

**City Council Meeting Minutes  
Study Session and Regular Meeting  
November 16, 2021**

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**I. ROLL CALL – 4:00 p.m.**

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

**II. CURRENT BUSINESS**

**SS1. Clarification of Items on the Consent Calendar – None**

**SS2. Housing Element Update Status Report (PA2017-141)**

Community Development Director Jurjis and Deputy Community Development Director Campbell utilized a presentation to discuss the revised housing plan and amendments for Accessory Dwelling Units (ADUs).

In response to Council Member Dixon's question, Deputy Community Development Director Campbell confirmed there will be no limit on ADUs and the count will offset the total affordable housing.

Deputy Community Development Director Campbell utilized slides to discuss focus area capacities, site selection process, residential care facilities, Affirmatively Furthering Fair Housing (AFFH), and the upcoming schedule.

In response to Council questions, Community Development Director Jurjis and Deputy Community Development Director Campbell explained that policy actions to encourage ADU production have been included in the revised housing plan and use of the surplus money is open for consideration by Council; noted that staff will continue revisions to the housing element to address future residual California Department of Housing and Community Development (HCD) comments; shared staff's optimism and legal requirements if the City becomes uncertifiable; discussed Banning Ranch and unidentified affordable housing unit counts; and encouraged meeting with Senator Dave Min and Assemblywoman Cottie Petrie-Norris to discuss the housing element and to advocate for Council with HCD.

Nancy Scarbrough requested an open discussion to brainstorm ADU production ideas and to review the revised housing element.

Jim Mosher suggested that the revised housing element be sent to HCD after the Housing Element Update Advisory Committee meeting and questioned the Banning Ranch unit placements on the map.

David Tanner noted the variables that could cause the housing element to be inconsistent with the general plan and suggested adding a policy to mitigate financial impacts to the City.

Council Member Brenner expressed interest in a delayed housing element submission. Deputy Community Development Director Campbell noted that additional comments from the Housing Element Update Advisory Committee can be added into the final draft in February.

Council Member O'Neill informed Council that all Housing Element Update Advisory Committee comments have been incorporated into the first housing element draft.

In response to Council Member Brenner's question, Deputy Community Development Director Campbell assured Council that any additional comments resulting from the Housing Element Update Advisory Committee meeting can be added to the revised housing plan before submitting to HCD.

Mayor Avery acknowledged staff for their knowledge, time, and energy to revise the housing plan.

**SS3. Fractional Home Ownership**

Community Development Director Jurjis utilized a presentation to discuss fractional ownership of real estate, companies selling fractional ownership, how it works, operations, community concerns, City regulations, and the Newport Beach Municipal Code (NBMC) table of allowed uses, definitions.

In response to Council Member Dixon's question, Community Development Director Juris noted the definition of conversion and its subjective interpretation and application.

Council Member Blom highlighted the percentage of LLCs and trust ownerships in Newport Beach and discussed the reality of future home ownership and impact to the City with the elimination of fractional ownership.

In response to Council Member Brenner's questions, Community Development Director Jurjis confirmed which zones fractional ownership and Short-Term Lodging (STL) are allowed and not allowed, explained how time share use is subject to the definition, zoning rules when properties convert to condominiums, and the cap on STL applications.

Pacaso's Director of Government and Community Relations Ellen Haberle utilized a presentation to discuss co-ownership history, Pacaso's role, owner agreements, and enforced policies.

In response to Council questions, Ms. Haberle provided the definition of a luxury home, stated who holds the title and how the co-owners are listed, and related Pacaso's enforcement procedures for respecting local ordinances; confirmed that Pacaso is employed by the LLC to serve as property and program manager; noted that the company uses an LLC operating agreement; stated that ownership interests are sold in one-eighth increments with a 50% cap, and an average owner group consisting of 6-7 members; stated that while neighbor and owner conflict is a reality, local ordinances can preserve the peace, quiet, safety and comfort of the residents; and explained Pacaso's equitable scheduling calendar tool, the rules for member guests, and occupancy cycles.

Community Development Director Jurjis agreed to seek collaboration with fractional home ownership companies, like Pacaso, to establish a mutual understanding of City regulations and company enforcement procedures. Ms. Haberle agreed to collaborate with City staff to identify cities with preventative ordinances.

Council Member O'Neill expressed concern about regulation standards for commercial enterprise. Community Development Director Jurjis shared that a threshold provision exists for fractionally owned properties with 11 or more members, which requires filing with the Department of Real Estate and public records.

Nancy Scarbrough believed that the rotation frequency of member stays is subjective and questioned how fractional ownership will affect property taxes.

Russell Dahl expressed concern for Pacaso's minimal data and history, unpredictable member behavior and guest visits, long-term unknown ramifications, and avoidance of the City's short-term occupancy and rental rules.

Susan Stoneburner asked Council to consider classifying fractional ownership homes as STLs, described her experience with a Pacaso property, and expressed the opinion that the home is being used as a short-term rental without a short-term rental agreement, business license, or proper City taxation.

Cathy Brown shared her dismay about having a Pacaso property in a single-family residential zone.

Mike O'Neill shared and praised his relationship and experience as a fractional owner with Pacaso.

Richard Manga noted his support and relationship as a fractional owner with Pacaso.

Mike Desantis shared his displeasure and experience as a Pacaso property neighbor, expressed concern that his experiences conflicted with Ms. Haberle's presentation, and noted how the property has impacted the neighborhood.

Connie Adnoff requested Council investigate legal options for when fractional owner members disturb the local community.

Jeff believed that the City should focus on nuisance issues and not regulate good behavior, predict behavior, or profile guests.

David Tanner requested that staff explore using fractional ownerships as a vehicle for affordable housing units.

Council Member Blom correlated bad behavior sightings at fractionally owned properties with problems exhibited at individually owned dwellings, expressed concern with limiting opportunities and creating more regulations for property purchases and uses, and encouraged communication amongst neighbors.

Mayor Pro Tem Muldoon expressed the opinion that fractional ownership cannot be eliminated and that it does not violate timeshare ordinances. In response to Mayor Pro Tem Muldoon's questions, City Attorney Harp shared conduct and public nuisance regulations and possibly creating a voluntary centralized complaint hotline as a communication tool with Pacaso and other fractional ownership businesses. Community Development Director Jurjis reviewed the Department of Real Estate time share laws and procedures for fractional ownership with 11 or more members, confirmed that Newport Beach regulations would need amending to include a time share cap, and concurred that the current City definition of time share fits the Pacaso application.

In response to Council Member Dixon's questions, Ms. Haberle compared second homeowner travel habits to short-term renters, discussed policy guidelines for complaints, and agreed to share complaint reports with the City. City Attorney Harp clarified the difference between fractional ownership and short-term rentals.

In response to Council Member Duffield's question, Community Development Director Jurjis explained that home sale prices are based on supply and demand and the possibility does exist for a private homeowner to overprice an individual home sale with the hope of a fractional owner sale at a higher cost.

#### **SS4. Water Conservation Ordinance Update**

Mayor Avery continued the item to the next City Council meeting.

**III. PUBLIC COMMENTS ON AGENDA AND NON-AGENDA ITEMS**

Jim Mosher clarified that correspondence regarding offshore oil drilling and spent fuel at the San Onofre Nuclear Generating Station are both matters for which Council Members have been asked to be included on a future agenda and suggested handouts posted in the Council Chambers be amended to reflect this.

*City Attorney Harp announced that the City Council would adjourn to Closed Session to discuss the items listed in the Closed Session agenda and read the titles; and reported that City Manager Leung will be recusing herself on Closed Session Item IV.B due to potential financial interest conflicts.*

**IV. CLOSED SESSION – Council Chambers Conference Room**

**A. CONFERENCE WITH LABOR NEGOTIATORS**

(Government Code § 54957.6): 1 matter

**Agency Designated Representatives:** Grace K. Leung, City Manager, and Barbara Salvini, Human Resources Director, Negotiators.

**Employee Organization:** Newport Beach Employees League (NBEL)

**B. CONFERENCE WITH LABOR NEGOTIATORS**

(Government Code § 54957.6): 1 matter

**Agency Designated Representatives:** Brad Avery, Mayor; and Kevin Muldoon, Mayor Pro Tem

**Unrepresented Employee:** Grace K. Leung, City Manager

**V. RECESSED – 6:09 p.m.**

**VI. RECONVENED AT 6:41 P.M. FOR REGULAR MEETING**

**VII. ROLL CALL**

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

**VIII. CLOSED SESSION REPORT**

City Attorney Harp announced that no reportable actions were taken.

**IX. INVOCATION – Pastor Rick Mixon, Fairview Community Church, Costa Mesa**

**X. NATIONAL ANTHEM AND PLEDGE OF ALLEGIANCE – World War II Veteran Frank Puccilli and Council Member O'Neill, respectively**

**XI. NOTICE TO THE PUBLIC**

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

Council Member Brenner:

- Attended the Newport Beach Foundation reception, spoke to the Newport Beach Chamber of Commerce, Wake Up Newport, and the Commodores and noted the websites stopsb9oc.com, ourcommunityvoices.com, and livablecalifornia.org

- Attended the annual Visit Newport Beach (VNB) Marketing Outlook and Tourism Awards, Associated California Cities of Orange County (ACC-OC) Leadership Conference, Speak Up Newport meeting regarding offshore oil drilling, and the Mayor's Prayer Breakfast
- Met with Council Member O'Neill, Mayor Avery, and staff regarding the General Plan Update process

Council Member O'Neill:

- Attended the Distinguished Citizens Program/Newport Beach Foundation, memorial for Detective Sergeant Randy Parker, thanked the Newport Beach Police Department for their help on Halloween
- Announced the Citizens of the Year gala on November 19

Council Member Dixon:

- Attended the San Onofre Nuclear Generating Station tour with Council Member Brenner, VNB Marketing Outlook and Tourism Awards reception, solid waste management meetings, ACC-OC Leadership Conference, and Orange County Council of Governments (OCCOG) meeting
- Met with Council Member Brenner and staff to discuss the Ad Hoc Residential Care Facilities Committee
- Announced the first City Council Redistricting Committee meeting on November 8

Council Member Blom:

- Attended the VNB Marketing Outlook and Tourism Awards, meeting with the Irvine Terrace Residents Association, and the San Diego crew meet, where the North Atlantic Conference (NAC), Orange Coast College (OCC), and Newport Sea Base rowing teams competed

Mayor Avery:

- Attended the Mayor's Prayer Breakfast and the VNB Marketing Outlook and Tourism Awards reception

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

- **Consideration of a resolution supporting the Support Action for Spent Fuel Now coalition, which facilitates a network of stakeholders to make offsite spent fuel storage and/or disposal a priority at the Federal level, including for the San Onofre Nuclear Generation Station site [Council Member Dixon]**

The City Council unanimously concurred to bring the item back at a future meeting.

- **Consideration of allocating funding to hire a Government Affairs firm to represent the City of Newport Beach regarding laws, rules and regulations related to residential care facilities [Mayor Pro Tem Muldoon]**

The City Council unanimously concurred to bring the item back at a future meeting.

- **Consideration of a resolution expressing support for Initiative 21-0016, which: (1) opposes the legislature of the State of California's adoption of legislation that overrides local zoning and land use authority; and (2) ensures that zoning and land use authority is retained by local governmental entities that represent the communities in which the residents reside, and allows local government to participate in solving affordable housing issues through solutions that effectively address the unique needs and conditions of each local community [Council Member Brenner]**

The City Council unanimously concurred to bring the item back at a future meeting.

- **Consideration of adopting a resolution supporting a ban on new offshore oil drilling [Council Member Duffield and Mayor Avery]**

Mayor Avery and Council Members Blom, Brenner, Dixon, Duffield, and O'Neill concurred to bring the item back at a future meeting.

- **Consideration of requesting to have staff assess service needs and resources related to fire response in the harbor and present the analysis, costs, and alternatives to City Council [Council Member Blom]**

The City Council unanimously concurred to bring the item back at a future meeting.

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

Water Quality Coastal Tidelands Committee member Chuck Fancher requested that Council support Item 10 (Resolution No. 2021-114: Supporting the Water Infrastructure Funding Act of 2022).

#### **XV. CONSENT CALENDAR**

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

1. **Minutes for the October 26, 2021, City Council Regular Meeting [100-2021]**  
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.

##### ***ORDINANCE FOR ADOPTION***

3. **Ordinance No. 2021-23: Fifth Amendment to the Hoag Development Agreement (PA2020-065) (C-2912) [38/100-2021]**
  - a) Determine that the Final EIR No. 142, which was certified by the City of Newport Beach in 1992, fully addresses the potential environmental effects associated with the Hoag Hospital Master Plan development program; and
  - b) Conduct second reading and adopt Ordinance No. 2021-23, *An Ordinance of the City Council of the City of Newport Beach, California, Amending a Development Agreement between the City of Newport Beach and Hoag Memorial Hospital Presbyterian (Development Agreement Amendment No. DA2021-001).*

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

4. **Resolution No. 2021-107: Proclaiming the Termination of the Local Emergency Declared on October 5, 2021 and Ratified on October 12, 2021 Related to the Oil Spill in the Pacific Ocean [100-2021]**
  - 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. 2021-107, *A Resolution of the City Council of the City of Newport Beach, California, Proclaiming the Termination of the Local Emergency Declared on October 5, 2021 and Ratified on October 12, 2021 Related to the Oil Spill in the Pacific Ocean.*
5. **Resolution No. 2021-108: Authorizing the Recreation and Senior Services Director to Apply for the Per Capita Grant Funds Under Proposition 68, Parks and Water Bond Act of 2018 to Construct Pickleball Courts at Newport Ridge Park [100-2021]**
  - a) 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, Division 6,

Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly; and

- b) Adopt Resolution No. 2021-108, *A Resolution of the City Council of the City of Newport Beach, California, Authorizing the Recreation and Senior Services Director to Apply for the Per Capita Grant Funds Under County Per Capita Grant Funds in the amount of \$177,952 and \$53,284, Respectively.*

**6. Resolution No. 2021-109: Adopting a Memorandum of Understanding with the Newport Beach City Employees Association (CEA) (C-2051) and Newport Beach Professional and Technical Employees Association (ProfTech) (C-2059) and Associated Salary Schedules [38/100-2021]**

- 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. 2021-109, *A Resolution of the City Council of the City of Newport Beach, California, Adopting a Memorandum of Understanding Between the City of Newport Beach and the Newport Beach City Employees Association and the City of Newport Beach and the Newport Beach Professional and Technical Employees Association and the Associated Salary Schedules;* and
- c) Approve Budget Amendment No. 22-018 appropriating \$86,102 in increased expenditures in various City division salary and benefit accounts from unappropriated General Fund balances.

**Mayor Pro Tem Muldoon voted “no” to Item 6.**

**7. Resolution No. 2021-110: Medi-Cal Managed Care Rate Range Intergovernmental Transfer (IGT) Program for Cost Recovery of EMS Services [38/100-2021]**

- 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. 2021-110, *A Resolution of the City Council of the City of Newport Beach, California, Authorizing the Mayor and City Manager, or Designees, to Execute Agreements and Amendments with the Department of Health Care Services (DHCS) and CalOptima to Participate in the Rating Period of January 1, 2021 through December 31, 2021 Medi-Cal Rate Range Intergovernmental Transfer (IGT) Program;*
- c) Authorize the Mayor and City Clerk to execute the Intergovernmental Agreement Regarding Transfer of Public Funds with the California Department of Health Care Services (C-8085-3F);
- d) Authorize the Mayor and City Clerk to execute the Health Plan-Provider Agreement Intergovernmental Transfer Rate Range Program Agreement with CalOptima (C-8085-2E); and
- e) Approve Budget Amendment No. 22-021 increasing revenue estimates and expenditure appropriations related to the Medi-Cal IGT Program. Additional revenues are estimated to be up to \$579,129 in Medi-Cal IGT Program funds (account number 01040404-431246) and increased expenditure appropriations are estimated to be up to \$310,177 in Medi-Cal IGT Program expenditures (account number 01040404-821008).

**8. Resolution Nos. 2021-111 and 2021-112: Proposed Assessment District No. 120-2 – Area Along Santa Ana Avenue, Cliff Drive, La Jolla Lane and La Jolla Drive [89/100-2021]**

- a) The City Council deemed this project exempt from the California Environmental Quality Act (CEQA) on October 12, 2021 pursuant to Section 15302(d) (conversion of overhead electric utility distribution system facilities to underground including connection to existing overhead electric utility distribution lines where the surface is restored to the condition existing prior to the undergrounding);
- b) Adopt Resolution No. 2021-111, *A Resolution of the City Council of the City of Newport Beach, California, Declaring its Intention to take Proceedings Pursuant to the Municipal Improvement Act of 1913 and to Issue Bonds Pursuant to the Improvement Bond Act of 1915, and Make Certain Findings and Determinations in Connection therewith, all relating to the Formation of Assessment District No. 120-2;* and

- c) Adopt Resolution No. 2021-112, *A Resolution of the City Council of the City of Newport Beach, California, Preliminarily Approving the Assessment Engineer's Report and Fixing the Time and Place of the Public Hearing for Assessment District No. 120-2.*

***Mayor Pro Tem Muldoon recused himself from Item 8 due to potential future financial interest conflicts.***

**9. Resolution No. 2021-113: Approval of Measure M2 Expenditure Report [100-2021]**

- 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. 2021-113, *A Resolution of the City Council of the City of Newport Beach, California, Concerning the Measure M2 Expenditure Report for the City of Newport Beach for the Fiscal Year Ending June 30, 2021.*

***Mayor Pro Tem Muldoon recused himself from Item 9 due to potential future financial interest conflicts.***

**10. Resolution No. 2021-114: Supporting the Water Infrastructure Funding Act of 2022 [100-2021]**

- 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. 2021-114, *A Resolution of the City Council of the City of Newport Beach, California, Supporting the Water Infrastructure Funding Act of 2022.*

**11. Resolution No. 2021-115: Supporting the Stopping Hazardous Incidents in the Pacific Act of 2021 [100-2021]**

- 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. 2021-115, *A Resolution of the City Council of the City of Newport Beach, California, Supporting the Stopping Hazardous Incidents in the Pacific Act of 2021 ("SHIP Act").*

**12. Resolution No. 2021-116: Supporting the Inclusion of the City in a Coastal Orange County Congressional District [100-2021]**

- 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. 2021-116, *A Resolution of the City Council of the City of Newport Beach, California, Requesting the California Citizens Redistricting Commission Include the City of Newport Beach and All Other Orange County Coastal Cities in the Same Congressional District;* and
- c) Authorize the Mayor to sign the letter to the California Citizens Redistricting Commission.

**CONTRACTS AND AGREEMENTS**

**13. Dover Shores Traffic Calming Improvements – Notice of Completion for Contract No. 7998-1 (Project No.19T12) [38/100-2021]**

- 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.



**14. FY2019-20 Streetlight Improvements (Eastbluff) – Notice of Completion for Contract No. 7661-2 (20V02) [38/100-2021]**

- 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.

***Mayor Pro Tem Muldoon recused himself from Item 14 due to potential future financial interest conflicts.***

**15. FY2019-20 Traffic Signal Rehabilitation Project – Notice of Completion for Contract No. 7818-1 (20T01) [38/100-2021]**

- 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.

***Mayor Pro Tem Muldoon recused himself from Item 15 due to potential future financial interest conflicts.***

**16. FY2021-22 Traffic Signal Rehabilitation Project – Award of Contract No. 8746-1 (22T01) [38/100-2021]**

- 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) Approve the project plans and specifications;
- c) Award Contract No. 8746-1 to International Line Builders, Inc. dba ILB Electric for the total bid price of \$733,221, and authorize the Mayor and City Clerk to execute the contract; and
- d) Establish \$74,000 (approximately 10 percent) contingency to cover the cost of unforeseen work not included in the original contract.

***Mayor Pro Tem Muldoon recused himself from Item 16 due to potential future financial interest conflicts.***

**17. Removed from the Consent Calendar**

**18. City Bridge Maintenance Project – Award of Contract No. 7679-2 (21R13) [38/100-2021]**

- a) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (c) (repair and maintenance of existing street with 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 drawings and specifications;
- c) Award Contract No. 7679-2 to Applied Restoration, Inc. for the total bid price of \$669,420, and authorize the Mayor and City Clerk to execute the contract; and
- d) Establish a contingency of \$67,000 (approximately 10 percent of total bid) to cover the cost of unforeseen work not included in the original contract.

**19. Approval of Agreement for On-Call Plant Healthcare Services with West Coast Arborists, Inc. (C-8750-1) [38/100-2021]**

- 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 three-year On-Call Agreement with two automatic annual extensions with West Coast Arborists, Inc. for plant healthcare services for City trees and landscape with a not-to-exceed amount of \$600,000, and authorize the Mayor and City Clerk to execute the agreement.

**20. Ford Road Pump Station Rehabilitation – Approval of Amendment No. 1 to Walden & Associates Professional Services Agreement (Contract No. 7731-1) [38/100-2021]**

- 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. 1 to the Professional Services Agreement with Walden & Associates of Irvine, California, for the Ford Road Pump Station Rehabilitation project to add \$69,477 to the current contract for a total not-to-exceed amount of \$174,922, and authorize the Mayor and City Clerk to execute the agreement.

**21. Professional Services Agreement for Pier and Boardwalk Safety (C-7967-2) [38/100-2021]**

- 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, and
- b) Approve a Professional Services Agreement with Contemporary Services Corporation of Northridge, California, for Pier and Boardwalk Safety in an amount not-to-exceed \$1,050,000, as amended, and authorize the Mayor and City Clerk to execute the Agreement.

*Mayor Pro Tem Muldoon voted “no” to Item 21.*

**22. Approval of Amendment No. Two to Janitorial Services Agreement with Universal Building Maintenance, LLC dba Allied Universal for Janitorial Services at City Facilities (Contract No. 8567-1) [38/100-2021]**

- 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) Approve Amendment No. Two to the Janitorial Services Agreement with Universal Building Maintenance, LLC dba Allied Universal to increase the total not-to-exceed amount by \$426,126, for a total not-to-exceed amount of \$2,668,144.76, and extend the term for six months to June 30, 2022; and
- c) Authorize the Mayor and City Clerk to execute the amendment.

**MISCELLANEOUS**

**23. Annual Reporting on Development Impact Fees and Development Agreements [100-2021]**

- 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, review, and file the Annual Reports on Development Impact Fees and Development Agreements.

**24. Fiscal Year 2021-22 First Quarter Financial Report [100-2021]**

- 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) Approve Budget Amendment No. 22-005, adjusting revenue estimates and expenditure appropriations for the FY 2021-22 budget as outlined in the staff report; and
- c) Receive and file the report of budget amendments for the first quarter.

**Motion by Mayor Pro Tem Muldoon, seconded by Council Member O'Neill,** to approve the Consent Calendar, except for the item removed (Item 17); and noting the recusal by Mayor Pro Tem

Muldoon to Items 8, 9, 14, 15 and 16, the “no” vote by Mayor Pro Tem Muldoon to Items 6 and 21, and the amendments to Items 1 and 21.

**The motion carried unanimously.**

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

**17. Ocean Piers Maintenance Project – Award of Contract No. 7884-2 (22H03) [38/100-2021]**

Council Member Blom explained that he pulled this item for reconsideration of fund use and proposed a broader, long-term scope that would benefit the greater good of the City versus spending large amounts of money on continuous repairs.

**Motion by Council Member Blom, Council Member Duffield,** to a) find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (minor alteration of existing public facilities with negligible expansion) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because this project has no potential to have a significant effect on the environment; b) approve the project drawings and specifications; c) award Contract No. 7884-2 to APC for the total bid price (includes additive bid items) of \$578,770, and authorize the Mayor and City Clerk to execute the contract; d) establish an amount of \$57,877 (10%) to cover the cost of unforeseen work not included in the original contract; and e) approve Budget Amendment No. 22-022 appropriating \$140,000 from Tidelands Capital Fund unappropriated fund balance to Account No. 10001-980000-22H03 (Tidelands Maintenance fund).

**The motion carried unanimously.**

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

Jon Prun listed the potential impacts of Senate Bill (SB) No. 9 to area neighborhoods and requested that control be retained at the local level by Council filing for an injunction.

Council Member Brenner announced that an item pertaining to SB 9 and SB 10 will return at the next City Council meeting.

**XVIII. PUBLIC HEARINGS**

**25. Resolution No. 2021-117: Call for Review of the Corona del Mar 76 Service Station Remodel (PA2019-027) [100-2021]**

***Council Member Duffield recused himself due to personal financial interest conflicts.***

Associate Planner Crager utilized a presentation to discuss the 76 Station remodel, elevations, site plan overview, floor plan, and modifications to Service Station Standards.

In response to Council questions, Community Development Director Jurjis and Associate Planner Crager clarified that the wall on the property line will remain in place and the four-foot setback applies to the air and water dispenser; confirmed six changes to the modifications of Service Station Standards; discussed the waiver for setbacks and the Police Department’s recommended conditions of approval for alcohol sales, which are limited to beer and wine only; clarified that Council still has discretion regarding waivers; and discussed the applicant’s right to modify the Service Station to meet specific design requirements, the reason for remodeling and expanding, the proposed landscaping, and potential design modifications as a condition for approval or later review by Council.

***Mayor Avery opened the public hearing.***

Hamid Kianipur, applicant, explained that his family has owned and operated the station since 2003, reviewed the station's background, outlined the remodel and changes to operating procedures, parking, American Disabilities Act (ADA) accommodations, landscaping, and feedback from the City, the Police Department, and the community.

Scott Peotter, architect and project manager representing the applicant, utilized a presentation to show the existing site and building, the various submittals, proposed site, elevations, perspectives, and lighting.

In response to Council questions, Mr. Peotter confirmed that the house under construction behind the station stands five-feet higher than the applicant's structure; and related that the canopy will include the new gas station's logo, incorporate the same wood grain, and attempt to tie together the architecture. He added that the current design plan helps keep light and noise pollution to a minimum.

In response to Council questions, Community Development Director Jurjis and Traffic Engineer Brine noted that retail and restaurant operators are permitted uses on the property, the City does not regulate who operates the convenience store, and a condition to add a lighting inspection at the end of construction could be added if desired; explained the review and contamination testing process in the event of a sale or lease turn over; shared the difficulty with mandating colors for a potential operator without City mandated design standards; and explained that a traffic study was not conducted for this project because the intersection did not meet municipal code thresholds, redirecting traffic flow at this intersection is not conducive to traffic patterns, and restriping options.

Council Member Blom summarized the efforts of the applicant to conform to City rules and regulations and reminded Council that alternative property uses may not be better.

Regarding Community Development Director Jurjis suggesting that a condition be added for the canopy to match the building design, Mr. Peotter agreed. Mr. Kianipur added that he agreed to starting alcohol sales at a later hour.

Mayor Avery expressed pleasure in the design plan.

An unidentified speaker requested that Council postpone its vote so the recent plan changes and Police Department reports can be reviewed.

Doreen Chandler described daily traffic scenarios for Irvine Terrace residents, expressed concerns with the potential impacts of an additional mini mart, and requested Council postpone its vote so a traffic study can be conducted.

Jeff Woodman listed possible impacts to traffic expressed concerns regarding on-site parking, the environment, and police call volume, noted a scale discrepancy regarding the canopy in the presentation, and requested a continuance of the proposal.

Debbie Stevens expressed support for the Corona del Mar 76 Service Station project.

John Hollern referenced the proposed site map to show a noncompliant parking spot and narrow spacing down the middle alley.

Robert Gregory opposed adding a convenience store and detailed traffic issues at the intersection.

Dean Chandler summarized the intersection traffic patterns and impacts of adding a convenience store, expressed concern for alcohol sales, future property use, redundant retail options, loitering, congestion, visual aesthetics, and quality of life for Corona del Mar residents.

Garen Yekenian, owner of Korker Liquor, noted a community petition against the Corona del Mar 76 Service Station proposal, highlighted Korker's hours of operation, and stated his concern for waiving development standards and the potential precedence it could set for other businesses.

Nancy Van Otten opposed adding a convenience store to the area and highlighted possible environmental concerns related to the gas tanks during renovation.

Rebecca asked Council to consider the quality of life and safety of area neighborhoods, traffic congestion, and increased alcohol sales.

Bill Wonderly supported the Corona del Mar 76 Service Station project.

Walter Mead questioned upgrading a gas station when current car trends lean toward electric vehicles.

Bernie Svalstad supported the Corona del Mar 76 Service Station project, summarized the progression of the project plans, and noted the role of Council.

Jasmine Mortazavi supported the Corona del Mar 76 Service Station project.

Lawrence Sherwin requested a postponed vote, traffic study, and alternative property options, and questioned the sensibility of adding a convenience store with alcohol sales next to another alcohol sales retailer.

Will Vogue suggested conducting a traffic study.

Matt Larson supported the Corona del Mar 76 Service Station project.

***Hearing no further testimony, Mayor Avery closed the public hearing.***

Council Member Blom noted the impact to Corona del Mar with the current and renovated status of the station, the applicant's due diligence to the process, and the role of Council.

In response to Council Member Brenner's questions, Community Development Director Jurjis confirmed that there are no known gas tank issues at this time. Traffic Engineer Brine clarified a minimum increase in car trips to trigger a traffic phasing ordinance study and how traffic habit observations can feed adjustments.

**Motion by Council Member Brenner, seconded by Council Member Dixon,** to a) find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, because it has no potential to have a significant impact on the environment; and b) adopt Resolution No. 2021-117, *A Resolution of the City Council of the City of Newport Beach, California, Upholding the Decision of the Planning Commission and Approving Conditional Use Permit No. UP2019-004 and Coastal Development Permit No. CD2019-005, which Supersedes Conditional Use Permit No. UP1580, to Remodel and Expand an Existing Convenience Store Including a Waiver of Some Service Station Development Standards and the Introduction of a Type 20 (Off-Sale Beer and Wine) Alcohol Beverage Control License for the Property Located at 2201 East Coast Highway (PA2019-027)*, with the addition of the following conditions: limit alcohol sales from 9 a.m. to 9 p.m., strike the condition requiring the Community Development Director and Police Chief to evaluate after one-year for the hour extension, require the owner to apply for the change and go through the regular permit process, support modification for the setback relief, have the owner work with staff to create a less contemporary design, and require that the canopy match the design of the building.

City Attorney Harp stated that conditions applicable to all businesses should be addressed separately from this motion.

In response to Council Member Dixon's question, Community Development Director Jurjis confirmed that not all convenience stores attached to gas stations sell alcohol, but always have an anchor item to sell.

**Council Member Dixon introduced a friendly amendment to support Council Member Brenner's motion that included prohibiting alcohol sales and allowing extended hours.**

Council Member Dixon utilized slides to show alcohol litter at the current location.

Council Member Brenner expressed concern for maintaining the original motion in the event the friendly amendment is not adopted.

**Substitute motion by Council Member Dixon, seconded by Council Member Brenner,** to approve the original motion, but remove the sale of alcohol.

Mayor Pro Tem Muldoon and Council Member O'Neill indicated that they would support Council Member Brenner's original motion.

Council Member Dixon expressed concern that additional problems may arise with having two adjacent retail operators selling alcohol.

**With Council Member Duffield recusing himself and Mayor Avery, Mayor Pro Tem Muldoon, and Council Members Blom and O'Neill voting "no," the substitute motion failed 2-4.**

**With Council Member Duffield recusing himself, the original motion carried 6-0.**

**26. Ordinance No. 2021-24: Amendment to the Newport Place Planned Community (PC-11) (PA2021-147) [100-2021]**

***Council Member O'Neill recused himself due to his membership in the Pacific Club.***

Community Development Director Jurjis summarized that the amendment is related to changes in the zoning language.

***Mayor Avery opened the public hearing. Hearing no further testimony, he closed the public hearing.***

**Motion by Council Member Blom, seconded by Council Member Dixon,** to a) determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15303 of the CEQA Guidelines because it has no potential to have a significant effect on the environment; and b) waive full reading, read by title only, introduce Ordinance No. 2021-24, *An Ordinance of the City Council of the City of Newport Beach, California, Approving an Amendment to the Newport Place Planned Community (PC-11) No. PD2011-001 to Change the Land Use Designation from "Restaurant Site 1" to "General Commercial Site 8" for Property Located at 4241 MacArthur Boulevard,* and pass to second reading on November 30, 2021.

**With Council Member O'Neill recusing himself, the motion carried 6-0.**

**27. Annual Review of Zoning Agreement for Sierra by the Sea (C-4745) (PA2010-150) [38/100-2021]**

In response to Council Member Brenner's question, Community Development Director Jurjis noted that exemplary residential group home operators will be used as a template for conversation with other operators.

Council Member Dixon noted Sierra by the Sea as a role model to the community with no code violations.

***Mayor Avery opened the public hearing. Hearing no testimony, he closed the public hearing.***

**Motion by Council Member Dixon, seconded by Council Member Brenner,** to a) find this review exempt from the California Environmental Quality Act (“CEQA”) pursuant to Section 15321 (Enforcement Actions by Regulatory Agencies) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because this review enforces an entitlement for use adopted by the City and has no potential to have a significant effect on the environment; b) find that SBTS has demonstrated good faith compliance with the terms of the Zoning Implementation and Public Benefit Agreement; and d) receive and file documents submitted by SBTS to demonstrate good faith compliance with the terms of the Zoning Implementation and Public Benefit Agreement.

**The motion carried unanimously.**

## **XIX. CURRENT BUSINESS**

### **28. Ordinance No. 2021-25: Solid Waste and Divertible Material Container and Bulky Item Requirements [100-2021]**

Public Works Director Webb and Deputy Public Works Director Martin utilized a presentation to discuss the changing laws regarding solid waste collection, recycling and disposal, revisions to NBMC Chapter 6.06, the new waste 3-cart collection system, revisions to NBMC Chapter 6.04, required containerizing to address some service issues, revisions to NBMC Chapter 14.17, upcoming residential refuse modifications, including cart size choices, residential collection day route changes, and expectations for the next few months.

In response to Council questions, Public Works Director Webb and Deputy Public Works Director Martin clarified that all cities in California are required to participate, new hauler contracts will offer discounted bulk mulch pricing, confirmed vendor process efficiencies and increased cost savings to the City through the new system, stated that a communication plan will be shared at the January 2022 City Council meeting, and agreed to include the option of using biodegradable trash bags in the communications to the residents.

**Motion by Council Member Dixon, seconded by Council Member Brenner,** to 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, direct the City Clerk to read by title only, introduce *Ordinance No. 2021-25, An Ordinance of the City Council of the City of Newport Beach, California, Amending Chapter 6.04 (Garbage, Refuse and Cuttings), Chapter 6.06 (State Mandated Municipal Solid Waste Diversion Programs), and Chapter 14.17 (Water-Efficient Landscaping) of the Newport Beach Municipal Code Necessary to Implement Senate Bill 1383 (Short-Lived Climate Pollutant Reduction Act of 2016) State Mandates*, and pass to second reading on November 30, 2021.

***Mayor Avery opened the public hearing.***

Jim Mosher questioned the ordinance, fees, and clarity of the proposal.

***Hearing no further testimony, Mayor Avery closed the public hearing.***

**The motion carried unanimously.**

XX. MOTION FOR RECONSIDERATION – None

XXI. ADJOURNMENT – 9:38 p.m.

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 November 10, 2021, at 4:00 p.m.

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Brad Avery  
Mayor

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Leilani I. Brown  
City Clerk

DRAFT