), and Marina Park when done in compliance with State of California Department of Alcoholic Beverage Control (ABC) regulations and approved in writing by the Recreation and Senior Services Director. Approval to serve beer and wine shall not be deemed to approve service of alcohol in violation of Section 25604 of the Business and Professions Code. The Recreation and Senior Services Director will require the permittee to pay City costs to provide additional security when alcohol is served.

Thank you for your consideration of waiving this line item.

With much gratitude,

Stefanie Farnsworth Salem  
Founder & CEO Newport Beach  
Wine & Food  
[stefanie@newbefest.com](mailto:stefanie@newbefest.com)  
(949)335-2348





PUBLIC USE OF CITY FACILITIES*Purpose*

City of Newport Beach (City) facilities, which include parks, playing fields, gymnasiums, community rooms and swimming pools, are available to the public for civic, social, educational, athletic, cultural activities and limited commercial use. It is the intent of this Policy to provide use regulations and application and scheduling procedures to accommodate groups that wish to use City facilities.

*Procedure*

- A. Applications to use the City facilities must be made on forms provided by the Recreation and Senior Services Department (Department). Applicants must provide all information as may be required by the Department to assure compliance with the requirements and regulations of this Policy.
- B. Applicants will be required to pay a security deposit in an amount that will promote use of the Recreation and Senior Services facilities in an orderly manner without damage to the facilities. Security deposits will be refunded upon inspection of facilities and confirmation that no property damage has occurred or additional cleanup is required.
- C. Applicants will be required to acknowledge that neither the City nor the Department assumes any liability for injury or loss of personal property. Prior to the use of the facility, the application must have approval of the Recreation and Senior Services Director or designated representative.
- D. Approval or denial of a reservation request will be provided within five working days of receipt of a completed application.
- E. Reservations for use of Department facilities may be made up to six months in advance, but no later than ten working days before the event with the exception of park reservations which may be made no later than five working days before the event.
- F. The City is not liable for any and all accidental injury to any and all persons or loss or damage to group or individual property. When it is deemed to be in the best interest of the general public, the City will require the permittee to furnish a Certificate of Insurance naming the City of Newport Beach as an additional insured. The amount of the insurance shall not be less than \$1,000,000 per occurrence of commercial general liability insurance.

- G. A contract shall not be transferred, assigned or sublet. All contracts will be issued for specific facilities and for specific hours, and the premises must be vacated as scheduled.
- H. The reservation request and rental agreement must be completed and signed by an adult age 21 and over who will attend, supervise and be responsible for the entire event or activities. Proof of residency is required at the time of application in order to receive the resident rate. Proof of non-profit status is required at the time of application in order to receive the non-profit rate.
- I. A Facility Use Agreement which authorizes the rental of facilities may be revoked for violation of any rental policies.

### *Regulations and Restrictions*

All uses of Department facilities will be subject to the following regulations and restrictions:

- A. Use of Alcohol.
  - 1. Alcoholic beverages are prohibited and shall not be permitted in or on any municipal facilities operated by the Department, except beer and wine may be served for special occasions at the OASIS Senior Center, Newport Theatre Arts Center (NTAC), Newport Coast Community Center (NCCC), Civic Center Community Room (CCCR), and Marina Park when done in compliance with State of California Department of Alcoholic Beverage Control (ABC) regulations and approved in writing by the Recreation and Senior Services Director. Approval to serve beer and wine shall not be deemed to approve service of alcohol in violation of Section 25604 of the Business and Professions Code. The Recreation and Senior Services Director will require the permittee to pay City costs to provide additional security when alcohol is served.
  - 2. The use of alcoholic beverages is by written permission only and must be requested at the time the facility use request is submitted. The Department reserves the right to place restrictions on the use of alcoholic beverages in accordance with State Law and these guidelines. "Alcohol use" means the presence of any beverage that contains any amount of alcohol.
  - 3. Alcohol is not allowed when an event is designated for minors such as school age award programs, birthday parties and/or receptions.



4. When alcohol is served, there shall be a minimum of two security guards present at the facility at all times. The guards must arrive 30 minutes before guest arrival time and remain until the contract end time. One guard must be positioned at the entrance of the event and one guard positioned in the event area. The parking lot must be monitored every 30 minutes. The security guards shall have the authority to enforce all rules and regulations governing facility rentals. In the event that the Police are called, the cost of their services shall be deducted from the applicant's security deposit. The applicant will be billed for any costs exceeding the security deposit.
  5. No alcoholic beverage shall be served to any person less than 21 years of age. Injuries caused to any person as a result of alcoholic beverages being served to or consumed by someone under the age of 21 while on the City's premises, shall be the sole responsibility of the organization or individual renting the facility.
  6. The distribution or consumption of alcoholic beverages shall be in compliance with all applicable laws, including regulations of the ABC. Any organization using City facilities shall be solely responsible for obtaining all permits or licenses relating to the distribution and consumption of alcoholic beverages on the premises.
  7. Alcohol may only be served by an adult 21 years of age or older. If evidence is found that alcohol is being served that was not authorized by the Department or to a minor the Police will be notified and the event will be terminated and all fees and deposits will be forfeited.
  8. The City shall require the applicant to carry general liability insurance when alcohol is available, but not sold. The City shall require a full liquor liability premium in addition to general liability insurance when alcohol is sold in exchange for money. The cost of the required liability insurance shall be borne by the applicant.
- B. Smoking is prohibited in all City facilities including restrooms and within 100 feet of a park, park facility or beach.
- C. For all indoor facility rentals involving youth, 17 years and under, there shall be at least one adult for every 20 minors, or increments thereof, in attendance, who shall remain in the facility for the duration of the activity.
- D. No group's activities shall interfere with the administration of the Department.

- E. Non-profit 501 (c) (3) groups may use the facility for fundraising activities and charge entrance fees and collect donations provided that a detailed plan of the event, including the expenses, marketing plan and procedure for collecting fees, is submitted with the rental application.
- F. Facilities and equipment are to be left in the same condition as they were prior to the rental. The permittee is responsible to pay for any damage to property or loss of property. A fee equal to total replacement cost will be charged. It shall be the responsibility of the permittee to see that unauthorized portions of the facility are not used. Continued or repeated use of City facilities will be contingent upon care of the facility, property and equipment, and observance of all approved rules and regulations.
- G. No gambling of any kind shall be conducted on, or in, City facilities, and the permittee shall insure that no disorderly or illegal conduct shall be allowed in any facility.
- H. The use of public address equipment will be limited to that provided by the facility, unless written approval has been secured by the Department through a Special Event Permit.
- I. Private groups wishing to collect fees, donations or admission charges, or those using the facility to market a product, give a presentation, or advertise their business, will be considered commercial users.
- J. The posted occupancy of City facilities shall not be exceeded.
- K. Storage space will not be granted at any time.
- L. Facilities are not available for reservations on the following holidays: Christmas Eve, Christmas Day, Easter, President's Day, Independence Day, Labor Day, Martin Luther King Day, Memorial Day, New Year's Eve, New Year's Day, Thanksgiving and Veteran's Day.
- M. All persons using the facilities shall observe and obey regulations of this policy, the rules of the Department and all applicable City, State and Federal laws, rules and regulations.
- N. Vehicles are not permitted on park grass or fields. Parking is permitted in designated spaces. Overnight parking is not allowed.
- O. Minors must remain in the rented facility room and shall not be allowed to roam unsupervised throughout the facility.



- P. When no alcohol is served but the group size is 200 or more, one security guard may be required, at the discretion of the Department Director.
- Q. Policies and guidelines regarding caterers shall be adhered to.
- R. All professional services utilized for events require a City of Newport Beach business license.
- S. Animals are not permitted within City Facilities with the exception of service animals. However, this provision shall not apply to activities or programs of the Recreation and Senior Services Department.

*Fee Classifications - Priorities of Use*

Permission for use of City facilities shall be granted on a first come first served basis, subject to the following priorities:

- A. All official Department initiated and/or conducted activities, including those of the Friends of OASIS at the OASIS Senior Center, and exemptions noted in City Council Policies B-5 and B-10.
- B. All official City of Newport Beach activities.
- C. All official City co-sponsored groups and/or activities such as community groups and activities which are non-profit, self-governing, privately organized and of an educational nature which may be brought under the sponsorship of the Department.
- D. Official public agency sponsored programs and activities not included in A, B, and C above.
- E. Youth Sports Commission Member Organizations.
- F. Resident non-profit youth serving organizations with 50% or more of membership consisting of Newport Beach residents.
- G. Recreational, social or civic activities of groups which are resident promoted and sponsored by local non-profit\* organizations which are open to the public and have 50% or more of memberships consisting of Newport Beach residents.
- H. Recreational or social activities of private Newport Beach residents which are not open to the public. (private parties)



- I. Recreational, social or civic activities and/or groups which are non-resident promoted and sponsored by non-profit organizations which are open to the public, but not qualifying under D above.
- J. Schools, colleges, hospitals and other similar civic groups not qualifying under the definition of non-profit.
- K. Others.

*\* Non-profit status is defined as an organization that is so defined by the Internal Revenue Service, § 501(c) (3) and has a State of California Tax Identification Number.*

#### ***Fees, Deposits and Cancellation Procedures***

Fees may be charged for the use of City facilities and shall be established and periodically adjusted and approved by the City Council. Fees are imposed to cover overhead, processing, deposits, maintenance and replacement costs for application and scheduling and maintenance of the facilities.

- A. A security deposit will be required for all room rentals. All or a portion of the deposit may be retained by the Department after inspection of the facility by the Recreation and Senior Services Director or a designated representative and a determination that the facility has not been left clean and/or in good repair.
- B. A separate additional cleaning fee may be charged for rental of the OASIS Event Center, Newport Coast Community Center, Community Youth Center, Civic Center Community Room, and Marina Park Community Center.
- C. No fee or deposit shall be charged for use of City facilities by the City of Newport Beach, or events co-sponsored by the City of Newport Beach or its departments, with the exception of direct costs.
- D. Cancellations for any facility other than the OASIS Event Center, Newport Coast Community Center, Community Youth Center, Civic Center Community Room, and Marina Park may occur seventy-two hours prior to the scheduled use of facilities without forfeiting fees collected by the City, with exception of a City service refund processing fee. Cancellations with less than seventy-two hours notice will be charged a cancellation fee established by resolution of the City Council. In the event of cancellation by the City, notice will be given as far in advance of the scheduled use as possible.

- E. Cancellation of rentals by users for the OASIS Event Center, Newport Coast Community Center, Community Youth Center, Civic Center Community Room, and Marina Park that occur less than thirty days prior to the scheduled use of the facility will be charged 25% of the rental fee. Cancellations with less than seventy-two hours notice will be charged the entire rental fee.

### *History*

Adopted I-5 - 11-22-1962 ("Use Priorities and Fees")

Amended I-5 - 3-9-1970

Reaffirmed I-5 - 2-14-1972

Adopted G-4 - 5-13-1974 ("Use of City Facilities")

Amended I-5 - 5-28-1974

Amended I-5 - 2-13-1978

Amended G-4 & I-5 - 10-10-1978

Amended I-5 - 2-12-1979

Amended I-5 - 5-14-1979

Amended I-5 - 8-28-1979

Amended I-5 - 11-26-1979

Amended G-4 & I-5 - 2-9-1981

Amended I-5 - 11-23-1981

Amended I-5 - 10-12-1982

Amended I-5 - 10-25-1982

Amended G-4 & I-5 - 4-23-1984

Amended I-5 - 11-28-1988

Amended I-5 - 11-27-1989

Amended I-5 - 3-25-1991

Adopted I-25 - 5-26-1998 ("Public Use of City Facilities", incorporating G-4 & I-5)

Amended I-25 - 5-8-2001

Amended I-25 - 4-23-2002

Amended I-25 - 4-8-2003

Amended I-25 - 7-22-2003 (changed to B-13)

Amended B-13 - 9-13-2005

Amended B-13 - 10-10-2006

Amended B-13 - 8-11-2009

Amended B-13 - 5-14-2013

Amended B-13 - 5-12-2015

Amended B-13 - 8-8-2017







**CITY OF**

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# **NEWPORT BEACH**

## **City Council Staff Report**

January 14, 2020  
Agenda Item No. 16

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** Grace K. Leung, City Manager - 949-644-3001,  
gleung@newportbeachca.gov

**PREPARED BY:** Carol Jacobs, Assistant City Manager,  
cjacobs@newportbeachca.gov

**PHONE:** 949-644-3313

**TITLE:** Update on Addressing Homelessness

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**ABSTRACT:**

Since March of 2019, the City has been working on developing a number of plans and strategies to work with our homeless population. This report is an update of recent activity.

**RECOMMENDATION:**

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Receive and file.

**FUNDING REQUIREMENTS:**

There is no fiscal impact related to this update. However, the City continues to dedicate resources responding to homeless issues and exploring longer term solutions. As staff further develops and implements strategies, it is anticipated additional resources will be proposed in the next budget cycle for both immediate and long-term needs.

**DISCUSSION:**

In March of 2019, the City created a Homeless Task Force (HTF) to focus its efforts in addressing homelessness in the community. The HTF worked with Council and staff to develop strategies and assisted with defining the challenges and developing a multi-faceted approach to this complex issue. In September 2019, the HTF was reconstituted into an Ad Hoc Committee of the City Council including Mayor Will O'Neill and Council Members Brad Avery and Joy Brenner. The community members of the HTF, with significant expertise and experience in homeless issues and working with homeless individuals, continue to provide guidance and input to the Ad Hoc Committee.

The City has dedicated one full-time police officer as a Homeless Liaison Officer, re-allocated from existing resources in January 2017, and contracts with City Net for homeless outreach services. Additionally, in September 2019, a manager was re-assigned from the Library Department to be the City's Homeless Coordinator and oversee the City Net contract, focus the multi-departmental responses to homeless individuals and coordinate efforts with the County, neighboring cities and nonprofit organizations to implement solutions.

Through our focused efforts over the last several months and guidance and input from City Council and the HTF, we have a better understanding of homelessness in our City and an appreciation for the complexity in addressing the issues that are both unique within each city and also regional and statewide in nature. We currently estimate approximately 60 homeless individuals in Newport Beach, the majority of whom are chronically homeless, which is defined by the federal Housing and Urban Development Department as without shelter for over one year. The challenges of addressing the needs of the chronically homeless, each with a specific set of circumstances, means we need a variety of short- and long-term strategies that will involve both city and regional resources and partnerships. Below is an update of the strategies we are developing and implementing:

#### Temporary Shelter

The City Council continues to work on three pathways to providing temporary shelter with access to services for the homeless. The City is working with our neighboring cities to develop a regional approach to providing temporary shelter beds. This approach is supported at the state and county level, with state and federal funding available to assist with the costs of operating a regional shelter. The City also continues to consider the Corporation Yard at 592 Superior Avenue and 4200 Campus Drive as possible sites for a temporary shelter within the City's boundaries.

#### Permanent Supportive Housing

The Ad Hoc Committee is reviewing opportunities that may exist within the community to provide for Permanent Supportive Housing. This type of housing provides individuals who were previously homeless rental units with services on site to assist them with rental assistance, health care, treatment and employment skills. Permanent Supportive Housing is considered the long-term solution for the chronically homeless and efforts are underway across the county to develop these projects. Newport Beach has one such project for veterans, which opened in March 2018. The Cove houses twelve people and provides on-site veteran services and counseling. Other service models may include senior services and care, mental health treatment, or housing for transitional-age youth coming out of foster care. Different models and public-private partnerships are being explored.

#### Education

There are many root causes of homelessness and understanding the many different aspects of this complex issue is important for the community as well as for staff. The Ad Hoc Committee is working to educate the public in a variety of ways, so that understanding, and solutions can be developed. To that end, the Committee has provided the following to the community:

The City hosted the United Way in presenting Homelessness 101. This presentation provided information on the issue, how and why people become homeless and strategies for solving the issue for good.

The City has created “Say No to Panhandling Signs, Say Yes to Good Giving” signage. These signs will be placed in strategic locations in the City to encourage individuals to give to charitable organizations or the City to assist with providing assistance to homeless individuals.

On Wednesday January 29, 2020 the City will be hosting a Mental Health Forum to discuss how mental health issues relate to homeless issues. The meeting is free and will be held in the Civic Center Community Room at 6:30 p.m.

The Committee will be working on additional educational forums on a monthly basis and encourages the public to attend.

#### Police Enforcement

The Police Department continues to enforce the law; any illegal activity can lead to an arrest. The Police patrol places in the City in which there are on-going issues to deter illegal activity. The community has often voiced concerns with the activity at the Orange County Transportation Authority Bus Center and the police continues to enforce the closure of the center from 11:00pm – 5:00am daily and are patrolling or responding to calls on average three times a day.

#### Rapid Response Team

The City has created a Rapid Response Team lead by the City’s Homeless Coordinator and Assistant City Manager. This interdepartmental team provides a focused response to the City’s most vulnerable individuals. By understanding the interactions with all departments and the issues individuals are experiencing, staff can tailor a response to best serve the needs of the homeless individual.

#### Success Stories

Staff is committed to working with our homeless population and connecting them with the services they need to end their homelessness.

The City’s Homeless Coordinator and Rapid Response Team works closely with our outreach social services provider, City Net, to move individuals into housing. In the months of September, October and November, City Net engaged with 277 individuals (many of these are the duplicates as many homeless individuals require multiple contacts prior to agreeing to services), and five individuals were housed.

A 30-year homeless man at Central Library is now in an Anaheim apartment, a mother who is 97 and her 67 year old daughter are now in a Tustin apartment, a domestic violence survivor by the 73 Freeway is now housed in Riverside, and an evicted Newport Beach woman has been placed in a psychiatric treatment house in Costa Mesa with a housing plan in place.



Since March of 2018, City Net has had 37 individuals exit the street.

We will continue to work individually with our homeless population, through our Rapid Response Team, City Net and a myriad of resources including the county and non profit organizations, while also developing regional resources such as shelter bed space and Permanent Supportive Housing, to achieve short- and long-term solutions.

**ENVIRONMENTAL REVIEW:**

Staff recommends the City Council find this action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

**NOTICING:**

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).



**CITY OF**

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# **NEWPORT BEACH**

## **City Council Staff Report**

January 14, 2020  
Agenda Item No. 17

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** Leilani I. Brown, City Clerk - 949-644-3005,  
lbrown@newportbeachca.gov

**PREPARED BY:** Leilani I. Brown, City Clerk

**TITLE:** Confirm Appointment to the Balboa Village Advisory Committee to  
Represent the Balboa Village Merchant Association Business Board

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### **ABSTRACT:**

Due to the recent resignation of Marcel Ford from the Balboa Village Advisory Committee (BVAC), the City Council may appoint a new member pursuant to City Council Policy A-2 (*Boards, Commissions and Committees*), Resolution No. 2018-80, and the Maddy Act.

### **RECOMMENDATION:**

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Confirm Mayor Will O'Neill's BVAC appointment of Kelly Carlson to represent the Balboa Village Merchant Association Business Board for a term that expires on December 31, 2020.

### **FUNDING REQUIREMENTS:**

There is no fiscal impact related to this item.

### **DISCUSSION:**

Resolution No. 2018-80 allows the Balboa Village Merchant Association Business Board one representative on BVAC. Marcel Ford resigned from his respective seat on BVAC as the representative of the Balboa Village Merchant Association Business Board. The vacated term expires on December 31, 2020.

Pursuant to the Maddy Act and City Council Policy A-2, the City Clerk prepared and posted a Notice of Unscheduled Vacancy on Thursday, October 17, 2019, and Monday, November 25, 2019, in the City Clerk's Office, at the Central Library, on the bulletin board in the City Council Chambers, and on the City's webpage; and was published in the *Daily Pilot* on Saturday, October 19, 2019, and Friday, November 29, 2019.

As per the Notice, applications were accepted by the City Clerk's Office until the position was filled. Consistent with the Maddy Act and City Council Policy A-2, the final appointment to fill the unexpired term will not be made for at least ten working days after the posting of the Notice of Unscheduled Vacancy.

One application was received from a Balboa Village Merchant Association Business Board Member and is attached hereto as Attachment A.

**ENVIRONMENTAL REVIEW:**

Staff recommends the City Council find this action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

**NOTICING:**

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

**ATTACHMENT:**

Attachment A – Application



# ATTACHMENT A

## RECEIVED APPLICATION FOR APPOINTIVE POSITION

FOR OFFICE USE ONLY

Residence District: 1

Verified by: ROV

2019 DEC 10 PM 2:16

OFFICE OF  
THE CITY CLERK  
CITY OF NEWPORT BEACH

CITY OF NEWPORT BEACH

100 Civic Center Drive  
Newport Beach, CA 92660  
City Clerk (949) 644-3005  
Fax (949) 644-3039

**DIRECTIONS:** One application can be used for all the appointive positions you are applying for. Applications should be filled out completely so that the City Council may fully evaluate your qualifications. It is the responsibility of the applicant to familiarize themselves with the duties and responsibilities of the position(s) applied for. Detailed information outlining the responsibilities of the positions can be obtained from the City Clerk's Office or on the City's website: [www.newportbeachca.gov](http://www.newportbeachca.gov) (City Government/Boards, Commissions and Committees). Applications will be kept on file for two years for the position(s) applied for. If you are not selected for appointment during that period of time, it will be necessary for you to re-submit an application if you are still interested in being considered.

**NOTICE:** Section 702 of the City Charter requires that members of Boards or Commissions appointed by the City Council shall be from the qualified electors of the City. This document is a public record and may be posted on the internet.

NAME OF BOARD, COMMISSION OR COMMITTEE: Balboa Village Advisory Committee

Name: Carlson (Last) Kelly (First) Leigh (Middle)

Residence Address (required): [REDACTED] Zip Code: 92661

How long have you lived in Newport Beach? 15 years Home/Cell #: [REDACTED]

Business Address: [REDACTED] Business Phone: [REDACTED]

[REDACTED] Email Address: [REDACTED]

Have you ever been convicted of any crime or violation of any law or statute other than minor traffic violations?

☒ NO ☐ YES (If yes, attach separate sheet with explanation)

**NOTICE:** Pursuant to Section 702 of the City Charter, no members of boards or commissions shall hold any paid office or employment in the City government.

Do you currently hold any paid office or employment with the City of Newport Beach, including but not limited to contracted services?

☒ NO ☐ YES (If yes, attach separate sheet with explanation)

If applying for a position on the Finance Committee, have you declared bankruptcy in the last 10 years? ☒ NO ☐ YES

Please state any past, current or foreseeable future financial interests of any kind that may conflict with the Board, Commission or Committee you are applying for.

We own Balboa Water Sports and Balboa Beach & Bicycle Boutique, which are both in Balboa Village. We also own a duplex within 150 feet of Balboa Village and one unit is a weekly rental.

CONTINUE TO PAGE TWO

Name and Location of Colleges/ Universities Attended	Major	Degree	Last Year Attended
Westmont College	Economics & Business	Bachelor's	2002
Pepperdine University	Business Administration	Master's	2009

Prior or Current Civic Experience (include membership in professional, charity or community organization)	Office Held (if any)	Dates of Membership
Balboa Village Merchant Association	President	2014 - current

**Occupational History.** Begin with your present or most recent position. List all positions separately held for the last five years.

Firm or Organization	Type of Business	Title	Dates of Employment
Balboa Water Sports, Inc	Personal Water Craft Rentals	Co-Owner	2011 - current

**References.** Include names of at least two residents of Newport Beach who are not officially connected with the City.

1. Name  Address  Phone No.
2. Name  Address  Phone No.

Summarize why you wish to serve the City of Newport Beach on a board, commission or committee. Include any special qualifications you have which are particularly appropriate to the position for which you are applying.

I wish to serve on the BVAC because the success and revitalization of the Balboa Village area is extremely important to me. I have served on the Balboa Village Merchant Association for 5 years, 3 as the Vice President and the past year as President. As a business owner and resident I am extremely involved in the area and aware of what is going on.

I certify that all statements made on this application are true and correct to the best of my knowledge. I have read and understand the duties and responsibilities of the particular position(s) that I am applying for and authorize the release of this information on the internet.

[BOX MUST BE CHECKED IF SUBMITTING ELECTRONICALLY]



Signature

Date





# NEWPORT BEACH

## City Council Staff Report

January 14, 2020  
Agenda Item No. 18

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** David A. Webb, Public Works Director - 949-644-3311,  
dawebb@newportbeachca.gov

**PREPARED BY:** Tony Brine, City Traffic Engineer, tbrine@newportbeachca.gov  
**PHONE:** 949-644-3349

**TITLE:** Request to Waive City Council Policy L-2, *Driveway Approaches*, at  
400 40<sup>th</sup> Street

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### **ABSTRACT:**

The property owners (Owners) of 400 40<sup>th</sup> Street on Newport Island are planning to redevelop their current single-family property to construct a new residential duplex. As part of the redevelopment, the Owners are requesting that the City Council waive City Council Policy L-2 (Driveway Approaches) to allow a new driveway on Marcus Avenue, as well as the requirement to include one (1) additional covered non-tandem off-street parking space as called for in the Council Policy

### **RECOMMENDATION:**

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Waive City Council Policy L-2 and allow a new driveway on Marcus Avenue at 400 40<sup>th</sup> Street on Newport Island. It is also recommended that as part of this waiver, the project still be required to include one (1) additional covered non-tandem off-street parking space as called for in the Council Policy.

### **FUNDING REQUIREMENTS:**

There is no fiscal impact related to this item.

### **DISCUSSION:**

The Owners of 400 40<sup>th</sup> Street are planning to redevelop their existing single-family property to construct a new residential duplex. The property is located on Newport Island. (Attachment A). As part of the redevelopment, the Owners have written a letter (Attachment B), requesting that the City Council waive City Council Policy L-2, Driveway Approaches. The proposed project would include a 2-car garage off the alley serving the rear unit, and a proposed 2-car garage off Marcus Avenue serving the front unit. The proposed site plan has been provided by the Owners (Attachment C). Marcus Avenue, along the project frontage, is currently red curbed and parking is not permitted along the project frontage on Marcus Avenue, see site photo. (Attachment D).



The goals of City Council Policy L-2 (Attachment E) are to minimize the number and width of driveway openings to preserve on-street parking and to reduce the points of traffic conflict. The policy requires residential properties that abut an alley to take access via the alley only. However, the policy does provide for an exception to allow driveways on the street, in the case of corner lots, subject to one of the following conditions:

- A new curb opening from the street shall be permitted where existing utility conditions, that cannot be removed/relocated, prevent alley access and one (1) additional covered non-tandem off-street parking space beyond code required amount is being provided; or
- An existing curb opening can be maintained or relocated when one (1) additional covered non-tandem off-street parking space beyond code-required amount is provided and no loss of on-street parking is proposed.

The proposed project does not meet either of the conditions. The project does not have a utility conflict in the alley that hinders alley access. The proposed project only provides the code-required four (4) parking spaces.

The applicant points out that there is precedent for a similar type of driveway waiver on Newport Island. On February 28, 2006, the City Council approved an encroachment permit for a driveway on Marcus Avenue as part of a redevelopment project at 401 38<sup>th</sup> Street (Attachment F).

Staff supports a waiver of City Council Policy L-2 at 400 40<sup>th</sup> Street to allow for a new garage and driveway on Marcus, in addition to also having garage access off the rear alley.

- A new driveway on Marcus Avenue would not cause a loss of existing on-street parking along the project side of Marcus Avenue, as it is currently red curb.
- A second garage on Marcus Avenue should maximize the parking of vehicles within the project garages by eliminating the use of tandem parking spaces in one garage off the alley.

As a condition of the waiver, staff recommends the project still include one (1) additional covered non-tandem off-street parking space as called for in the Council Policy as a means to address the general shortage of parking on Newport Island, which will be exacerbated by replacement of a single-family structure with a new duplex project. Additionally, the existing garage on the project site is set back 10 feet from the alley, which provides for one to two additional onsite parking spaces currently as shown in attachment F – Site Photos. The proposed Duplex rear garage will be set back only 5 feet from the alley as allowed by code, and thus these spots will be eliminated. The Owners have indicated that the additional non-tandem covered off-street parking space outlined in the exceptions would result in a loss of 325 square feet of livable area of the rear unit. At City Council discretion, the additional off-street parking space could be optional, or made as a compact spot.

**ENVIRONMENTAL REVIEW:**

Staff recommends the City Council find this action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

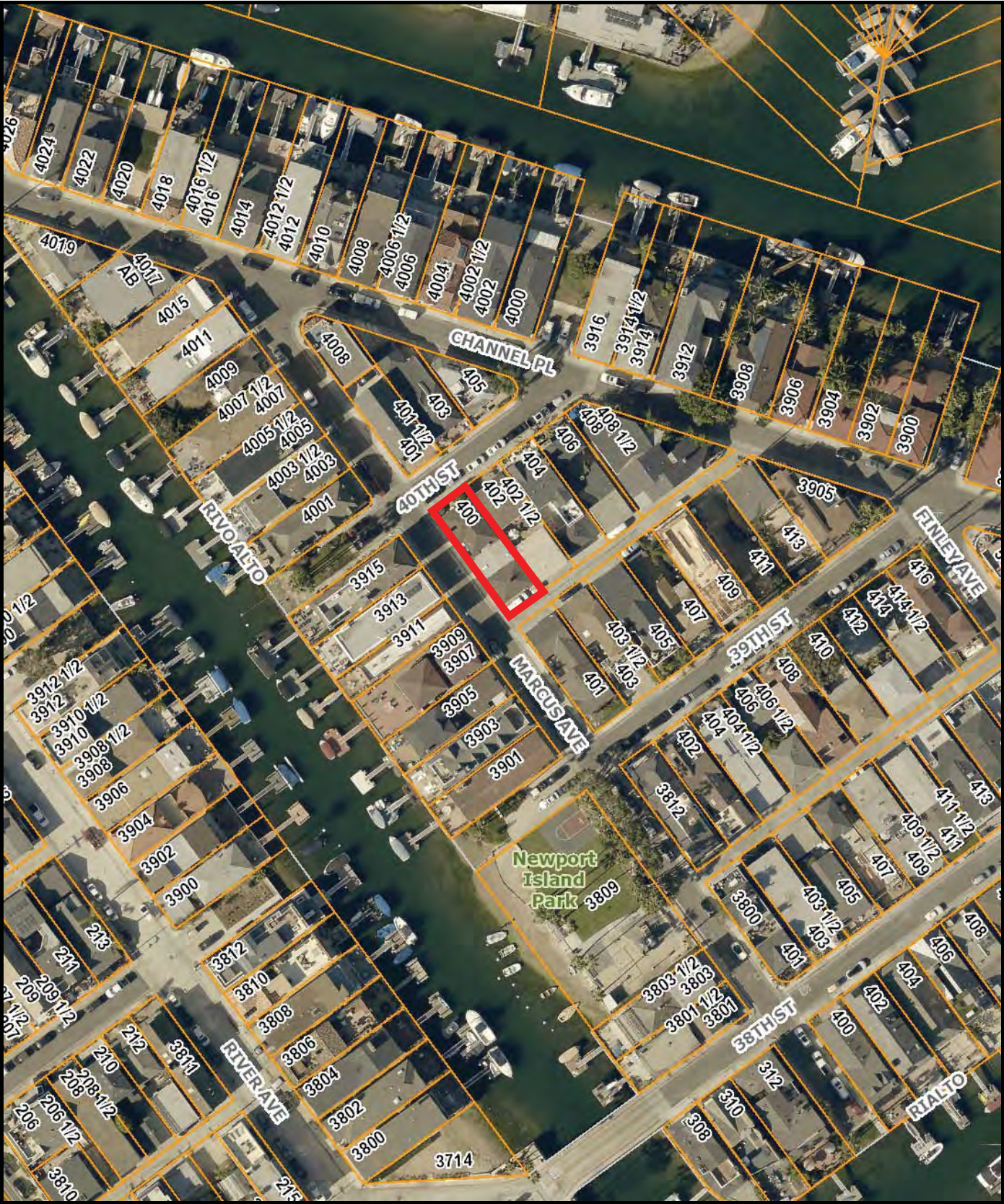
**NOTICING:**

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

**ATTACHMENTS:**

Attachment A – Location Map  
Attachment B – Owner Letter  
Attachment C – Plans  
Attachment D – Site Photo  
Attachment E – City Council Policy L-2  
Attachment F – February 28, 2006 Staff Report and Minutes for 401 38<sup>th</sup> Street





LOCATION MAP

CITY OF NEWPORT BEACH  
PUBLIC WORKS DEPARTMENT

N2019-0620

NOV. 19, 2019



October 20, 2019

Dave Keeley  
**CITY OF NEWPORT BEACH**  
 Public Works Department  
 100 Civic Center Drive  
 Newport Beach, CA 92660

**RE: Request for an exception to L-2, section C. Driveway approaches, and request for an exemption from the addition of one (1) additional covered non-tandem off-street parking space beyond code; new construction, duplex, 400, 40th St., Newport Beach, Ca. 92663, Newport Island.**

This request is being made on behalf of myself, Kim Keirstead, and my brother Kevin Snow. Kevin and I are long-time residents of Newport Island, having grown up in the home that is currently located on the property we intend to develop. It was our mother's home for close to 50 years until she passed in 2017. Myself, my husband, and our three children are currently living in the home.

Together, our families will be designing and building a two-unit duplex on the property, two units equal in size, one for each of our families.

I would like to address City Council Policy L-2, section C:

*C. For new developments, proposed new street curb openings or retention of existing street curb openings shall not be permitted for residential property which abuts an alley. All vehicle access shall be from the alley.*

*An exception may be made in the case of corner lots where the street on which the proposed new or existing curb opening is not located on an arterial street and the street frontage is available for the full depth of the lot, subject to the one of the following conditions:*

*A new curb opening from the street shall be permitted where existing utility conditions, that cannot be removed/relocated, prevent alley access and one (1) additional covered non-tandem off-street parking space beyond code required amount is being provided. The proposed new curb opening shall be located to maximize the remaining on-street parking; or*

- 1. An existing curb opening can be maintained or relocated when one (1) additional covered non-tandem off-street parking spaces beyond code required amount is being provided and no loss of on-street parking is proposed.*

400, 40th St., Newport Beach, Ca. 92663, is a corner lot, the full length of the lot on Marcus is red curb (**there will be no loss of on-street parking**), it is not located on an arterial street, and there is street frontage available for the full depth of the lot.

The proposal follows the current municipal code, which requires four parking spots, two parking spots per unit. Parking for the front unit would be accessed from Marcus and parking for the rear unit would be accessed from the alley.

The lot allows an opportunity to avoid a double-stack tandem design that can hinder traffic flow. Where one car needs to be pulled out of the garage to allow for second car in the garage to pull out. In this situation, the car pulling out from the carport would be backing out into the alley and then into the street.

Newport Island, in general, has very low traffic volume, all streets and alleys are two-way and are used equally.

The addition of the (1) additional covered non-tandem off-street parking space beyond code would cause a loss of approximately 325 sq. Ft. of livable space. As it is, the design program requires small living spaces, the loss of 325 sq. Ft. of livable space would cause substantial difficulties.

We appreciate the time that City Council members and staff have taken to come to visit the site. This is a unique location where L-2, section C should not be applied as it does not benefit the neighborhood. As long-time residents of Newport Island, it is essential for us to build an aesthetically pleasing home, that is in harmony with the current architecture and is a compliment to the community.

We appreciate your consideration.

Sincerely,



Kim Keirstead



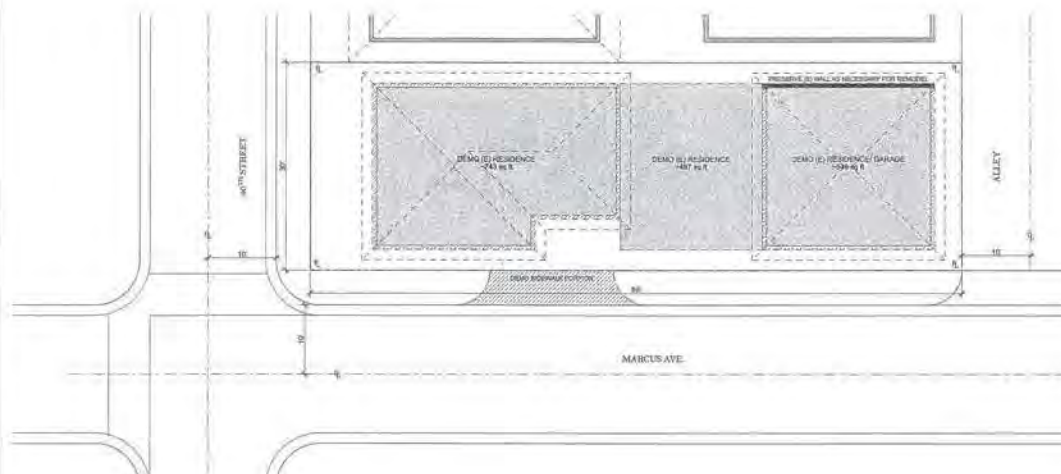


**NB 40TH REMODEL**  
**KIM KEIRSTEAD & KEVIN SNOW**  
 400 40TH STREET  
 NEWPORT BEACH, CA 92663  
 (949) 230-7011

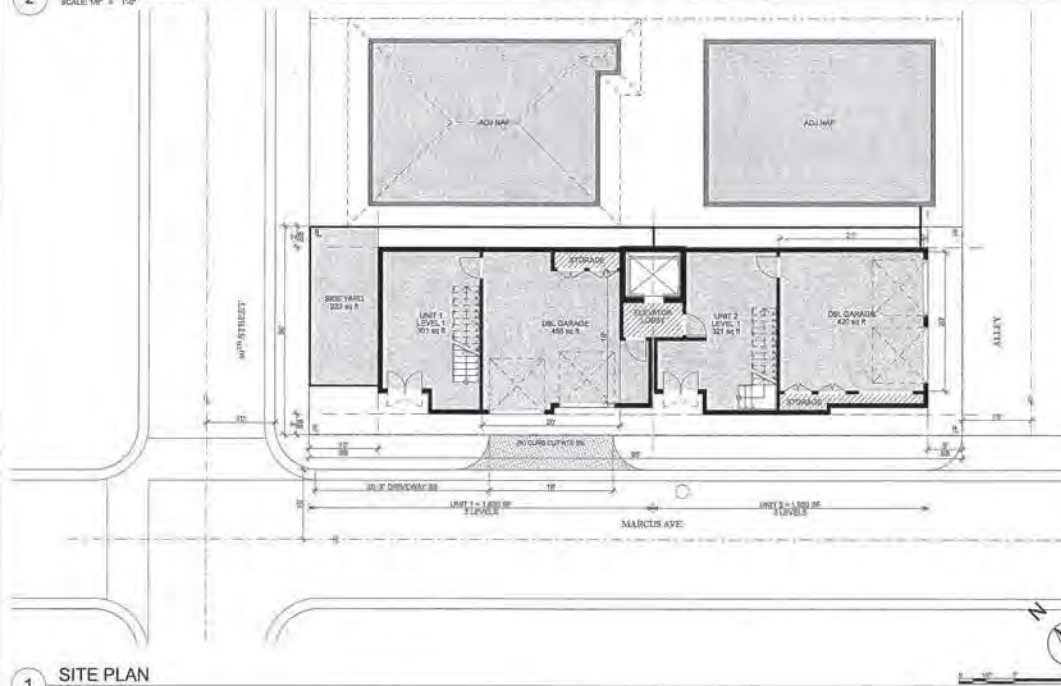
REVISION	DATE

**A.04**

**SITE PLAN & NOTES**



**2 DEMO SITE PLAN (FOR REFERENCE ONLY)**  
 SCALE: 1/8" = 1'-0"



**1 SITE PLAN**  
 SCALE: 1/8" = 1'-0"

- BMP NOTES:**
1. SUFFICIENT BMP'S MUST BE INSTALLED TO PREVENT SILT, MUD, OR OTHER CONSTRUCTION DEBRIS FROM BEING TRACKED INTO THE ADJACENT STREET(S) OR STORM WATER CONVEYANCE SYSTEMS DUE TO CONSTRUCTION VEHICLES OR ANY OTHER CONSTRUCTION ACTIVITY. THE CONTRACTOR SHALL BE RESPONSIBLE FOR CLEANING ANY SUCH DEBRIS THAT MAY BE IN THE STREET AT THE END OF EACH WORK DAY OR AFTER A STORM EVENT THAT CAUSES A BREACH IN THE INSTALLED CONSTRUCTION BMP'S.
  2. ALL STOCK-PILES OF UN-COMPACTED SOIL AND/OR BUILDING MATERIALS THAT ARE INTENDED TO BE LEFT UNPROTECTED FOR A PERIOD GREATER THAN SEVEN CALENDAR DAYS ARE TO BE PROVIDED WITH EROSION AND SEDIMENT CONTROLS. SUCH SOIL MUST BE PROTECTED EACH DAY WHEN THE PROBABILITY OF RAIN IS 40% OR GREATER.
  3. A CONCRETE WASHOUT SHALL BE PROVIDED ON ALL PROJECTS WHICH PROPOSE THE CONSTRUCTION OF ANY CONCRETE IMPROVEMENTS THAT ARE TO BE POURED IN PLACE ON THE SITE.
  4. ALL EROSION/SEDIMENT CONTROL DEVICES SHALL BE MAINTAINED IN WORKING ORDER AT ALL TIMES.
  5. ALL SLOPES THAT ARE CREATED OR DISTURBED BY CONSTRUCTION ACTIVITY MUST BE PROTECTED AGAINST EROSION AND SEDIMENT TRANSPORT AT ALL TIMES.
  6. THE STORAGE OF ALL CONSTRUCTION MATERIALS AND EQUIPMENT MUST BE PROTECTED AGAINST ANY POTENTIAL RELEASE OF POLLUTANTS INTO THE ENVIRONMENT.

- GENERAL NOTES:**
- A. (E) BUILDING ADDRESS TO REMAIN MOUNTED ABOVE FRONT DOOR. NUMBERS ARE 4" H. W/ 2" MIN. STROKE AND A CONTRASTING COLOR TO THE BUILDING.
  - B. COMBUSTIBLE DEBRIS SHALL NOT BE ACCUMULATED WITHIN BUILDINGS. WASTE SHALL BE REMOVED AT THE END OF EACH WORK SHIFT.
  - C. MATERIALS SUSCEPTIBLE TO SPONTANEOUS IGNITION, SUCH AS OIL RAGS, SHALL BE STORED IN A LISTED DISPOSAL CONTAINER.
  - D. AN APPROVED SEISMIC GAS SHUTOFF VALVE WILL BE INSTALLED ON THE FUEL GAS LINE ON THE DOWN STREAM SIDE OF THE UTILITY METER AND BE RIGIDLY CONNECTED TO THE EXTERIOR OF THE BUILDING OR STRUCTURE CONTAINING THE FUEL GAS PIPING. (PER ORDINANCE 110, 146) (INCLUDES COMMERCIAL ADDITIONS AND T1 WORK OVER \$10,000) SEPARATE PLUMBING PERMIT IS REQUIRED.
  - E. PLUMBING FIXTURES ARE REQUIRED TO BE CONNECTED TO A SANITARY SEWER OR TO AN APPROVED SEWAGE DISPOSAL SYSTEM (R306.3)
  - F. KITCHEN SINKS, LAVATORIES, BATHROOMS, SHOWERS, BIDETS, LAUNDRY TUBS AND WASHING MACHINE OUTLETS SHALL BE PROVIDED WITH HOT AND COLD WATER AND CONNECTED TO AN APPROVED WATER SUPPLY (R306.4)
  - G. BATHTUB AND SHOWER FLOORS, WALLS ABOVE BATHTUBS WITH A SHOWER HEAD, AND SHOWER COMPARTMENTS SHALL BE FINISHED WITH A NON-ABSORBENT SURFACE. SUCH WALL SURFACES SHALL EXTEND TO A HEIGHT OF NOT LESS THAN 6 FEET ABOVE THE FLOOR. (R307.2)
  - H. PROVIDE ULTRA LOW FLUSH WATER CLOSETS FOR ALL NEW CONSTRUCTION. EXISTING SHOWER HEADS AND TOILETS MUST BE ADAPTED FOR LOW WATER CONSUMPTION.
  - I. PROVIDE TO INCH HIGH NON-ABSORBENT WALL ADJACENT TO SHOWER AND APPROVED SHOWER-RESISTANT MATERIALS FOR SHOWER ENCLOSURE. (1115B.2 AND 2406.3)
  - J. WATER HEATER MUST BE STRAPPED TO WALL. (SEC. 507.3, UPC)
  - K. SMOKE DETECTORS SHALL BE PROVIDED FOR ALL DWELLING UNITS INTENDED FOR HUMAN OCCUPANCY UPON THE OWNER'S APPLICATION FOR A PERMIT FOR ALTERATIONS, REPAIRS, OR ADDITIONS, EXCEEDING ONE THOUSAND DOLLARS (\$1,000). (R314.6.2)
  - L. WHERE A PERMIT IS REQUIRED FOR ALTERATIONS, REPAIRS OR ADDITIONS EXCEEDING ONE THOUSAND DOLLARS (\$1,000), EXISTING DWELLINGS OR SLEEPING UNITS THAT HAVE ATTACHED GARAGES OR FUEL BURNING APPLIANCES SHALL BE PROVIDED WITH A CARBON MONOXIDE ALARM IN ACCORDANCE WITH SECTIONS R315.1. CARBON MONOXIDE ALARMS SHALL ONLY BE REQUIRED IN THE SPECIFIC DWELLING UNIT OR SLEEPING UNIT FOR WHICH THE PERMIT WAS OBTAINED. (R315.2)
  - M. EVERY SPACE INTENDED FOR HUMAN OCCUPANCY SHALL BE PROVIDED WITH NATURAL LIGHT BY MEANS OF EXTERIOR GLAZED OPENINGS IN ACCORDANCE WITH SECTION R303.1 OR SHALL BE PROVIDED WITH ARTIFICIAL LIGHT THAT IS ADEQUATE TO PROVIDE AN AVERAGE ILLUMINATION OF 4 FOOT-CANDELS OVER THE AREA OF THE ROOM AT A HEIGHT OF 30 INCHES ABOVE THE FLOOR LEVEL. (R303.1)

- CONSTRUCTION NOTES:**
- C-1. AN ENCROACHMENT PERMIT IS REQUIRED FOR ALL WORK WITHIN THE PUBLIC RIGHT-OF-WAY FROM THE PUBLIC SERVICES DEPARTMENT.

- NOTE:**
- A. DIMENSIONS ARE TO FACE OF FINISH
  - B. FIELD VERIFY ALL DIMENSIONS
  - C. (AOW) = AREA OF WORK
  - D. (NAP) = NOT A PART OF SCOPE
  - E. (PIP) = PROTECT IN PLACE
  - F. (E) = EXISTING, (N) = NEW

**BUILDING AREA / CODE ANALYSIS:**







ATTACHMENT D

SITE PHOTO







## DRIVEWAY APPROACHES

### *General*

- A. An encroachment permit shall be required prior to any driveway construction within the street right-of-way. All construction shall conform with the Standard Plans and Specifications of the City of Newport Beach, which may be amended from time-to-time. Brick, textured concrete or flat stone surfacing may be used subject to Public Works Department approval. Such brick, textured concrete or flat stone surfacing may not be used on Bayside Drive.
- B. The number and width of driveway openings shall be kept to a minimum allowed by City standards so as to preserve on-street parking and to reduce the points of traffic conflict.
- C. The term "Curb Opening" shall mean the total width of the approach including the slope distances on the curb. The term "Approach Bottom" shall mean the total width of the approach less the slope distances on the curbs.
- D. Curb openings shall not be constructed closer than five (5) feet to the beginning of the curvature of a curb return, crosswalk, fire hydrant, traffic signal/street light, utility pole/ anchor/ pedestal or trees, unless approved by the Public Works Department.
- E. The entire curb opening shall be within the prolongation of the property lines except when cross easements provide for a common driveway along the mutual property line.
- F. No permit shall be issued for driveways on Clubhouse Drive, Glen Drive, Balboa Island or on the ocean side of Ocean Boulevard without City Council approval. No curb openings shall be permitted on Ocean Boulevard when access is available from an existing alley, street or improved private roadway.
- G. No permit shall be issued if the driveway encroaches on a crosswalk area.
- H. No permit shall be issued if the driveway construction requires the relocation of any public facility such as fire hydrants utility pole/ anchor/ pedestal, street tree, vault, vent pipes, or street lights without prior written approved of the Public Works Department and a deposit has been made to cover the cost of relocation. The property owner shall pay all costs for the relocation of any public facilities.
- J. No permit shall be issued unless the applicant agrees to remove any existing driveway opening that is or will be abandoned, and reconstruct curb, gutter and sidewalk (if applicable) to City Standards at no cost to the City.

- K. Where practical, difficulties or hardships may result from the strict application of this policy, minor dimensional variances may be granted with prior written approval of the Public Works Director.
- L. Nothing herein shall be construed as preventing any person from appealing to the City Council for relief from the applications of this policy.
- M. No building permit shall be issued on a parcel whose access requires City Council review for an encroachment permit on public property, until said encroachment permit has been issued.

***Residential Zones and Residential Uses - Special Requirements***

- A. The width of the driveway approach bottom shall not exceed twenty (20) feet except when the driveway is to serve an enclosed three (3) or four (4) car garage, in which case the driveway approach bottom may be increased to twenty-five (25) feet or thirty-two (32) feet, respectively.
- B. One (1) additional curb opening may be permitted to a single parcel subject to the following conditions:
  - 1. The total width for all openings shall not exceed fifty percent (50%) of the total frontage of the parcel; and
  - 2. The curb openings shall be separated by at least twenty (20) feet to retain maximum street parking.
- C. For new developments, proposed new street curb openings or retention of existing street curb openings shall not be permitted for residential property which abuts an alley. All vehicle access shall be from the alley.

An exception may be made in the case of corner lots where the street on which the proposed new or existing curb opening is not located on an arterial street and the street frontage is available for the full depth of the lot, subject to the one of the following conditions:

- 1. A new curb opening from the street shall be permitted where existing utility conditions, that cannot be removed/relocated, prevent alley access and one (1) additional covered non-tandem off-street parking space beyond code required amount is being provided. The proposed new curb opening shall be located to maximize the remaining on-street parking; or

2. An existing curb opening can be maintained or relocated when one (1) additional covered non-tandem off-street parking spaces beyond code required amount is being provided and no loss of on-street parking is proposed.

In no case shall there be more than one (1) street curb opening on a residential property that abuts an alley.

- D. Driveway grades must not exceed the listed applicable maximum slope depending on application. Driveways to lowered or entrances to subterranean parking must rise above the flood level or a minimum of six (6) inches above the flow line of the street or alley, whichever is greater, before transitioning to a downward slope. Slope transitions shall be a minimum of five (5) feet in length and the change of slope cannot exceed eleven percent (11%).

Driveways providing only parking access – Fifteen percent (15%) maximum slope. Must have access directly from garage into residence.

Driveways providing vehicle and pedestrian access – Eight percent (8%) maximum slope.

Driveways providing required parking spaces on the driveway itself – Five percent (5%) maximum slope.

Minor variations from the listed maximum slopes and slope changes may be granted by the Public Works Director when unusual site conditions are encountered.

### ***Commercial Uses***

- A. The width of the driveway approach bottom shall not exceed thirty-five (35) feet.
- B. The total width of all driveways shall not exceed fifty (50%) of the frontage of the parcel.
- C. Commercial driveway approaches may use a curb return design with a maximum curb radius of twenty-five (25) feet and a driveway approach bottom of greater than thirty-five (35) feet if the following conditions are satisfied:
  1. The driveway serves as an entrance to a parking area or structure for 200 or more vehicles.



2. The number of driveways serving the parcel are at a minimum.
- D. The curb return commercial driveway approach may incorporate a divided exit and entrance if the separation structure (median island) is continued on-site in such a manner as to provide proper traffic design.

### ***Closure of Abandoned Driveway Approaches By City***

The City may close any abandoned driveway approaches at locations where two (2) or more of the following criteria exist:

- A. The abandoned driveway approach is adjacent to a parcel of property where redevelopment and possible subsequent closure of the approach is not believed imminent;
- B. The driveway approach is at a location where there is a shortage of available on-street parking;
- C. The removal of the driveway approach is needed for safe pedestrian and/or bicycle passage;
- D. The closure of the abandoned driveway approach benefits not so much to the property owner as the pedestrian and vehicular traffic in the area;
- E. The parcel is adjacent to and can take access from a public alley.

When in the opinion of the Public Works Department, a curb cut or abandoned driveway approach should be closed, and the adjoining property owner protests the closing, the protester shall be notified that he shall have two (2) weeks to appeal the staff decision to the City Council. That appeal must be in writing and may be filed through the mail. If an appeal is not made, the City shall proceed with the closure. If an appeal is made, a hearing shall be held by the City Council, and the decision of the Council shall be final. .

### ***History***

(1966, 01/24) – L-2 - Adopted  
 (1968, 02/26) – L-2 - Amended  
 (1970, 03/09) – L-2 - Amended  
 (1972, 02/14) – L-2 - Reaffirmed  
 (1972, 07/24) – L-2 - Amended  
 (1977, 11/14) – L-2 - Amended  
 (1982, 10/12) – L-2 - Amended

(1982, 10/25) - L-2 - Amended  
(1987, 07/13) - L-2 - Amended  
(1989, 11/27) - L-2 - Amended  
(1992, 12/14) - L-2 - Amended  
(1994, 01/24) - L-2 - Amended  
(1996, 02/26) - L-2 - Amended  
(2001, 05/08) - L-2 - Amended  
(2006, 10/10) - L-2 - Amended  
(2018, 08/14) - L-2 - Amended





**CITY OF NEWPORT BEACH  
CITY COUNCIL STAFF REPORT**

Agenda Item No. 15  
February 28, 2006

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** Public Works Department  
Iris Lee, P.E.  
949-644-3311  
ilee@city.newport-beach.ca.us

**SUBJECT:** 401 38<sup>TH</sup> STREET – APPEAL OF STAFF DECISION TO NOT ALLOW A  
NEW CURB CUT ON NEWPORT ISLAND

**APPLICANT:** RYAN VITT

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**RECOMMENDATIONS:**

1. Approve Encroachment Permit N2006-0073  
  
or  
  
Deny Encroachment Permit N2006-0073 based on its nonconformance with the provisions of Council Policy L-2.C.
2. Direct staff to condition the Owner to close the existing curb cut fronting the property on 38<sup>th</sup> Street in conjunction with the construction of the proposed duplex.

**DISCUSSION:**

Background:

Ryan Vitt, owner of 401 38<sup>th</sup> Street at Marcus Avenue on Newport Island, is requesting approval to make a new 19-foot long curb cut along the property's Marcus Avenue frontage to provide required parking for a new two-unit residential project (see letter attached as Exhibit 'A'). The owner proposes to construct a new Marcus Avenue curb cut to provide access to the two-car garage assigned to the front unit. Access to the rear unit one-car garage/one-car carport will be taken from the alley. The property currently has two utilized garage access points -- one off the alley and one off 38<sup>th</sup> Street.

City Council Policy L-2.C specifically states "Street curb openings shall not be permitted to residential property which abuts an alley" and "An exception may be made for corner lots under special circumstances such as an existing structure prevents full alley access or additional covered off-street parking is being provided." Mr. Vitt's development will provide only the minimum four (4) on-site parking spaces required of all new duplex buildings and therefore does not meet the "additional on-site parking" criteria to qualify for a new curb cut on Marcus Avenue.

Staff therefore recommends the City Council to approve or deny the Owner's request to make a new curb cut on Marcus Avenue and to direct staff to condition the Owner to abandon the existing curb cut fronting the property on 38<sup>th</sup> Street in conjunction with the construction of the proposed duplex.

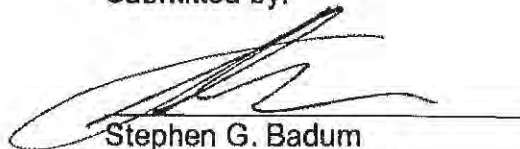
Environmental Review:

Pursuant to Section 15303, New Construction or Conversion of Small Structures – Class III of CEQA Guidelines, this action is exempt from environmental review.

Prepared by:

  
Iris Lee, P.E.  
Associate Civil Engineer

Submitted by:

  
Stephen G. Badum  
Public Works Director

Attachments:      Exhibit 'A' – Letter from Ryan Vitt (owner)  
                         Exhibit 'B' – Proposed Site Plan

Owner/Contractor: Ryan Vitt  
Address: 401 38th Street

Request: Curb cut approval and waiver of 5th onsite parking space

I am requesting City Council approval of a curb cut and a waiver of the Public Works required 5th onsite parking space for a new duplex located at 401 38th Street on Newport Island. The proposed curb cut will be located on Marcus Avenue, 35 feet 4 1/2 inches from the corner of Marcus Avenue and 38th Street. This proposed curb cut distance from the intersection of 38th Street and Marcus Avenue is consistent with other duplexes within the city of Newport Beach. The proposed curb cut will not do away with any street parking along Marcus Avenue or 38th Street. Since there is no decrease in the number of street parking spots, I am requesting the Public Works required 5th onsite parking spot be waived. The proposed new duplex is more in scale with the current development on the island as compared to new duplexes with all 4 onsite parking spots located off the alley. As the drawings show, the proposed new duplex meets the required 4 onsite parking spaces, 2 parking spaces per unit, as well as the appearance of 2 individual side by side units.

Thank you,

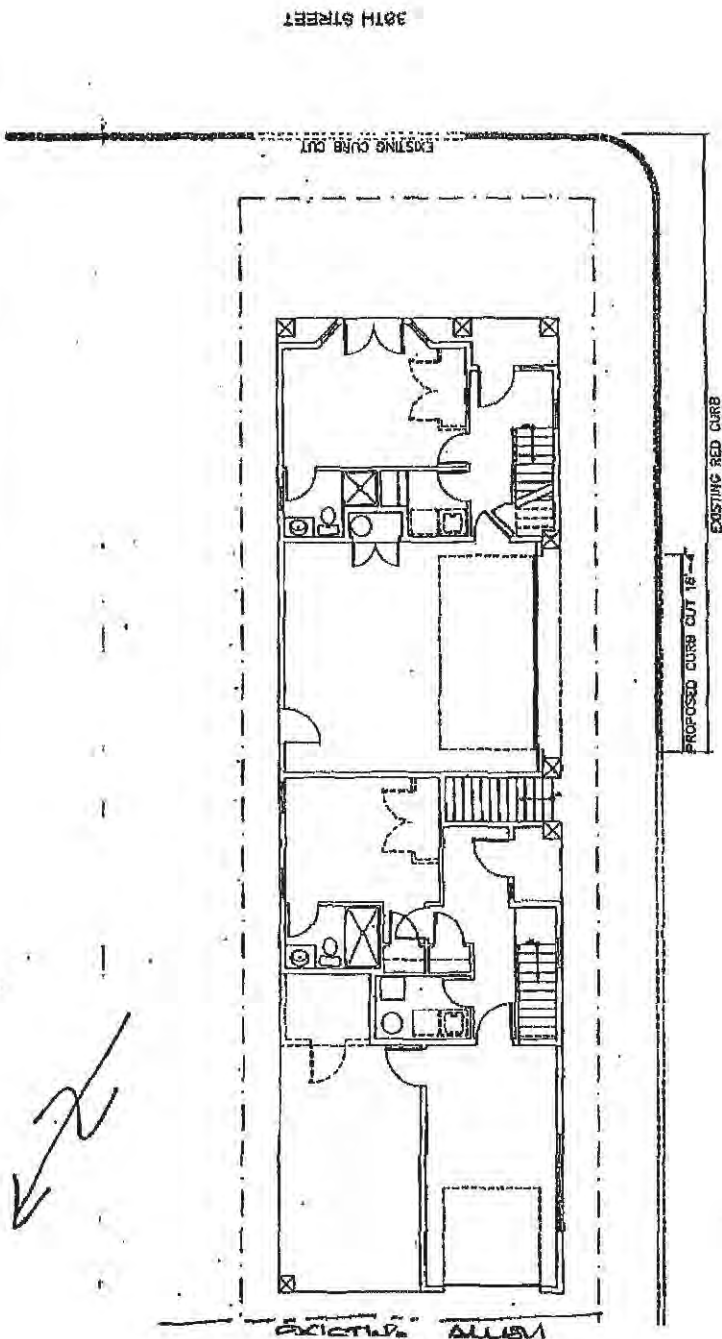
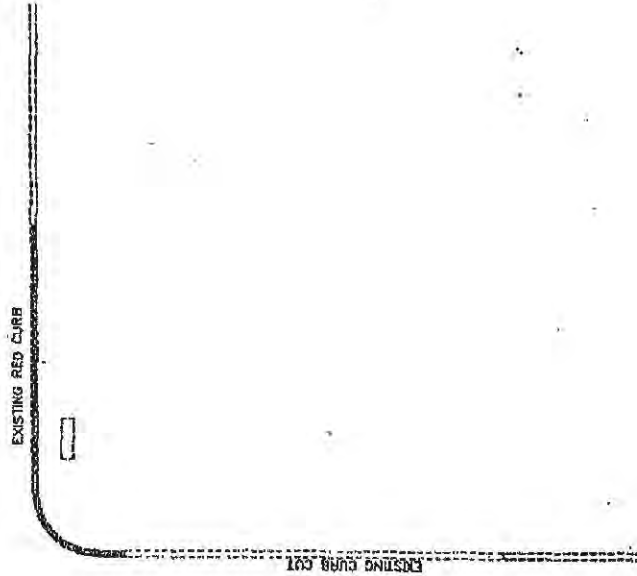
Ryan Vitt

EXHIBIT A





MARCUS AVENUE



MARCUS AVENUE

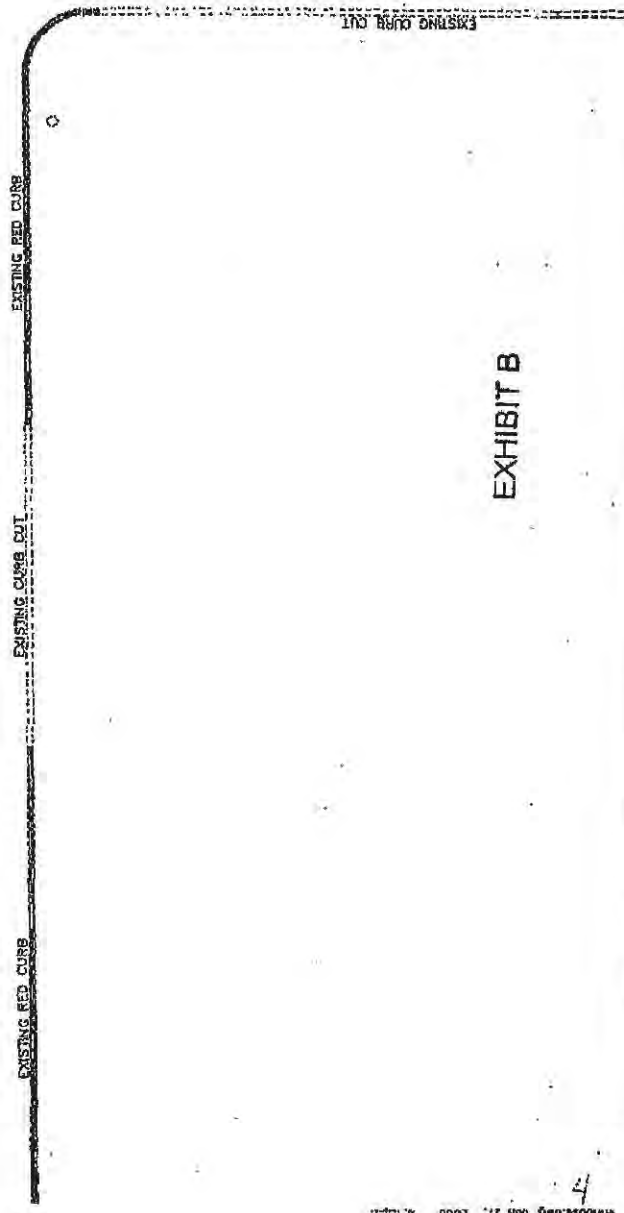


EXHIBIT B

2

**EQAC** - Council Member Nichols reported that they met last night and will be preparing comments relative to the General Plan.

**Ad Hoc Telecommunications Committee** - Councilmember Daigle reported that they have been discussing a media policy.

**Newport Beach/Irvine Borders Committee** - Council Member Daigle reported that the Newport Beach members met with outside legal counsel and generated and sent a letter to Irvine that articulates the City's concerns with their development at the City's border.

**City Hall Site Review Committee** - Mayor Pro Tem Rosansky reported that they will meet next on March 6 in the Council Chambers and indicated that they are still soliciting potential sites for City Hall.

**Facilities Finance Review Committee** - Mayor Webb reported that they met on Monday and will meet again on the March 13 at 4:00 p.m. He stated that they received reports relative to future facilities needs and the City's financial status.

**SCAG Aviation Committee** - Council Member Ridgeway stated that they discussed the airport system as it relates to the regional transportation plan. He reported that they will be looking at a ground transportation system and noted that Southern California's requirement will be 170 Million Annual Passengers (MAP) by 2030.

**M. PLANNING COMMISSION AGENDA AND ORAL STATUS REPORT**

**14. PLANNING COMMISSION AGENDA FOR FEBRUARY 23, 2006. [100-2006]**

Planning Director Temple reviewed the following Planning Commission items: Brookfield Homes - 1301 Quail Street (PA2004-251); JS Residential, L.P. - 801 Domingo Drive (PA2005-110); and Fire Facility Overlay for the proposed Fire Station in Santa Ana Heights (PA206-033).

**N. CURRENT BUSINESS**

**15. 401 38TH STREET - APPEAL OF STAFF DECISION TO NOT ALLOW A NEW CURB CUT ON NEWPORT ISLAND. [100-2006]**

Traffic/Development Services Manager Edmonston provided the staff report and indicated that they denied the request because, although the number of on-street parking spaces will be maintained, it doesn't conform with the Council policy. Council Member Ridgeway believed that the policy isn't serving the citizens well in this case and noted that the current curb cut is the only one on 38th Street.

**Motion by Council Member Ridgeway** to 1) approve Encroachment Permit N2006-0073; and 2) direct staff to condition the owner to close the existing curb cut fronting the property on 38th Street in conjunction with the construction of the proposed duplex.

Ryan Vitt, property owner, displayed a model of the proposed new curb cut.

The motion carried by the following roll call vote:



Ayes: Council Member Curry, Council Member Selich, Mayor Pro Tem Rosansky, Mayor Webb, Council Member Ridgeway, Council Member Daigle, Council Member Nichols

**16. BACK BAY SCIENCE CENTER - AWARD OF CONTRACT (C-3460), APPROVAL OF PROFESSIONAL SERVICES AGREEMENT WITH DOUGLAS E. BARNHART, AND AMENDMENT NO. 3 TO PROFESSIONAL SERVICES AGREEMENT WITH GAIL PICKART. [38/100-2006]**

Assistant City Manager Kiff utilized a PowerPoint presentation to show what entities are involved in the project, how Shellmaker looks today and how it will look after the Back Bay Science Center (BBSC) is constructed, the floor plan of the BBSC, the phases of the project, the updated budget, issues for Council to consider, and the project timeline. He displayed the websites where people can get more information and noted that the partners have been working on this project for about five years.

In response to questions, Assistant City Manager Kiff explained that the City's contribution is coming from the American Trader Oil Spill Fund, the Newport Bay Restoration Fund, the General Fund, and reimbursable Trailhead Funds. He clarified that improvements like including a tidepool feature and the canvas cover over the amphitheater are not in this phase as they intend to seek sponsors.

Noting how much money is being spent on the Back Bay, Council Member Nichols stated that he would like to see the money used in the front Bay.

Council Member Ridgeway noted that, as Chair of the Coastal/Bay Water Quality Citizens Advisory Committee, he and all the members support this. Further, when the tidepool is added, there will not be as many students visiting the Corona del Mar tidepools.

**Motion by Council Member Ridgeway to 1) approve the plans and specifications; 2) award or reject the bid packages (1-16) for C-3460 as outlined in the staff report for the total bid price of \$4,469,033 and authorize the Mayor and the City Clerk to execute the contracts; 3) establish an amount of \$245,000 to cover the cost of unforeseen work; an amount of \$260,000 to cover contracts for items to be re-bid; and an amount of \$212,900 for professional support services, preconstruction services and relocation costs to move existing modular units; 4) approve a Construction Manager at Risk Agreement with Douglas E. Barnhart, Inc. authorizing compensation for an amount not to exceed \$574,631 and authorize the Mayor and the City Clerk to execute the Agreement; 5) approve Amendment No. 3 to Professional Services Agreement with Gail P. Pickart, P.E., for project management during construction for a not to exceed amount of \$45,000 and authorize the Mayor and the City Clerk to execute the Amendment; 6) approve budget amendments (06BA-045) in the aggregate amount of \$5,806,564 from Account Numbers 010-3605 (\$1,661,164), 230-3605 (\$311,000), 457-4879 (\$112,000), 457-4879-1 (\$615,400), 457-5927 (\$69,000), 457-4911 (\$1,230,000), 457-4930 (\$308,000), 457-4929 (\$600,000), 457-4940 (\$400,000), 457-4928 (\$500,000) to Account No. 7457-C5100661. 7) authorize the City Manager to enter into a Funding Acceptance and Recognition Agreement with micoean for signage and an entryway monumentation that recognizes micoean's \$500,000 contribution to the BBSC.**

Dr. Jack Skinner requested that Council support the motion and expressed his reasons why the BBSC is needed.

Jack Keating, Newport Bay Naturalists and Friends member, stated that there is a





**CITY OF**

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# **NEWPORT BEACH**

## **City Council Staff Report**

January 14, 2020  
Agenda Item No. 19

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** David A. Webb, Public Works Director - 949-644-3311,  
dawebb@newportbeachca.gov

**PREPARED BY:** Tony Brine, City Traffic Engineer, tbrine@newportbeachca.gov  
**PHONE:** 949-644-3329

**TITLE:** Ordinance No. 2020-1: Amending Chapter 12.24 of the Newport Beach Municipal Code Regarding Speed Limits

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### **ABSTRACT:**

California Vehicle Code (CVC) Section 40802 requires that the City review its speed limits every five (5), seven (7), or ten (10) years depending on changes to roadway conditions and other factors. Additionally, the CVC requires posted speed limits to be justified by a current Engineering and Traffic Survey (E&TS) if the speed limits are going to be enforced by the Police Department using radar. The last comprehensive E&TS was approved by the City Council in 2011.

Staff has prepared the updated 2019 E&TS confirming that all existing posted speed limits are set in conformance with the CVC and State law. Roadway speed limits citywide are recommended to remain unchanged from the current posted speed limits with the exception of six (6) streets.

### **RECOMMENDATION:**

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Waive full reading, read by title only, introduce Ordinance No. 2020-1, *An Ordinance of the City Council of the City of Newport Beach, California, Amending Sections of Chapter 12.24 of the Newport Beach Municipal Code Regarding Increasing and Decreasing State Speed Limits*, and pass to second reading on January 28, 2020.

### **FUNDING REQUIREMENTS:**

Sufficient funding is available in the current Capital Improvement Program budget for the purchase and installation of new speed limit signs for those roadways requiring changes. It will be expensed to the Traffic Signage, Striping and Marking project (19T03) account 01201927-980000-19T03.

## **DISCUSSION:**

California Vehicle Code Section 40802 requires that the City review its speed limits every five (5), seven (7), or ten (10) years depending on changes to roadway conditions and other factors. As part of this review, new speed data was collected on every non-residential street in the city. The collection of speed data, accident records, and roadway conditions constitute an Engineering and Traffic Survey (E&TS). The last comprehensive E&TS was approved by the City Council in 2011.

The California Vehicle Code specifies that the posted speed limit on any street, other than a local street or school zone, must be established by a current E&TS if a speed-measuring device (laser, radar) is used by the Police Department to enforce speed limits.

The California Manual on Uniform Traffic Control Devices explains in detail the legal procedures for establishing speed limits throughout the State. Local jurisdictions are required to establish speed limits per State law, and do not have latitude to artificially raise or lower speed limits.

The basic process to setting legal speed limits is to sample the speed of traffic on a roadway and identify the “critical speed” or “85<sup>th</sup> percentile speed”, which is that speed at or below which 85% of the traffic is moving. The speed limit is then set at the nearest 5 MPH increment to the 85th percentile speed. When there is a high accident rate, or other “conditions not readily apparent to the driver”, a further reduction of 5 MPH may be justified if well documented. These conditions can include high pedestrian and bicycle usage. Public Works staff has reviewed all roadway segments to determine if there are speed related accidents or other conditions that would justify a 5 MPH reduction when establishing the posted speed limit.

The new E&TS was completed to confirm that all existing posted speed limits throughout the city are set in conformance with the California Vehicle Code and State law. Roadway speed limits citywide are recommended to remain unchanged from the current posted speed limits with the following exceptions:

The speed limits on the following two (2) street sections are recommended to be **increased** based on the latest E&TS survey:

- Camelback Street: 35 mph to 40 mph
- MacArthur Boulevard: Ford Road to San Joaquin Hills Road: 55 mph to 60 mph

The speed limits on the following four (4) street sections are recommended to be **decreased** based on the latest E&TS survey

- 15<sup>th</sup> Street: Superior Avenue to Monrovia Avenue: 40 mph to 35 mph
- Newport Center Drive: Coast Highway to Newport Center Drive E/W.: 45 mph to 40 mph
- Ford Road: Newport Hills Drive to San Miguel Drive: 45 mph to 40 mph
- Newport Ridge Drive W.: San Joaquin Hills Rd. to Newport Ridge Drive E.: 45 mph to 40 mph

A new ordinance establishing speed limits is necessary to enable effective enforcement of speed limits on streets throughout the city. Staff recommends the introduction of an ordinance that modifies speed limits on the above six (6) street sections.

**ENVIRONMENTAL REVIEW:**

Staff recommends the City Council find this action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

**NOTICING:**

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

**ATTACHMENTS:**

Attachment A – Ordinance No. 2020-1

Attachment B – Engineering and Traffic Survey Summary





## ATTACHMENT A

### ORDINANCE NO. 2020-1

#### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AMENDING SECTIONS OF CHAPTER 12.24 OF THE NEWPORT BEACH MUNICIPAL CODE REGARDING INCREASING AND DECREASING STATE SPEED LIMITS

**WHEREAS**, the California Vehicle Code requires speed limits to be justified by an engineering and traffic survey ("E & TS") if the speed limits are to be enforced by radar;

**WHEREAS**, California Vehicle Code Section 40802 requires local agencies to conduct engineering studies to reevaluate non-statutory speed limits on segments of their roadways;

**WHEREAS**, the most recent E & TS for the City of Newport Beach ("City") was approved in 2011;

**WHEREAS**, an updated E & TS for the City was completed in 2019; and

**WHEREAS**, the updated E & TS includes recommendations for speed limit adjustments on various roads within the City.

**NOW THEREFORE**, the City Council of the City of Newport Beach ordains as follows:

**Section 1:** Section 12.24.052 of the Newport Beach Municipal Code is hereby amended to read as follows:

The prima facie speed limit on the following named streets or parts thereof shall be sixty (60) miles per hour:

Newport Coast Drive from Pacific Coast Highway to Route 73.  
MacArthur Boulevard from Ford Road to San Joaquin Hills Road.

**Section 2:** Section 12.24.055 of the Newport Beach Municipal Code is hereby amended to read as follows:

The prima facie speed limit on the following named streets or parts thereof shall be fifty-five (55) miles per hour:

Coast Highway from Cameo Shores Road to Newport Coast Drive.  
Jamboree Road from East Coast Highway to Campus Drive.  
MacArthur Boulevard from Campus Road to Jamboree Road.  
MacArthur Boulevard from Route 73 to Ford Road.  
MacArthur Boulevard from San Joaquin Hills Road to East Coast Highway.  
San Joaquin Hills Road from Marguerite Avenue to Newport Coast Drive.

**Section 3:** Section 12.24.065 of the Newport Beach Municipal Code is hereby amended to read as follows:

The prima facie speed limit on the following named streets or parts thereof shall be forty-five (45) miles per hour:

Avocado Avenue from Coast Highway to San Miguel Drive.  
Birch Street from Bristol Street to Jamboree Road.  
Bison Avenue from MacArthur Boulevard to Jamboree Road.  
Bristol Street from Jamboree Road to Campus Drive.  
Campus Drive from MacArthur Boulevard to Jamboree Road.  
Coast Highway from Poppy Avenue to Cameo Shores Road.  
Dover Drive from West Coast Highway to Westcliff Drive.  
Irvine Avenue from Santa Isabel Avenue to Mesa Drive.  
Mesa Drive-Birch Street from Irvine Avenue to Bristol Street.  
Pelican Hill Road South from Newport Coast Drive to Pelican Hill Road North.  
Ridge Park Road from Newport Coast Drive to End of Street East.  
Santa Barbara Drive.  
Vista Ridge Road.

**Section 4:** Section 12.24.070 of the Newport Beach Municipal Code is hereby amended to read as follows:

The prima facie speed limit on the following named streets or parts thereof shall be forty (40) miles per hour:

Bayside Drive from Coast Highway to Promontory Drive East.  
Camelback Street.  
Coast Highway from Avocado Avenue to Carnation Avenue.  
Dove Street from Campus Drive to Bristol Street.  
Eastbluff Drive North from Vista del Sol northerly to Jamboree Road.  
Ford Road from Newport Hills Drive to San Miguel Drive.  
Irvine Avenue from Westcliff Drive to Santiago Drive.



Marguerite Avenue from Fifth Avenue to San Joaquin Hills Road.  
Newport Center Drive.  
Placentia Avenue between Hospital Road and the north City limit.  
Quail Street from Birch Street to Dove Street.  
San Miguel Drive from MacArthur Boulevard to San Joaquin Hills Road.  
Spyglass Hill Road.  
Superior Avenue from Coast Highway to Industrial Way.  
Von Karman Avenue from MacArthur Boulevard to Campus Drive.  
Newport Ridge Drive East from San Joaquin Hills Road to Newport Ridge Drive West.  
Newport Ridge Drive West from San Joaquin Hills Road to Newport Ridge Drive East.

**Section 5:** Section 12.24.075 of the Newport Beach Municipal Code is hereby amended to read as follows:

The prima facie speed limit on the following named streets or parts thereof shall be thirty-five (35) miles per hour:

Bayside Drive from Promontory Drive East to Marine Avenue.  
Coast Highway from Carnation Avenue to Poppy Avenue.  
Eastbluff Drive South from Vista del Sol southerly to Jamboree Road.  
Hospital Road from Newport Boulevard to Superior Avenue.  
Irvine Avenue from 16th Street to Westcliff Drive.  
Irvine Avenue from Santiago Drive to Santa Isabel Avenue.  
Jamboree Road from Bayside Drive to East Coast Highway.  
La Salud from La Felicidad to La Vida.  
Monrovia Avenue south of 16th Street to north of Production Place.  
Newport Center East/West from Newport Center Drive to Newport Center Drive.  
San Clemente Drive from Santa Barbara Drive to Santa Cruz Drive.  
San Miguel Drive from Newport Center Drive to MacArthur Boulevard.  
Santa Cruz Drive.  
Sea Lane between Goldenrod Avenue and Harbor View Drive.  
Westcliff Drive from Dover Drive to Irvine Avenue.  
15th Street between Superior Avenue and Monrovia Avenue.  
16th Street from Irvine Avenue to Dover Drive.

**Section 6:** The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

**Section 7:** If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

**Section 8:** The City Council finds the introduction and adoption of this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

**Section 9:** Except as expressly modified in this ordinance, all other Sections, Subsections, terms, clauses and phrases set forth in the Newport Beach Municipal Code shall remain unchanged and shall be in full force and effect.

**Section 10:** The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the ordinance, or a summary thereof, to be published pursuant to City Charter Section 414.

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This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 14th day of January, 2020, and adopted on the 28th day of January, 2020, by the following vote, to-wit:

AYES: \_\_\_\_\_

NAYS: \_\_\_\_\_


ABSENT: \_\_\_\_\_

\_\_\_\_\_  
WILL O'NEILL, MAYOR

**ATTEST:**

\_\_\_\_\_  
LEILANI I. BROWN, CITY CLERK

**APPROVED AS TO FORM:**  
CITY ATTORNEY'S OFFICE

  
\_\_\_\_\_  
AARON C. HARP, CITY ATTORNEY





## ATTACHMENT B

### SPEED SURVEY SUMMARY

Roadway ID Number	Location	Direction	Speed Limit	85th Percentile Speed
1	<b>15th Street</b>			
	Monrovia Ave to Superior Ave	EB	35	36
		WB	35	37
2	<b>16th Street</b>			
	Irvine Ave to Dover Dr	EB	35	39
		WB	35	39
3	<b>Avocado Avenue</b>			
	San Miguel Dr to Coast Hwy	NB	45	45
		SB	45	44
	Coast Hwy to Waterfront Dr	NB	30	33
		SB	30	33
4	<b>Balboa Boulevard</b>			
	Coast Hwy to 32nd St	EB	30	32
		WB	30	32
	32nd St to 23rd St	EB	30	33
		WB	30	33
	23rd St to Medina Wy	EB	30	36
		WB	30	37
	Medina Wy to Main St	EB	25	32
		WB	25	32
5	<b>Bayside Drive</b>			
	Coast Hwy to Promontory Dr East	EB	40	44
		WB	40	43
	Promontory Dr East to Marine Ave	EB	35	
		WB	35	
	Marine Ave to El Paseo Dr	EB	35	34
		WB	35	37
	El Paseo Dr to Carnation Ave	EB	25	29
		WB	25	28
	Carnation Ave to Marguerite Ave	EB	30	32
		WB	30	33
6	<b>Birch Street - Mesa Drive</b>			
	Irvine Ave to Bristol St South	NB	45	45
		SB	45	47
	Bristol St South to MacArthur Blvd	NB	45	47
		SB	45	45
	MacArthur Blvd to Jamboree Rd	EB	45	44
		WB	45	43

Roadway ID Number	Location	Direction	Speed Limit	85th Percentile Speed
7	<b>Bison Avenue</b>			
	Jamboree Rd to MacArthur Blvd	EB	45	47
		WB	45	45
	MacArthur Blvd to Route 73	EB	50	49
		WB	50	47
8	<b>Bonita Canyon Drive</b>			
	MacArthur Blvd to East City Limit	EB	50	50
		WB	50	49
9	<b>Bristol Street North</b>			
	Jamboree Rd to Campus Dr	EB	NA	NA
		WB	45	48
10	<b>Bristol Street South</b>			
	Campus Dr to Jamboree Rd	EB	45	48
		WB	NA	NA
11	<b>Camelback Street</b>			
	Bison Ave to Jamboree Rd	NB	40	44
		SB	40	39
12	<b>Campus Drive</b>			
	Bristol St South to MacArthur Blvd	NB	45	48
		SB	COUNTY OF ORANGE	
	MacArthur Blvd to Jamboree Rd	EB	45	48
		WB	CITY OF IRVINE	
13	<b>Cliff Drive</b>			
	Riverside Ave to Dover Dr	EB	30	34
		WB	30	32
14	<b>Coast Highway</b>			
	West City Limit to Superior Ave	NB	50	See Appendix C
		SB	50	See Appendix C
	Superior Ave to Hoag Dr/Balboa Coves	NB	45	See Appendix C
		SB	50	See Appendix C
	Hoag Dr/Balboa Coves to Riverside Ave	NB	40	See Appendix C
		SB	45	See Appendix C
	Riverside Ave to Tustin Ave	NB	40	See Appendix C
		SB	40	See Appendix C
	Tustin Ave to Dover Dr	NB	45	See Appendix C
		SB	40	See Appendix C
	Dover Dr to Bayside Dr	NB	50	See Appendix C
		SB	45	See Appendix C
	Bayside Dr to Jamboree Rd	NB	50	See Appendix C
		SB	50	See Appendix C
	Jamboree Rd to Avocado Ave	EB	50	54
		WB	50	56



Roadway ID Number	Location	Direction	Speed Limit	85th Percentile Speed
14	Avocado Ave to Carnation Ave	EB	40	38
		WB	40	41
	Carnation Ave to Poppy Ave	EB	35	36
		WB	35	35
	Poppy Ave to Cameo Shores Rd	EB	45	49
		WB	45	49
	Cameo Shores Rd to Newport Coast Dr	EB	55	57
		WB	55	57
	Newport Coast Dr to Los Trancos Park	NB	60	See Appendix C
		SB	60	See Appendix C
	Los Trancos Park to Crystal Heights	NB	60	See Appendix C
		SB	60	See Appendix C
15	Crystal Heights to Reef Point	NB	60	See Appendix C
		SB	60	See Appendix C
	Reef Point to East City Limit	NB	55	See Appendix C
16	Dove Street			
	Campus Dr to Bristol St North	EB	40	38
17	Dover Drive (w/o Channel)			
	Coast Hwy to Westcliff Dr	NB	45	45
		SB	45	45
	Westcliff Dr to Mariners Dr	NB	35	39
		SB	35	39
18	Mariners Dr to Irvine Ave	NB	30	34
		SB	30	31
	Eastbluff Drive			
19	Jamboree Rd South to Vista Del Oro South	NB	35	39
		SB	35	39
	Vista Del Oro South to Jamboree Rd North	NB	40	44
		SB	40	44
20	Ford Road			
	Jamboree Rd and MacArthur Blvd	EB	50	51
		WB	50	50
19	Hospital Road			
20	Newport Blvd to Superior Ave	EB	35	35
		WB	35	35
20	Irvine Avenue			
	15th St to 16th St	NB	30	37
		SB	30	35

Roadway ID Number	Location	Direction	Speed Limit	85th Percentile Speed
20	16th St to Westcliff Dr	NB	35	37
		SB	35	38
	Westcliff Dr to Dover Dr	NB	40	43
		SB	CITY OF COSTA MESA	
	Dover Dr to Santiago Dr	NB	40	47
		SB	40	47
	Santiago Dr to Santa Isabel Ave	NB	35	40
		SB	35	38
	Santa Isabel Ave to Mesa Dr	NB	45	50
		SB	45	48
	Mesa Dr to Bristol St South	NB	50	51
		SB	50	51
21	<b>Jamboree Road</b>			
	Bayside Dr to Coast Hwy	NB	35	33
		SB	35	35
	Coast Hwy to San Joaquin Hills Rd	NB	55	58
		SB	55	58
	San Joaquin Hills Rd to Ford Rd	NB	55	59
		SB	55	59
	Ford Rd to Bison Ave	NB	55	59
		SB	55	59
	Bison Ave to University Dr	NB	55	59
		SB	55	59
22	University Dr to MacArthur Blvd	NB	55	56
		SB	55	53
	MacArthur Blvd to Campus Dr	NB	CITY OF IRVINE	
		SB	55	54
	<b>La Salud</b>			
	La Felicidad to La Vida	NB	35	39
		SB	35	38
23	<b>MacArthur Boulevard</b>			
	Campus Dr to Jamboree Rd	NB	55	57
		SB	55	55
	Route 73 to Bison Ave	NB	55	56
		SB	55	55
	Bison Ave to Ford Rd	NB	55	57
		SB	55	57
	Ford Rd to San Joaquin Hills Rd	NB	60	62
		SB	60	60
	San Joaquin Hills Rd to Coast Hwy	NB	55	57
		SB	55	55

Roadway ID Number	Location	Direction	Speed Limit	85th Percentile Speed
24	<b>Marguerite Avenue</b>			
	Fifth Ave to San Joaquin Hills Rd	NB	40	44
		SB	40	46
25	<b>Monrovia Avenue</b>			
	15th St to North City Limit	NB	35	34
		SB	35	35
26	<b>Newport Boulevard</b>			
	Balboa Blvd to 32 <sup>nd</sup> St	NB	30	34
		SB	30	34
	32 <sup>nd</sup> St to Finley Ave	NB	30	35
		SB	30	35
	Finley Ave to West Coast Hwy	NB	35	See Appendix C
		SB	35	See Appendix C
	West Coast Hwy to Hospital Rd	NB	45	See Appendix C
		SB	40	See Appendix C
	Hospital Rd to North City Limit	NB	45	See Appendix C
		SB	45	See Appendix C
27	<b>Newport Center Drive</b>			
	Coast Hwy to Newport Center Dr E/W	NB	40	43
		SB	40	41
28	<b>Newport Center Drive East/West</b>			
	Newport Center Dr to Newport Center Dr	NB	35	37
		SB	35	37
29	<b>Newport Coast Drive</b>			
	Coast Hwy to Pelican Hill Rd North	NB	60	60
		SB	60	62
	Pelican Hill Rd N to San Joaquin Hills Rd	NB	60	60
		SB	60	59
	San Joaquin Hills Rd to Route 73	NB	60	64
		SB	60	64
30	<b>Newport Ridge Drive East</b>			
	San Joaquin Hills Rd to Terrace Ridge	NB	40	40
		SB	40	38
31	<b>Newport Ridge Drive West</b>			
	Terrace Ridge to San Joaquin Hills Rd	NB	40	44
		SB	40	44
32	<b>Old Newport Boulevard</b>			
	Coast Hwy to 15th St	NB	35	34
		SB	35	35
33	<b>Pelican Hill Road North</b>			
	Newport Coast Dr to Pelican Hill Circle North	EB	50	48
		WB	50	50



Roadway ID Number	Location	Direction	Speed Limit	85th Percentile Speed
34	<b>Pelican Hills Road South</b>			
	Pelican Hill Circle North to Newport Coast Dr	EB	45	42
		WB	45	46
35	<b>Placentia Avenue</b>			
	Hospital Rd to North City Limit	NB	40	42
		SB	40	42
36	<b>Quail Street</b>			
	Birch St to Dove St	EB	40	42
		WB	40	42
37	<b>Ridge Park Road</b>			
	Newport Coast Dr to Vista Ridge Rd	EB	45	48
		WB	45	47
38	<b>Riverside Avenue</b>			
	Coast Hwy to Cliff Dr	NB	30	35
		SB	30	34
39	<b>San Clemente Drive</b>			
	Santa Barbara Dr to Santa Cruz Dr	EB	35	36
		WB	35	38
40	<b>San Joaquin Hills Road</b>			
	Jamboree Rd to MacArthur Blvd	EB	50	52
		WB	50	53
	MacArthur Blvd to Marguerite Ave	EB	50	52
		WB	50	53
	Marguerite Ave to Spyglass Hill Rd	EB	55	59
		WB	55	59
	Spyglass Hill Rd to Newport Ridge Dr W	EB	55	56
		WB	55	58
41	<b>San Miguel Drive</b>			
	Newport Center Dr to MacArthur Blvd	NB	35	38
		SB	35	35
	MacArthur Blvd to San Joaquin Hills Rd	NB	40	44
		SB	40	43
42	<b>Santa Barbara Drive</b>			
	Jamboree Rd to Newport Center Dr	EB	45	45
		WB	45	40
43	<b>Santa Cruz Drive</b>			
	San Joaquin Hills Rd to Newport Center Dr	NB	35	35
		SB	35	35

Roadway ID Number	Location	Direction	Speed Limit	85th Percentile Speed
44	<b>Sea Lane</b>			
	Goldenrod Ave to Harbor View Dr	EB	35	35
		WB	35	32
45	<b>Spyglass Hill Road</b>			
	San Joaquin Hills Rd to San Miguel Dr	NB	40	44
		SB	40	40
46	<b>Superior Avenue</b>			
	Coast Hwy to Industrial Way	NB	40	42
		SB	40	42
47	<b>University Drive</b>			
	Jamboree Rd to East City Limit	EB	50	48
		WB	50	47
48	<b>Via Lido</b>			
	Newport Blvd to Lafayette Ave	EB	25	30
		WB	25	28
49	<b>Vista Del Oro</b>			
	Eastbluff Dr (North) to Vista Del Sol	EB	30	29
		WB	30	28
	Eastbluff Dr (South) to Vista Del Sol	EB	30	36
		WB	30	34
50	<b>Vista Ridge Road</b>			
	Newport Coast Dr to Ridge Park Rd	EB	45	45
		WB	45	47
51	<b>Von Karman Avenue</b>			
	MacArthur Blvd to Campus Dr	EB	40	41
		WB	40	39
52	<b>Westcliff Drive</b>			
	Irvine Ave to Dover Dr	EB	35	37
		WB	35	37
53	<b>Westminster Avenue</b>			
	Newport Blvd to 15th St	EB	30	33
		WB	30	31







**CITY OF**

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# **NEWPORT BEACH**

## **City Council Staff Report**

January 14, 2020  
Agenda Item No. 20

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** Seimone Jurjis, Community Development Director - 949-644-3232,  
sjurjis@newportbeachca.gov

**PREPARED BY:** Jim Campbell, Deputy Community Development Director  
**PHONE:** 949-644-3210

**TITLE:** Housing Action Plan to Address State Mandate for Additional  
Housing and Resolution No. 2020-6: Dissolving the General Plan  
Update Steering Committee and Establishing the Housing Element  
Update Advisory Committee

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### **ABSTRACT:**

At the November 7, 2019, Southern California Association of Governments (SCAG) meeting, the Regional Council radically changed the Regional Housing Needs Allocation (RHNA) methodology that was developed without input from the City. The “substitute motion” RHNA methodology submitted by the County of Riverside cities, was approved by SCAG’s Regional Council, and changed the City’s RHNA allocation from 2,751 to 4,832 housing units while reducing the County of Riverside cities’ RHNA allocations. The City’s increased RHNA number accelerates four decades worth of planning and development into the next decade. Due to this State mandate to plan for additional housing and the un-vetted changes by SCAG, the City Council directed staff to create an action plan to immediately address the exceptionally high number of housing units. Staff was also directed by the General Plan Update Steering Committee to seek guidance from the City Council about how the revised RHNA affects the City’s General Plan update process.

Staff has drafted the Housing Action Plan (Attachment B) that takes an aggressive approach to addressing the recent SCAG change that significantly increased the City’s RHNA allocation. As part of the Housing Action Plan, staff is also recommending the City Council consider establishing a Housing Element Update Advisory Committee to focus on updating the necessary elements of the City’s General Plan that address the RHNA allocation.

### **RECOMMENDATION:**

- a) Determine the recommended actions exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly;

- b) Direct staff to file an appeal to SCAG regarding the RHNA methodology;
- c) Adopt Resolution No. 2020-6, *A Resolution of the City Council of the City of Newport Beach, California, Dissolving the General Plan Update Steering Committee and Establishing the Housing Element Update Advisory Committee*; and
- c) Provide direction to staff on the Housing Action Plan and amending Section 423 of the City's Charter to be voted upon by the residents.

### **FUNDING REQUIREMENTS:**

No additional funding is being requested at this time.

### **DISCUSSION:**

At the November 7, 2019, SCAG meeting, the Regional Council radically changed the RHNA methodology that had been developed and vetted over a long period of time without meaningful analysis by SCAG staff or member jurisdictions. The "substitute motion" RHNA methodology approved by SCAG would change the City's RHNA allocation from 2,751 to 4,832 housing units. To obtain compliance with the State mandate, the City must update its Housing and Land Use Elements. The Housing Element must be submitted to the California Department of Housing and Community Development (HCD) by October 15, 2021. Combining excessively high housing units with recent changes to Housing Element law limiting what would potentially qualify as a housing opportunity site will make it nearly impossible for the City of Newport Beach to obtain Housing Element certification. Furthermore, the City's Charter Section 423 will require a vote of the electorate given the magnitude of the RHNA housing unit increase. Given the October 2021 deadline, a special election will be necessary, costing the City approximately \$400,000.

At its November 19, 2019, meeting, the City Council requested that staff bring forward an action plan to address the estimated 4,832 RHNA housing units anticipated to be distributed to the City through the State's mandate. Staff has developed a 12-point Housing Action Plan with four main objectives:

- A. *Pursue legislative amendments to assist the City to obtain compliance with the Housing Element deadline of October 15, 2021;*

With the projected 4,832 RHNA housing units to be distributed to the City, the Land Use Element of the General Plan would be required to increase residential development opportunities. The update would necessitate a vote of the residents due to Charter Section 423, which requires a vote for any major General Plan amendment resulting in a density increase greater than 100 dwelling units. A special election vote would increase cost and add significant time to the overall schedule for updating the necessary elements. Therefore, to help ensure a successful adoption of a certified Housing Element, staff believes the City must pursue the following legislative amendments to housing element law:

1. An extension of time beyond the current October 15, 2021, Housing Element due date;
2. Reform CEQA to allow for an exemption for general plan element updates due to the housing crisis declared by the State;
3. Amend Government Code Section 65583.2 to allow for more flexibility or automatic approval of sites meeting certain objective standards when determining suitability of housing opportunity sites needed to meet RHNA; and
4. Amend allowance that permits a local government to credit up to 25 percent of their RHNA sites requirements through existing units that will be substantially rehabilitated, converted from non-affordable to affordable housing, or preservation of affordable units that are at-risk of converting to market-rate units. The current allowance is severely limiting and revisions to the law may allow for greater use of this credit.

*B. Find ways to reduce Regional Housing Needs Allocation;*

Staff recommends the City file an appeal after HCD issues their comments to SCAG's methodology and SCAG adopts the final RHNA in February 2020.

*C. Review priorities of the General Plan Update process to focus on housing;*

Staff recommends the City Council redirect the City's resources (staffing and budget) towards a focused update of the Housing, Land Use, and Circulation Elements. As part of this shift, staff also recommends dissolving the General Plan Update Steering Committee and establishing a Housing Element Update Advisory Committee to provide guidance on policy decisions and act as the advisory committee for the more focused update.

*D. Regional Collaboration*

Collaborate with surrounding and regional cities, the League of California Cities, and Association of California Cities of Orange County.

General Plan Update Steering Committee Feedback

It is important to note that the General Plan Update Steering Committee (Committee) was created by City Council resolution in January 2019 and has been meeting since February 2019. The Committee was not tasked with guiding policy decisions, rather its focus was on overseeing the outreach and engagement process. In this capacity, the Committee has worked with City staff and City Council to select an outreach consultant and has shaped the Listen and Learn (i.e., the community engagement and outreach process). During the 13 meetings the Committee held, and even since the Listen and Learn kickoff in October, a lot has changed. The Committee frequently received updates from City staff on SCAG's determination of 4,832 new housing units for the City. The Committee was consistently mindful of this requirement, as it worked to guide the Listen and Learn process.



Most recently, the Committee met on December 4, 2019, to discuss the Listen and Learn process and to consider staff's recommendation on immediately forming a broader General Plan Advisory Committee (GPAC) to help guide policy decisions. The Committee expressed frustration with the State mandating the City to plan for 4,832 RHNA housing units, especially given a seemingly unreasonable time constraint with an October 15, 2021, deadline to update the City's Housing Element. The Committee believed there were still unanswered questions, such as: what will the final RHNA number be for the City? What will the HCD guidelines state? How many ADUs can the City utilize in the Housing Element? Instead of recommending or not recommending the formation of a GPAC, the Committee believed that staff should seek further direction from the City Council on the General Plan update process, as much has changed since they received their initial charge. Of particular concern is how the City Council would like to address the immediate need of pursuing a General Plan update in response to the updated RHNA numbers. The Committee discussed the current update efforts and concluded the City's focus should be on planning for the 4,832 RHNA housing units. A more broad and comprehensive General Plan update would follow later.

In summary, the Committee believes there should be an immediate pause in the overall General Plan update process and a redirection of the priorities and resources towards addressing the RHNA housing numbers.

Some of the comments received from the Committee are:

1. Go back to City Council and receive direction on the General Plan update process before forming the GPAC;
2. Redirect the General Plan update process and focus on addressing the RHNA housing numbers;
3. It is premature to continue with further community workshops on a broader General Plan update;
4. The City should not let the Housing Element submittal deadline dictate the City's process;
5. The City should not rush the update process, as it should be done right;
6. Our City is too important and this issue is so very transformational; and
7. The City may compromise too much if it goes too fast.

#### Staff's Recommendations

Based on the Committee's comments and recommendation to seek guidance from the City Council on these issues, City staff recommends the following:

1. Pause the overall General Plan update and refocus the City's resources on updating the Housing, Land Use, and Circulation Elements. Environmental justice policies would be included where appropriate to be compliant with State law;

2. Create a new advisory committee (the Housing Element Update Advisory Committee) to guide the refocused update and build upon the progress already established by the General Plan Update Steering Committee. Staff recommends nine voting members with the Mayor or a City Council Member serving as a non-voting ex-officio member. The committee would serve as a forum for public participation and they would provide guidance on policy decisions. The GPUSC would dissolve with the appointment of the new committee; and
3. With consultation and direction from the new committee, redirect the existing outreach consultant to focus on obtaining community consensus on where and how to plan for the RHNA-mandated housing units.

### Charter 423 Amendment

Accommodating the State-mandated increase in dwelling units (the RHNA) within the City's General Plan will necessitate a vote of the residents because one or more General Plan Statistical Areas will likely receive increases over 100 units. The residents might not approve the General Plan amendment, resulting in a non-compliant Housing Element potentially subjecting the City to significant penalties and fines. The City would likely need to seek intervention from the Courts in that circumstance.

One way to avoid this potential situation is to consider a Charter amendment for the November 2020 General Election exempting the City's General Plan amendment to accommodate the State mandate. The Charter amendment would be carefully written to not apply to any other proposed amendment. In other words, only the City's plan to accommodate a State-mandated increase in housing units would not require a vote. If a property owner requested a change to the Land Use Element to accommodate additional housing at a site not included in the Housing Element update sponsored by the City, then that application would require a vote if it were classified as a major amendment. While this concept may be controversial and might not be successful if pursued, the attempt to avoid a non-compliant Housing Element requiring Court intervention might be viewed favorably by the State and the Courts. If such a Charter amendment is successful, it would simplify the Housing Element update process. Staff is requesting that the City Council consider placing this amendment on the November 2020 ballot.

### **ENVIRONMENTAL REVIEW:**

Staff recommends the City Council find the recommended actions is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. None of the recommended actions authorize development but only provide a framework for future planning. The future update of the General Plan to accommodate the RHNA will require environmental review consistent with CEQA prior to adoption.

**NOTICING:**

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

**ATTACHMENTS:**

Attachment A – Resolution No. 2020-6  
Attachment B – January 2020 Housing Action Plan



## ATTACHMENT A

### RESOLUTION NO. 2020- 6

#### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, DISSOLVING THE GENERAL PLAN UPDATE STEERING COMMITTEE AND ESTABLISHING THE HOUSING ELEMENT UPDATE ADVISORY COMMITTEE**

**WHEREAS**, on January 22, 2019, the City Council of the City of Newport Beach ("City") adopted Resolution No. 2019-7 creating the General Plan Update Steering Committee ("Committee") to consider amendments to the City's General Plan and Local Coastal Program;

**WHEREAS**, Resolution No. 2019-7 was repealed and replaced by Resolution 2019-20, which maintained the same purpose but revised the number of members of the Committee;

**WHEREAS**, the Committee's primary purpose is to ensure there is sufficient public outreach and stakeholder input regarding the proposed General Plan Update and to guide the initial public outreach effort;

**WHEREAS**, the Committee began meeting in February 2019, worked with City staff and the City's outreach consultant, Kearns & West ("K&W"), and guided the community engagement and outreach process ("Listen and Learn") during this time;

**WHEREAS**, the Committee received regular updates from City staff regarding the California Department of Housing and Community Development ("HCD") Regional Housing Need Determination for the Southern California region of 1,344,740 housing units and the City's estimated Regional Housing Needs Assessment ("RHNA") from the Southern California Association of Governments ("SCAG") for the sixth cycle (2021-2029);

**WHEREAS**, City staff and K&W officially launched the Listen and Learn on October 26, 2019, with a community-wide fair event hosted at the Civic Center followed by a series of seven (7) identical workshops conducted within each of the seven (7) council districts in November and December;

**WHEREAS**, as an element of the General Plan Update, the Committee sought input from the community and discussed the RHNA as part of the City's Housing Element during the Listen and Learn;

**WHEREAS**, also during this time, SCAG's RHNA Subcommittee worked to identify a recommended methodology for distributing HCD's Regional Housing Need Determination that would result in an estimated RHNA allocation of 2,751 new housing units for the City;

**WHEREAS**, on November 7, 2019, the SCAG Regional Council voted to adopt a substitute methodology resulting in an increased RHNA estimate of 4,832 new housing units ("Proposed RHNA Methodology"), which has been submitted to the California Department of Housing and Community Development ("HCD") for final consideration;

**WHEREAS**, recognizing the significant impact of SCAG's allocation of housing units to the City in the Proposed RHNA Methodology, the Committee met on November 6, 2019, and December 4, 2019, and recommended the Committee focus on the Housing Element, Land Use Element, and Circulation Element and to retain a qualified consultant to assist with preparation of amendments to these elements;

**WHEREAS**, the Housing Element requires immediate focus in light of the fact that the City will likely be required to obtain voter approval of the sixth cycle Housing Element Update (2021- 2029), in accordance with Section 423 of the City of Newport Beach Charter, by October 2021;

**WHEREAS**, with the Committee's guidance, City staff worked to release a Request for Proposal ("RFP") for consultant services related to updating the City's General Plan Housing Element, Land Use Element, and Circulation Element on December 20, 2019; and

**WHEREAS**, the aforementioned circumstances require the establishment of a new Committee titled the Housing Element Update Advisory Committee ("Housing Element Update Advisory Committee") to provide community input on the Housing Element update. The Housing Element Update Advisory Committee will be well-suited to help articulate the community's values and vision while providing guidance on shaping policies and goal for the Housing Element.

**NOW, THEREFORE**, the City Council of the City of Newport Beach resolves as follows:

**Section 1:** The City Council hereby creates the Housing Element Update Advisory Committee to serve as a forum for public participation, to guide a focused update of the Housing, Land Use and Circulation Elements of the General Plan, and to build upon the progress already established by the General Plan Update Steering Committee.

**Section 2:** The Housing Element Update Advisory Committee shall be an ad hoc committee and the term, qualification of appointees, selection of appointees, appointment process, membership, and responsibilities shall be done in conformance with this resolution and Attachment 1, which is incorporated herein by reference.

**Section 3.** The City Council hereby repeals Resolution No. 2019-20 effective upon appointment of the Housing Element Update Advisory Committee Members, at which time the General Plan Update Steering Committee is dissolved.

**Section 4:** If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

**Section 5:** The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

**Section 6:** The City Council finds the adoption of this resolution is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly and the formation of a committee is not a project.

**Section 7:** This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting the resolution.

**ADOPTED** this 14th day of January, 2020.

\_\_\_\_\_  
Will O'Neill  
Mayor

**ATTEST:**

\_\_\_\_\_  
Leilani I. Brown  
City Clerk

**APPROVED AS TO FORM:**  
CITY ATTORNEY'S OFFICE

  
\_\_\_\_\_  
Aaron C. Harp  
City Attorney

Attachment 1: Description of the Housing Element Update Advisory Committee



## ATTACHMENT 1

### Housing Element Update Advisory Committee

**AUTHORIZATION:** Established by Resolution No. 2020-\_\_ adopted on January 14, 2020.

**MEMBERSHIP:** Ten (10) total. The Mayor, or a City Council Member designated by the Mayor, shall be an ex officio member without the right to vote. Nine (9) residents appointed by the Mayor and confirmed by the City Council.

**MEMBERSHIP TERM:** The person elected as Mayor, or the City Council Member designated by the Mayor, shall be a member of the Housing Element Update Advisory Committee ("Committee"). The term of the appointed members of the Committee shall be indefinite pending City Council action, or expiration of the Committee.

**MEETINGS:** Meetings shall be held as required by the business needs of the Committee in such locations, dates and times as allowed by the Ralph M. Brown Act.

**QUALIFICATIONS  
OF APPOINTED  
MEMBERS:**

Appointed Committee Members shall be:

- A. A resident of the City of Newport Beach ("City");
- B. A registered voter in the City of Newport Beach;
- C. Appointed by the Mayor; and
- D. Confirmed by the City Council.

The Committee shall have a Chairperson and a Vice Chairperson appointed by the Mayor.

**SELECTION  
OF APPOINTED  
MEMBERS:**

Selection of Committee Members shall be done as follows:

- A. The City Clerk shall prepare a notice letting members of the public know of the opportunity to serve on the Committee and the application process. The notice shall include, but not be limited to, details regarding what information is necessary to be considered for appointment, where to submit an application, and the application deadline.
- B. The application notice shall be published at least once in a newspaper of general circulation in the City and posted in the City's normal posting location for agendas, as well as the Newport Beach Public Library located at 1000 Avocado Avenue.
- C. The deadline to submit applications for the Committee shall be one (1) week after the application notice is published in a newspaper of general circulation in the City.
- D. The Mayor shall form an ad-hoc Appointments Committee, which shall be comprised of the Mayor and two (2) Council Members to review the applications, the applicants' answers to any questions, and to conduct any necessary interviews.
- E. In conducting their review of applications and interviews with the individual applicants, if any, the ad-hoc Appointments Committee shall attempt to determine if there exists a potential conflict of interest, which might interfere with the performance of the applicant's duties in an impartial manner free from bias.
- F. After the applications have been reviewed and any necessary interviews conducted, the two (2) Council Members on the ad-hoc Appointment Committee shall make a recommendation to the Mayor regarding who should be appointed to the Committee. In making a recommendation to the Mayor, the two (2) Council Members on the ad-hoc Appointment Committee shall

endeavor to avoid recommending appointments of applicants with a substantial conflict of interest, which would require repeated disqualification from voting on issues that are likely to come before the Committee.

- G. The Mayor shall consider the recommendation of the two (2) Council Members on the ad-hoc Appointment Committee and, after consideration of the recommendation, decide, in the Mayor's discretion, whom should be appointed to the Committee.
- H. The Mayor shall inform the City Clerk of the names of the members to be appointed to the Committee and the City Clerk will submit the names of the appointees to the City Council, at an open and noticed meeting, to be considered for confirmation by the City Council.
- I. Except as otherwise required by law, the process for selecting, appointing and confirming members to the Committee shall follow the process set forth herein.

**PURPOSE &  
RESPONSIBILITIES:**

- A. Ensure there is sufficient public outreach and stakeholder input regarding the update to the Housing, Land Use, and Circulation Elements of the City of Newport Beach General Plan and any other Elements deemed necessary;
- B. Review responses to the Request for Proposal for services to update the Housing, Land Use, Circulation, and other Elements deemed necessary;
- C. Make a recommendation to the City Council regarding the selection of consultants to assist in the update of the Housing, Land Use, Circulation, and other Elements deemed necessary;
- D. Provide guidance to City staff and the consultant through the outreach process;



- E. Provide guidance to City staff, and the consultant, on goals and policies related to the update of the Housing, Land Use, Circulation Elements, and any other Elements deemed necessary by the Committee or City Council; and
- F. Make other recommendations to the City Council regarding the update of the General Plan, as necessary.

**COMMITTEE  
EXPIRATION:**

The Committee shall expire and sunset without further action upon completion and submittal of a certifiable Housing Element to the California Department of Housing and Community Development.



# **Attachment B**

**JANUARY 2020  
HOUSING ACTION PLAN**



# CITY OF NEWPORT BEACH

JANUARY 2020

## HOUSING ACTION PLAN

Objective	Action	Action Steps	Stake Holders	Due Date
A. <i>Pursue legislative amendments to assist the City to obtain compliance with the Housing Element due date of October 15, 2021</i>	1. Request a two-year extension beyond the October 2021 deadline to provide realistic and adequate time complete the Housing Element.  2. Request to waive or partially waive the California Environmental Quality Act (CEQA) requirements for updating the Housing Element due to State mandates.  3. Amend Govt Code 65583.2 to allow more flexibility or automatic approval of sites meeting certain clear standards when determining suitability of housing opportunity sites.  4. Amend the allowance that permits a local government to credit up to 25 percent of their RHNA sites requirements through existing units that will be substantially rehabilitated	a. Request assistance from Assemblywoman Cottie Petri-Norris.  b. Request assistance from Senator Moorlach.  c. Send formal communication to the Department of Housing Community Development (HCD).  d. Collaborate with Governor Newsom's office.  e. Collaborate with the League of California Cities.	I. Assemblywoman Cottie Petri-Norris  II. State Senator John Moorlach  III. HCD  IV. League of California Cities	Feb. 2020
B. <i>Reduce Regional Housing Needs Allocation (RHNA)</i>	5. Reduce the current RHNA of 4,832 housing units.  6. Support regional efforts to revise RHNA allocation methodology prior to final adoption by SCAG in February.	f. File an appeal of final allocation numbers to Southern California Association of Governments (SCAG).  g. Letter to HCD regarding concerns with last minute changes to the RHNA allocation at the SCAG hearings.	I. OCCOG  II. SCAG  II. HCD	Feb. 2020

# CITY OF NEWPORT BEACH

JANUARY 2020

## HOUSING ACTION PLAN

C. <i>Change the priorities of the General Plan Update to focus on housing, impacts generated and compliance with the state requirements</i>	<p>7. Change the priority of updating the City's General Plan to focus on submitting a certifiable Housing Element to HCD.</p> <p>8. Commence updating the Housing, Land Use and Circulation elements.</p> <p>9. Form a goals and policy committee to make policy recommendations.</p>	<p>h. Commence with the update of the Housing Element with the goal of meeting the October 2021 deadline.</p> <p>i. Form a policy committee that can provide recommendations to staff on housing policy and housing opportunity sites (location of future housing sites).</p>	<p>I. City Council</p> <p>II. Housing Element Update Advisory Committee</p> <p>III. Community</p>	Jan. 2020
D. <i>Regional Collaboration</i>	<p>10. Work with surrounding cities on regional solutions to RHNA numbers.</p> <p>11. Work with OCCOG on regional solutions.</p> <p>12. Request the League of California Cities for a coordinated statewide response to excessive allocation.</p>	<p>j. Collaborate with surrounding Cities, such as:</p> <ul style="list-style-type: none"> <li>• Costa Mesa</li> <li>• Seal Beach</li> <li>• Huntington Beach</li> <li>• Fountain Valley</li> <li>• Laguna Beach</li> <li>• Irvine</li> </ul> <p>k. Send a formal request to the League of California Cities for assistance.</p>	<p>I. Surrounding Cities</p> <p>II. OCCOG</p> <p>III. League of California Cities</p>	Jan. – March 2020







**CITY OF**

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# **NEWPORT BEACH**

## **City Council Staff Report**

January 14, 2020  
Agenda Item No. 21

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** Leilani I. Brown, City Clerk - 949-644-3005,  
lbrown@newportbeachca.gov

**PREPARED BY:** Leilani I. Brown, City Clerk

**TITLE:** Appointment to the Visit Newport Beach, Inc. (VNB) Executive Committee

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**ABSTRACT:**

As part of the agreement between the City of Newport Beach (City) and Visit Newport Beach, Inc. (VNB) for destination marketing services, the City appoints a full voting member to the VNB Executive Committee.

**RECOMMENDATION:**

- a) Determine that the action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because it will not result in a physical change to the environment, directly or indirectly;
- b) Appoint Scott Calder, Jim Mosher or Sharon Wood to fill the unscheduled vacancy on the VNB Executive Committee for a term expiring on June 13, 2021, and
- c) If Sharon Wood is appointed and if desired, waive City Council Policy A-2 relative to serving on only one Board, Commission or Committee at a time.

**FUNDING REQUIREMENTS:**

There is no fiscal impact related to this item.

**DISCUSSION:**

On September 27, 2011, the City and VNB entered into an agreement for destination marketing services. As part of the agreement, the City appoints a full voting member to the VNB Executive Committee.

Doug Wood was appointed as the City's voting member on the VNB Executive Committee on June 13, 2017 and resigned at the end of November 2019. His term was set to expire on June 13, 2021.

Pursuant to the Maddy Act and City Council Policy A-2 (*Board, Commission and Committee Appointments*), the City Clerk prepared and posted an Unscheduled Vacancy Notice on November 27, 2019, in the City Clerk's Office, at the Central Library, on the bulletin board in the City Council Chambers, and on the City's webpage, and published the Notice in the *Daily Pilot* on December 4, 2019. As provided in the Notice, applications were accepted by the City Clerk's Office until the position was filled.

Pursuant to City Council Policy A-2, the City Clerk is forwarding all qualified applications to the City Council for consideration. Sharon Wood currently sits on the Civil Service Board and it would be up to the City Council relative to whether she may serve on more than one Board, Commission or Committee if appointed to the VNB Executive Committee.

Copies of the applications are attached hereto as Attachment A.

### ***Appointment Process***

Pursuant to Council Policy A-2, appointment to the VNB, Inc. Executive Committee will take place in the following manner:

- A. The City Council will vote on the appointment simultaneously. The voting will be by paper ballot and the City Clerk will tabulate and announce the results, including the vote tally.
- B. Each member of the City Council will cast one vote on the paper ballot. In order to be appointed, the nominee must receive at least four votes.

### **ENVIRONMENTAL REVIEW:**

Staff recommends the City Council find this action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

### **NOTICING:**

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

### **ATTACHMENT:**

Attachment A – Applications

## ATTACHMENT A

# RECEIVED APPLICATION FOR AN APPOINTIVE POSITION

District 3  
ROV

2019 DEC -5



## CITY OF NEWPORT BEACH

3300 Newport Boulevard  
Newport Beach, CA 92663  
City Clerk (949) 644-3005  
Fax (949) 644-3039

**DIRECTIONS:** One application can be used for all the appointive positions you are applying for. Applications should be filled out completely so that the City Council may fully evaluate your qualifications. *It is the responsibility of the applicant to familiarize themselves with the duties and responsibilities of the position(s) applied for. Detailed information outlining the responsibilities of the positions can be obtained from the City Clerk's office or on the City's website [www.city.newport-beach.ca.us](http://www.city.newport-beach.ca.us) (General Info/Citizen Participation Info).* Applications will be kept on file for two years for the position(s) applied for. If you are not selected for appointment during that period of time, it will be necessary for you to re-submit an application if you are still interested in being considered. **NOTICE:** Section 702 of the City Charter requires that members of Boards or Commissions appointed by the City Council shall be from the qualified electors of the City.

NAME OF BOARD, COMMISSION, OR COMMITTEE: VISIT NEWPORT BEACH EX COMMITTEE

Name: CALDER Scott F  
(Last) (First) (Middle)

Residence Address: [REDACTED] Zip Code 92660

How long have you lived in Newport Beach? 45 yrs. Home Phone [REDACTED]

Business Address: [REDACTED] Business Phone [REDACTED]

Email Address [REDACTED]

Have you ever been convicted of any crime or violation of any law or statute other than minor traffic violations?

Yes \_\_\_\_\_ No X (If yes, please attach a separate sheet)

Name and Location of Colleges/ Universities Attended	Major	Degree	Last Year Attended
<u>UC Berkeley</u>	<u>BUSINESS</u>	<u>BS</u>	<u>1962</u>

Prior or Current Civic Experience (Include membership in professional, charity or community organizations)	Office Held (if any)	Dates of Membership
<u>MORTGAGE BANKERS ASSN OF AMERICA</u>	<u>NONE</u>	<u>1965-PRES.</u>
<u>CALIFORNIA MORTGAGE ASSN.</u>	<u>OFFICER-DIRECTOR</u>	<u>1965-PRES.</u>
<u>SAN DIEGO MORTGAGE ASSN.</u>	<u>PRESIDENT</u>	<u>1965-1975</u>
<u>TORREY PINES KIWANIS - SAN DIEGO</u>	<u>PRESIDENT</u>	<u>1968-1975</u>
<u>KIDWORKS - SANTA ANA</u>	<u>ADVISORY BOARD</u>	<u>1980-1990</u>
<u>LAMBDA ALPHA INT.</u>	<u>BOARD OF DIRECT</u>	<u>2010-PRES</u>
<u>BUILDING BLOCK FOUNDATION</u>	<u>BOB</u>	<u>2002-2015</u>
<u>Newport Harbor Nautical Museum (EXPLORACAN)</u>	<u>BOB</u>	<u>1995-2012</u>



Occupational History. Begin with your present or most recent position. List all positions separately held for the last five years.

Firm or Organization	Type of Business	Title	Dates of Employment
PACIFIC SOUTHWEST REALTY SERVICES (PSRS)	COMMERCIAL Real Estate Finance	VP	2002 - Present

References (include names of at least two residents of Newport Beach who are not officially connected with the City).

Name	Address	Telephone No.
1. Tim Collins		
2. Doug Wood		

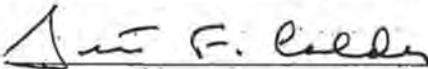
Summarize why you wish to serve the City of Newport Beach on a board, commission, or committee. Include any special qualifications you have which are particularly appropriate to the position for which you are applying (IF MORE SPACE IS NEEDED, PLEASE ATTACH A SEPARATE SHEET).

See ATTACHED BIO.

During my professional career I was always very involved in our trade organization on the national, state and local levels. Now that I am semi retired I would like to give my time to the community that has been home for the past 45 years.

During my mortgage banking career I have had an opportunity to deal with several cities and local communities with regard to zoning, building permits and use permits for commercial developments. I look forward to the opportunity of serving the City of Newport Beach.

I certify that all statements made on this application are true and correct to the best of my knowledge and I have read and understand the duties and responsibilities of the particular position(s) that I am applying for.

  
Signature

12-5-2019  
Date

## **SCOTT F. CALDER**

Scott F. Calder is a Vice President of Real Estate Finance in Pacific Southwest Realty Service's (PSRS) Orange County office. He is responsible for origination, negotiation, underwriting and placement of commercial real estate loans for both debt and equity.

Prior to joining PSRS in June of 2002, Mr. Calder was a Vice President with the Orange County Real Estate Financial Services Division of Burnham Real Estate Services from March 1991 to June 2002.

Prior to joining Burnham, Mr. Calder spent 7 years (1985-1991) as a Principal and Director of Acquisitions for T. Rowe Price Realty Advisers, Inc. where he was responsible for all acquisitions which included some 34 properties valued in excess of \$300 million. Prior to T. Rowe Price, Mr. Calder spent 11 years (1974-1985) with the real estate finance arm of Coldwell Banker (Now CBRE) and prior to that 10 years (1964-1974) with The Alison Company, a southern California based Mortgage Banking firm.

Mr. Calder received his Bachelor of Science degree in Business Administration (emphasis Real Estate) from the University of California, Berkeley, in 1962. He has successfully completed courses I, II and IV of the Appraisal Institute and is a licensed Real Estate Broker (since 1965) in the state of California. He served three terms as a member of the Board of Directors of the California Mortgage Bankers Association where he has served as a committee chair, and officer over the years.

He is currently serving on the Board of Directors of the Orange County Chapter of Lambda Alpha International, an honorary, non-political professional society dealing with land economics and related fields; is a past member of the advisory committee to the Building Block Foundation, a charitable foundation of the Orange County commercial real estate industry that invests in the future of Orange County's youth; and served a member of the Board of Trustees of the Newport Harbor Nautical Museum/ExplorOcean before it merged with Discovery Cube.

After graduation from college where he was enrolled in the Army ROTC Program he served as an officer in the US Army Reserves for six years

achieving the rank of Captain. His final active duty assignment was as the Assistant Special Agent in Charge of the Monterey Field Office of the 115<sup>th</sup> Army Intelligence Corp.

Mr. Calder is an active member of the Newport Harbor Yacht Club where he served for several years on Race Committee and is currently active on the *Hard on the Wind (club magazine)* Committee.



# RECEIVED APPLICATION FOR APPOINTIVE POSITION

FOR OFFICE USE ONLY

Residence District No. 3

Verified by AK

POV

2019 DEC 19 AM 7:09

OFFICE OF  
THE CITY CLERK  
CITY OF NEWPORT BEACH

**CITY OF NEWPORT BEACH**  
100 Civic Center Drive  
Newport Beach, CA 92660  
City Clerk (949) 644-3005  
Fax (949) 644-3039

**DIRECTIONS:** One application can be used for all the appointive positions you are applying for. Applications should be filled out completely so that the City Council may fully evaluate your qualifications. It is the responsibility of the applicant to familiarize themselves with the duties and responsibilities of the position(s) applied for. Detailed information outlining the responsibilities of the positions can be obtained from the City Clerk's Office or on the City's website: [www.newportbeachca.gov](http://www.newportbeachca.gov) (City Government/Boards, Commissions and Committees). Applications will be kept on file for two years for the position(s) applied for. If you are not selected for appointment during that period of time, it will be necessary for you to re-submit an application if you are still interested in being considered.

**NOTICE:** Section 702 of the City Charter requires that members of Boards or Commissions appointed by the City Council shall be from the qualified electors of the City. This document is a public record and may be posted on the internet.

NAME OF BOARD, COMMISSION OR COMMITTEE: Visit Newport Beach, Inc. (VNB) Executive Committee

Name: Mosher James ("Jim") M.  
(Last) (First) (Middle)

Residence Address (required): [REDACTED] Zip Code: 92660

How long have you lived in Newport Beach? since 1981 Home/Cell #: [REDACTED]

Business Address: NA Business Phone: N A [REDACTED]

NA Email Address: [REDACTED]

Have you ever been convicted of any crime or violation of any law or statute other than minor traffic violations?

☒ NO ☐ YES (If yes, attach separate sheet with explanation)

**NOTICE:** Pursuant to Section 702 of the City Charter, no members of boards or commissions shall hold any paid office or employment in the City government.

Do you currently hold any paid office or employment with the City of Newport Beach, including but not limited to contracted services?

☒ NO ☐ YES (If yes, attach separate sheet with explanation)

If applying for a position on the Finance Committee, have you declared bankruptcy in the last 10 years? ☒ NO ☐ YES

Please state any past, current or foreseeable future financial interests of any kind that may conflict with the Board, Commission or Committee you are applying for.

My potentially conflicting financial interests consist of stock ownership and ownership of a residence in Newport Beach.

CONTINUE TO PAGE TWO

Name and Location of Colleges/ Universities Attended	Major	Degree	Last Year Attended
California Institute of Technology	Physics	PhD	1977
California Institute of Technology	Physics	BS	1969

Prior or Current Civic Experience (include membership in professional, charity or community organization)	Office Held (if any)	Dates of Membership
Line in the Sand PAC	Director (2017 - present)	2014 - present

**Occupational History.** Begin with your present or most recent position. List all positions separately held for the last five years.

Firm or Organization	Type of Business	Title	Dates of Employment
none in last 5 years			

**References.** Include names of at least two residents of Newport Beach who are not officially connected with the City.

1. Name  Address  Phone No.
2. Name  Address  Phone No.

Summarize why you wish to serve the City of Newport Beach on a board, commission or committee. Include any special qualifications you have which are particularly appropriate to the position for which you are applying.

I have no special qualifications to serve as the City's representative on the VNB Executive Committee.

I do, however, have some knowledge of the history of the organization, and I believe the City needs to follow more closely than it has what it is investing a substantial amount of money in, and improving the openness of the VNB meetings.

While this would not be my first choice for serving the City, I would appreciate being interviewed for it.

I certify that all statements made on this application are true and correct to the best of my knowledge. I have read and understand the duties and responsibilities of the particular position(s) that I am applying for and authorize the release of this information on the internet.

[BOX MUST BE CHECKED IF SUBMITTING ELECTRONICALLY]



Signature

Date



# APPLICATION FOR APPOINTEE POSITION

FOR OFFICE USE ONLY

Residence District No. 6  
Verified by RR

ROV

2019 DEC -9 AM 8:18

CITY OF NEWPORT BEACH

100 Civic Center Drive  
Newport Beach, CA 92660  
City Clerk (949) 644-3005  
Fax (949) 644-3039

OFFICE OF  
THE CITY CLERK  
CITY OF NEWPORT BEACH

**DIRECTIONS:** One application can be used for all the appointive positions you are applying for. Applications should be filled out completely so that the City Council may fully evaluate your qualifications. It is the responsibility of the applicant to familiarize themselves with the duties and responsibilities of the position(s) applied for. Detailed information outlining the responsibilities of the positions can be obtained from the City Clerk's Office or on the City's website: [www.newportbeachca.gov](http://www.newportbeachca.gov) (City Government/Boards, Commissions and Committees). Applications will be kept on file for two years for the position(s) applied for. If you are not selected for appointment during that period of time, it will be necessary for you to re-submit an application if you are still interested in being considered.

**NOTICE:** Section 702 of the City Charter requires that members of Boards or Commissions appointed by the City Council shall be from the qualified electors of the City. This document is a public record and may be posted on the internet.

NAME OF BOARD, COMMISSION OR COMMITTEE: Visit Newport Beach Executive Committee

Name: Wood Sharon Z  
(Last) (First) (Middle)

Residence Address (required): [REDACTED] Zip Code: 92625

How long have you lived in Newport Beach? 19 years Home/Cell #: [REDACTED]

Business Address: [REDACTED] Business Phone: [REDACTED]

[REDACTED] Email Address: [REDACTED]

Have you ever been convicted of any crime or violation of any law or statute other than minor traffic violations?

☒ NO ☐ YES (If yes, attach separate sheet with explanation)

**NOTICE:** Pursuant to Section 702 of the City Charter, no members of boards or commissions shall hold any paid office or employment in the City government.

Do you currently hold any paid office or employment with the City of Newport Beach, including but not limited to contracted services?

☒ NO ☐ YES (If yes, attach separate sheet with explanation)

If applying for a position on the Finance Committee, have you declared bankruptcy in the last 10 years? ☐ NO ☐ YES

Please state any past, current or foreseeable future financial interests of any kind that may conflict with the Board, Commission or Committee you are applying for.

None

CONTINUE TO PAGE TWO



Name and Location of Colleges/ Universities Attended	Major	Degree	Last Year Attended
Emmanuel College, Boston MA	Economics	BA	1972
Columbia University, NY, NY	Urban Planning	MS	1974

Prior or Current Civic Experience (include membership in professional, charity or community organization)	Office Held (if any)	Dates of Membership
Newport Beach Civil Service Board	Member	2016-present
Newport/Mesa ProLiteracy	Tutor	2011-present
Jasmine Creek Architectural Committee	Member	2019-present

**Occupational History.** Begin with your present or most recent position. List all positions separately held for the last five years.

Firm or Organization	Type of Business	Title	Dates of Employment
City of Newport Beach	City Government	Asst City Manager	1996-2011
City of Claremont	City Government	Dir of Community Dev	1984-1996
City of Irvine	City Government	Senior Planner	1979-1984
City of Paterson, NJ	City Government	Planner	1975-1979

**References.** Include names of at least two residents of Newport Beach who are not officially connected with the City.

1. Name  Address  Phone No.
2. Name  Address  Phone No.

Summarize why you wish to serve the City of Newport Beach on a board, commission or committee. Include any special qualifications you have which are particularly appropriate to the position for which you are applying.

One of my areas of responsibility as Assistant City Manager was economic development, and I had frequent interaction with the Conference and Visitors' Bureau, as Visit Newport Beach was known during my tenure. Among the projects I worked on with them was the creation of the TBID. I understand how the City's TOT helps to fund VNB's operations and the City Council's interest in having some oversight of the use of these public funds. In addition to my service on the Civil Service Board, I had experience as a member of several intergovernmental boards and committees during my career, including the Metro Cities Fire Authority and SCAG Planning Directors' Committee, both of which I chaired. I believe that I can be an effective City Council representative on the Executive Committee, and would love to do more for the community.

I certify that all statements made on this application are true and correct to the best of my knowledge. I have read and understand the duties and responsibilities of the particular position(s) that I am applying for and authorize the release of this information on the internet.

[BOX MUST BE CHECKED IF SUBMITTING ELECTRONICALLY]



Signature

Date