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Written Comments

November 30, 2021, City Council Agenda Comments

The following comments on items on the Newport Beach City Council agenda are submitted by:
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Item SS4. Discussions Relative to SB 9 and SB 10

See comment on Item 9, below. A reference to that item on the evening's agenda would have seemed appropriate in the present agenda item description since Item 9 gives some hint of what staff is likely to say about SB 9 during the Item SS4 discussion.

Item IV. CLOSED SESSION

Item A under this heading refers to a scheduled closed door conference with legal counsel regarding existing litigation between two Ohio counties and three retail pharmacy chains taking place in a federal district court in the Northern District of Ohio.[1]

Although the Brown Act section cited in the agenda as justification for closed session, Section 54956.9, does indeed allow non-public discussion of existing litigation, it does only "*when discussion in open session concerning those matters would prejudice the position of the local agency in the litigation*."

That clearly says the City of Newport Beach would have to be a party to this litigation in Ohio, a point explicitly reiterated in the specific subsection cited, 54956.9(d)(1), which allows a closed session *only* when: "*Litigation, to which the local agency is a party, has been initiated formally*."

I could be wrong, but I do not believe the City of Newport Beach is a party to this litigation. Without being a party, it is very difficult to see how it could have a position in the trial, let alone a position that would be prejudiced by open discussion of whatever it is the City Attorney wishes to discuss with the Council.

For these reasons, **I do not believe Item IV.A is a legitimate closed session topic**, and hope any discussion of this case and how it impacts Newport Beach takes place in open session.

If, instead, the City Attorney wishes to discuss with the Council their interest in intervening in this existing federal case, the proper justification would be 54956.9(d)(4): "*Based on existing facts and circumstances, the legislative body of the local agency has decided to initiate or is deciding whether to initiate litigation*."

But in that case, or if I am mistaken and the City has already intervened, one has to wonder why? While the prescription opiate crisis, and the culpability of various players in it, is an issue impacting all cities in this country, it is only one of a myriad of nationwide issues, and it is hard to understand why the City would be committing resources to it alone, and more especially how the City's involvement could add enough new to the conversation to justify the commitment.

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[1] According to a news report appearing the day the present agenda was posted, "*A federal jury ruled against CVS, Walgreens and Walmart, finding that the pharmacy chains helped fuel the opioid crisis in two Ohio counties. The three pharmacy chains currently face thousands of lawsuits, but this was the first one to go to trial*."

This raises a larger issue, which is that the public is, and has been for many years, in the dark regarding what litigation the City currently ***is*** a party to, and how much is being spent on it.

The last public review of activities conducted by the City Attorney's Office that I can recall was more than a decade ago, Item 18 from January 25, 2011, and even that did not list the specific litigation the City was involved in at the time.

Especially given the opaque-to-the-public way in which legal matters are discussed in closed session or through private communications to Council members, shouldn't the Office of the City Attorney post a publicly-accessible list of cases it is pursuing, including their current status and outcome?

Item 1. Minutes for the November 16, 2021 City Council Special Meeting and Regular Meeting

The passages shown in *italics* below are from the draft minutes with suggested corrections shown in ***~~strikeout~~*** ***underline*** format. The page numbers refer to Volume 65.

> **Page 182**, Item III, paragraph 1: The "*unidentified speaker*" was Susan Dvorak.
>
> **Page 183**, Item SS2, paragraph 4, sentence 1: "*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* ***~~budget~~*** *surplus* ***~~money~~*** *is open for consideration by Council; …*" [?]
>
> **Page 184**, Item SS3, paragraph 1: *"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."*
>
> **Comment**: At around 44:45 in the video, Mr. Jurjis can be seen using slides quoting passages from Title 20 (Planning and Zoning) of the NBMC to demonstrate that, in his opinion, fractional ownership of a property does not constitute a "time share project" (something not currently allowed in R-1 districts, and something that was at one time prohibited throughout Newport Beach by Ordinance No. 82-14, but relaxed by Ordinance No. 96-7 and subsequent ordinances).
>
> Before blindly accepting that interpretation, it would seem wise to seek and opinion from someone versed in real estate law, for there would certainly seem room for other interpretations.
>
> First, the interpretation offered is flatly contradicted by the parallel provisions in Title 21 (Local Coastal Program Implementation Plan) that explicitly include "fractional ownership" in the definition of "time share project." As certified by the California Coastal Commission, our comparable definition for coastal development permit purposes is:
>
> > "*"Time share project" means a development in which a purchaser receives the right in perpetuity, for life, or for a term of years, to the recurrent, exclusive use or occupancy of an ownership interest in a lot, unit, room(s), or segment of real property, annually or on*

> *some other seasonal or periodic basis, for a period of time that has been or will be allotted from the use or occupancy periods into which the project has been divided and shall include, but not be limited to, time share estate, interval ownership,* ***fractional ownership****, vacation license, vacation lease, club membership, time share use, hotel/condominium, or uses of a similar nature See also "Limited use overnight visitor accommodations (LUOVA)*."

Moreover, Title 21 allows "Hotels, Motels, and Time Shares" *only* on property with a mixed use, general commercial or visitor-serving commercial land use designation.

Second, "Time-Share Project" is defined differently in NBMC Section 3.16.020 for determining when a use in that form for thirty days or less is subject to the City's transient occupancy tax. The existing definition of "Time-Share Interest" in that section relies on what is now a non-existent Section 11003.5 of the state Business and Professions Code, which may be reference to language sponsored by Assemblywoman Brewer in AB 935 in 1999.

Interestingly, the former BPC Section 11003.5 was in a chapter entitled "Subdivided Lands," and Section 30106 of the Coastal Act defines "development" (for which permits are generally required when it occurs in the coastal zone) to include not just construction, but "*subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land*."

Ms. Brewer's modified definition of a "Time-Share Project" constituting subdivision was repealed by California's Vacation Ownership and Time-share Act of 2004 (AB-2252), which excluded the time-shares included in that new act (time-share property with more than 10 owners) from the definition of "subdivided land." But by implication, time-share properties with 10 owners and less remained in the subdivided land chapter, as do properties owned in other forms described in BPC Section 11004.5 and elsewhere.

While there is some substance to the Director's argument that the words "project" and "development" suggest physical construction, it is listed as a "use" in the NBMC (allowed in some areas and not in others) and there seems little logic to distinguishing between a use created by original construction versus one created by conversion of an existing use. Plus the words in the NBMC definition seem copied from state codes in which they may have a different connotation since operative idea there is subdivision, not construction.

Moreover, what logic there is seems difficult to support when, as Council member Dixon pointed out, the conversion of a rented duplex to ownership as condominiums, with no physical change, is considered as "development" requiring a permit under our codes. And the time-share regulations in NBMC Subsection 20.48.220.A.2 prohibit "*The conversion of existing residential dwelling units into time share units,*" much as condominium and cooperative housing ownership is prohibited in the R-1 zones in both Title 20 (Subsection 20.18.010.B) and Title 21 (Subsection 21.18.010.B).

So changes in ownership can be "development" and we do regulate ownership.

I think the handling of this item highlights the imprudence of holding "study" sessions, with no material posted prior to the meeting for public review. Without anyone knowing what the presenter is going to say, the chance to question the information presented is greatly

diminished. If "study" is truly the object, there needs to be a fair chance to research and challenge staff's recommendations.

Page 184, Item SS3, paragraph 4: "*In response to Council Member Brenner's questions, Community Development Director Jurjis confirmed* ~~***which***~~ ***the*** *zones* ***in which*** *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.*"

Page 185, paragraph 8: "~~***Jeff***~~ ***Chuck Fancher*** *believed that the City should focus on nuisance issues and not regulate good behavior, predict behavior, or profile guests*." [see video at 1:50:22. The speaker introduced himself clearly. It's not clear how his name transmogrified into "Jeff."]

Page 185, paragraph 11, end of last sentence: *"…, and concurred that the current City definition of time share* ~~***fits***~~ ***does not fit*** *the Pacaso application*." [see video at 2:04:10]

Page 187, Council Member O'Neill, first bullet: "*Attended the Distinguished Citizens Program/Newport Beach Foundation,* ***the*** *memorial for Detective Sergeant Randy Parker,* ***and*** *thanked the Newport Beach Police Department for their help on Halloween*"

Page 187, Council Member Dixon, third bullet: "~~***Announced***~~ ***Attended*** *the first City Council Redistricting Committee meeting on November 8*" [This was a report of a past meeting, not an announcement of a future one.]

Page 187, Council Member Blom: "*Attended the VNB Marketing Outlook and Tourism Awards,* ~~***meeting with the***~~ ***an*** *Irvine Terrace Residents Association* ***meeting****, and the San Diego crew meet, where the* ~~***North Atlantic Conference***~~ ***Newport Aquatic Center*** *(NAC), Orange Coast College (OCC), and Newport Sea Base rowing teams competed*"

Page 193, Item 25, paragraph 1: "*Council Member Duffield recused himself due to personal financial interest conflicts*." [The minutes reflect what was said. However, recusals are supposed to be explained with enough specificity that the public understands the reason for the recusal. Nearly all recusals result from the potential effect of a decision on a personal financial interest of some kind. This one does not begin to explain in what specific way Council Member Duffield's personal finances would be affected by the Council's action regarding the 76 service station remodeling application.]

Page 194, paragraph 1: "*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***~~ ***Americans with*** *Disabilities Act (ADA) accommodations, landscaping, and feedback from the City, the Police Department, and the community*."

Page 194, paragraph 8: "*An unidentified speaker requested that Council postpone its vote so the recent plan changes and Police Department reports can be reviewed*." [The unidentified speaker was Cynthia Hollern (misspelled "Halloran" on page 163 of the October 12 Council minutes (but correct on page 9 of the October 7 Planning Commission minutes).]

Page 194, paragraph 5 from end: "*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." [missing comma]

Page 195, paragraph 1: "*Garen ~~Yekenian~~ Yegenian, 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*." [see correspondence]

Item 5. Ordinance No. 2021-25: Solid Waste and Divertible Material Container and Bulky Item Requirements

I commented at some length on this ordinance (based on a partial reading of it) when it was introduced as Item 28 at the November 16 meeting.

While I appreciate the difficulty of drafting something applicable to many different possible scenarios of trash collection, I continue to be bothered by the often inconsistent and sometimes contradictory definitions of terms in different sections. And while I appreciate some minor typographic errors have been corrected in response to the previous comments, this is the second reading, so no further changes can be made if it is to become effective by January 1 as the state requires. That makes further reading and suggestion of changes rather pointless – something that could have been avoided by not waiting to the last possible moment to introduce the ordinance.

One of my main concerns, as I attempted to point out on November 16, is that if the City plans to institute a three-cart system (which I do not think is necessary for compliance with SB-1383), and imposes it on 90% or more of residential and commercial generators, the CalRecycle information suggests the ordinance could be written as a "performance-based" collection service model one, in which case the City could avoid some of the enforcement responsibilities, which would be a relief to both the City and those against whom enforcement actions might otherwise have to be taken. While it seems likely the City could not qualify for a "performance-based" ordinance, that, like much else, should at least have been discussed publicly and not relegated to the judgment of a privately-meeting Council "working group."

Item 7. Resolution No. 2021-120: Supporting Initiative No. 21-0016 to Amend Article XI of the California Constitution to Provide That Local Land Use and Zoning Laws Override Conflicting State Laws

The amended initiative attached starting on page 7-7 seems to be officially called "21-0016A1".

Should it be referred to as such in the resolution?

Also, the Exhibit A referred to on pages 7-5 and 7-6 is not labeled as "Exhibit A".

Item 8. Resolution No. 2021-121: Initiation of Zoning Code and LCP Amendments Related to Parking Regulations (PA2021-104)

Parking is a big subject and this resolution is extremely vague as to what kind of parking regulations staff is being directed to propose amendments to.

Item 9. Resolution No. 2021-122: Initiation of Code Amendments Related to Senate Bill No. 9 (PA2021-277)

The staff report, page 9-3, says "*The bill does not supersede the provisions of the Coastal Act; however, the City is **precluded** from holding a public hearing on coastal development permits for a project subject to SB 9 approval*."

This statement appears inconsistent with the language of SB-9.

Lot splits are regarded as development under the Coastal Act (explicitly listed in PRC Sec. 30106), and, if in the coastal zone, require a coastal development permit, which, under the City's Local Coastal Program Implementation Plan is generally understood to involve an appealable discretionary decision made at a public meeting by the City's Zoning Administrator.

The only references to the Coastal Act in SB-9 are in the new Government Code Sections 65852.21(k) and 66411.7(o), both of which say "*Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local agency **shall not be required** to hold public hearings for coastal development permit applications for urban lot splits pursuant to this section*."

There would seem to me to be a significant difference being not being **required** to do something and being **prohibited** from doing it.

I read this as saying the City does not have to hold hearings on these, but I have great difficulty reading the SB-9 as prohibiting the City from continuing to hold public hearings on these applications if it chooses to do so. In fact, since SB-9 says it is not superseding any other aspect of the Coastal Act, it is difficult to see why the City would want to suspend its current practice, the result, in any event, remaining appealable, just as before. SB-9 does not say granting the CDP for an R-1 lot split in the coastal zone becomes ministerial.

Item 10. Resolution No. 2021-123: Supporting a Ban on New Offshore Oil and Gas Drilling

The staff report (last paragraph, page 10-1) mentions the City Charter's existing ban (in Section 1401) on offshore drilling within the City limits, which has existed since the Charter's adoption in 1954 (effective January 7, 1955).

Shouldn't this be mentioned in the resolution? As well as the distinction the Charter makes between "*drilling originating from the ocean's surface*" (which is always prohibited) and slant drilling from shore to fields under the ocean, for which certain exceptions are made?

Item 11. Resolution No. 2021-124: Repealing Resolution No. 2021-32 and Designating a Portion of 31st Street in Cannery Village as a One-Way Street

It is refreshing to see staff being able to admit it made a mistake and take steps to correct it.

Item 24. Resolution No. 2021-126: Central Library Lecture Hall Building - Approval of Conceptual Design and Associated Memorandum of Understanding with the Newport Beach Public Library Foundation

- The description on page 24-3 of the Conceptual Design as containing "Up to 299 fixed seats" does not match the description given by Library Trustee and LLHDC member Janet Ray who reported at the November 15 Board of Library Trustees meeting that the plan was for 275 fixed seats, with a capability to add 24 moveable ones for a total seating (fixed plus moveable) of 299.
- Regarding the Conceptual Design illustrated on page 24-10, improving just half the Central Library parking lot would, in my opinion, give the remaining half a neglected look, as well as diminish the significance of the eastern portion of the existing library building, which I doubt its architect would appreciate.
- Regarding Resolution No. 2021-126, the fact that the 2006 General Plan did not set limits on the maximum allowable size of government facilities is disturbing since Greenlight relies on those limits and has never exempted them.
- One might also question the CEQA exemptions claimed in Exhibit "B" on page 24-19 when the project admittedly impacts a bioswale that was presumably an environmental mitigation for earlier projects. In any event, the exhibit does not appear to have been very carefully reviewed, as is evident from these typos in the lines dismissing that concern:

  "*The operation would be subject to all applicable City regulations regarding environmental quality, including noise and water quality and **a** preliminary Water Quality Management Plan (PWQMP) has been prepared for the project. The **Project** displaces some of the existing water collection and treatment facilities for the City Hall/Library Campus, however, replacement or modification of those areas would be performed in compliance with an approved WQMP. Modifications to the treatment/collection areas ~~area~~ **are** included within this Project*."

- Regarding Attachment D, the Memorandum of Understanding, Recital A on page 24-21 says "*The Foundation was incorporated in 1989 to raise funds for the construction of the City of Newport Beach Central Library ("Central Library") located at 1000 Avocado Avenue ("Property")*." While the California Secretary of State's Business Search site confirms this, it also says the original foundation was dissolved in 1993 and reinstituted as a new corporation, initially deleting the word "Public" from its name, and not reinstating it to the earlier (and present) name until 2000.
- Recital E on the same page says "*The Foundation has raised over Seven Million Dollars and 00/100 ($7,000,000.00) over the ten (10) years prior to Covid-19 in furtherance of library programming or for valuable library enhancements and benefits, without cost to the City*." While I don't doubt that, it doesn't appear most of that money made it to the City's library, which appears to be the Foundation's sole purpose according to its articles of incorporation.

A search of the City Council's meeting minutes suggests that less than $2 million of the funds raised in the 10 years prior to COVID-19 were donated to the library:

Date	Item	Amount
4/27/2010	12	9,918
9/28/2010	17	156,000
9/27/2011	13	165,700
9/25/2012	11	220,000
7/23/2013	13	12,550
9/10/2013	13	162,000
8/12/2014	18	19,495
9/23/2014	10	224,000
8/11/2015	12	11,364
10/27/2015	10	221,125
4/12/2016	17	15,480
9/27/2016	14	185,000
9/12/2017	19	155,025
9/11/2018	9	153,125
10/8/2019	9	155,000
Total 2010-2019:		**1,865,782**

This suggests the Foundation has, in recent years, spent the bulk of its revenues on activities of its own devising with no direct City oversight, and suggests the Lecture Hall could be seen as something of a facility being built largely for privately-decided use.

- Recital K on page 24-22 says "*In furtherance of the development of the Project with substantial private funding through the Foundation, in December 2019, the City entered into a Professional Services Agreement with Robert R. Coffee Architects + Associates ("RCA") for the conceptual design of the Library Lecture Hall, and thereafter the completion of all construction documents and other project elements*." Contract C-7444-2, at a not-to-exceed cost of $637,670 and effective January 1, 2020, was actually approved by the Council as Item 24 at its November 19, 2019, meeting. Nothing I can find in that staff report or the minutes says anything about the Foundation paying part of the contract cost.
- Recital M on the same page says: "*Through this Agreement, the Parties wish to memorialize their intention to equally share in the cost of the Project subject to other terms and conditions set forth below*." Is it really the Council's intent to equally share in the cost? I thought the City's contribution was supposed to be capped and the Foundation would be responsible for any amounts needed in excess of that.
- Clause 3.3 on page 24-25 says "*The City shall provide to the Foundation electronic copies of the contractor's construction draw requests when received by City (but without backup unless specifically requested by the Foundation) as well as a final report to the Foundation documenting use of the Foundation Commitment within six (6) months of completion of the Project*." Does "construction draw requests" mean billings (as in "drawing" on an account)? It seems a strange and ambiguous term to use.

- Clause 12.1 on page 24-29 creates potential naming rights for the building. This seems in conflict with long-standing Council Policy B-9 against naming whole buildings (as opposed to rooms or amenities) after living people.[2]
- Clause 12.3 on the same page seems to offer potential naming rights to the Central Library's Bamboo Courtyard. Does that mean it will no longer by the "Bamboo Courtyard"?
- The letter from the Irvine Company on page 24-53 is copied to "*Larry Tucker, City of Newport Beach, Library Lecture Hall Design Committee*." I don't know where the Irvine Company got that impression, but Mr. Tucker is not an appointed member of the Council's Library Lecture Hall Design Committee.

Item 25. Ordinance No. 2021-27: A Code Amendment Related to Tattoo Establishments (PA2020- 030)

On page 25-2, in the first sentence under "Discussion," the reference to "the Safe **Board** Art Act" was evidently intended to be to "the Safe **Body** Art Act."

On page 25-3, it seems important to note that the appeals court in the case cited, *Real v. City of Long Beach*, (9th Cir. 2017) 852 F.3d 929, did not invalidate the Long Beach ordinance, but only remanded the case to the trial court with instructions to invalidate the ordinance *if* the trial court found it vested unbridled discretion in a government official to permit or deny the activity. It would be good to know if the trial court ultimately found it did that.

It seems likely it did, for it appears Long Beach revised its code with Ordinance No. ORD-18-0013 in 2018 (see their agenda item from May 8, 2018). However, Long Beach's ordinance is quite different from the one being offered here. In particular, it allows tattoo parlors by right in commercial districts (including the commercial portions of planned community districts) provided only they are 700 feet[3] from the nearest school or other tattoo parlor. In addition, the distance requirement can be waived with a use permit granted subject to discretionary findings (see LBMC Secs. 21.45.166, 21.52.273, and 21.25.401 et seq.). Because there is no distancing requirement from parks or residential structures, this opens up a much larger portion of their city; and with the use permit option a vastly larger number of potential sites.

As to the restriction imposed by the distancing requirement, see the map on page 6 of the 9-page Long Beach PowerPoint from their March 20 meeting, illustrating the impact of a proposed 500-foot avoidance zone around schools. Similar maps were presented to the Newport Beach Planning Commission as shown on pages 25-82 and 25-111 of the present agenda packet. However, I can make little sense of the Newport Beach maps because although they similarly illustrate a 500-foot avoidance zone around schools and parks, the illustration of the "500-foot buffer from Residential Structures" is inscrutable, for it is not drawn around the residential

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[2] The purported naming of the so-called "Donna and John Crean Mariners Branch Library" was never, to my knowledge, approved by the City Council.

[3] Long Beach staff proposed 500 feet. This seems to have been increased by their council.

structures. If a 500-foot buffer were shown around every residential structure, nearly the whole city (outside the Airport Area) would be shaded.

Moreover, there is little discernable logic to allowing tattoo establishments in some commercial districts but not others,[4] and not allowing them in the commercial areas of planned communities (which cover a vast portion of Newport Beach).

In contrast to the Long Beach ordinance, the combination of the added buffering from parks and homes and the restriction to specified commercial districts outside planned communities means that in practice only two (and at the very most four)[5] tattoo services could be legally established in the entire city. That is so close to a prohibition (and will, in fact become a prohibition on future permits once two new permits are issued) that is difficult to see how it could survive judicial scrutiny.

Specific comments

1. To reiterate what I said to the Planning Commission in May (see page 25-66 of the present staff report), if it is indeed the Council's wish to allow tattoo establishments in only a subset of the City's commercial districts, then proposed NBMC Section 20.48.230.A.1 (page 25-14) should be re-written to say that. As proposed, it is, at best, ambiguous, and by repeating in full the title of Chapter 20.20 appears to say they are "authorized" in *all* the districts named there. I continue to like my suggestion from May, but alternatively I could suggest:

   "*Tattoo establishments are authorized **only** within the Commercial Zoning Districts identified **for such use** in Chapter 20.20*."

2. I would also suggest that redundant words be removed from the proposed definition on page 25-16:

   ""*Tattoo Establishment (land use)" means an establishment where **~~the insertion of~~** pigment, ink or dye is **~~applied~~** **inserted** under the surface of the skin by a person pricking with a needle or otherwise, to permanently change the color or appearance of the skin or to produce an indelible mark or figure visible through the skin in exchange for financial or other valuable consideration. It does not include the*

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[4] Since tattoos were at one time associated primarily with sailors visiting ports, it is particularly ironic that the service is prohibited in the Marine Commercial and Visitor-Serving Commercial districts.

[5] The staff report says "*there are approximately 150-200 potentially available sites for the establishment of new tattoo business when factoring in the locational requirements under the proposed code amendment*," but goes on to note "*the proposed 1,000-foot separation requirement between tattoo establishments will diminish the availability of sites as new tattoo businesses are opened*." In fact, the "150-200 potentially available sites" are all located in just two areas: one in Newport Center (which will largely be eliminated with the construction of the Residences at Newport Center project along Anacapa) and the other along Irvine Avenue near its intersection with Bristol Street South. Once an establishment is approved in either of these areas, the 1000-foot buffer will likely prohibit the permitting of another in the same area unless the two were able to coordinate themselves so as two be at extreme opposite ends of the allowed area (which, in the case of Newport Center, would likely require constructing a new building in what is now a parking lot).

application of permanent make-up that is performed as an incidental service in a beauty shop, day spa, or dermatology office."

3. The Coastal Commission appears to have little interest in tattoo legislation, seeing no Coastal Act issues with it (see, for example, their analysis of the revised Long Beach ordinance as Item Th13d at their August 9, 2018 meeting). Nonetheless they might be surprised to discover they are *not* being asked to certify the distancing requirements or operating standards, and that because of those, although they *are* being asked (page 25-23) to add "Tattoo Establishments" as an allowed use (with a coastal development permit, if required) in the CG and OG Coastal Zoning Districts, the City's distancing requirements would, in fact, prohibit any such establishments in the Coastal Zone. At least to me, it seems strange to ask them to take the trouble to declare something an "allowed" use when other regulations prohibit it.
4. Finally, will Newport Beach have a mechanism comparable to that in Long Beach for permitting tattoo establishments at a location that does not, due to the City's distancing requirements, qualify for a by-right permit? If so, what is it? For example, does staff believe an application for a tattoo establishment anywhere in an OR, OG or CG Zoning District (but only those districts) be approved as a variance[6] to the code? Or does staff think such a safety valve is unnecessary?

Item 26. Ordinance No. 2021-28: A Code Amendment Related to Short-Term Lodging Citywide and on Newport Island (PA2020-048 and PA2020-326)

This item consists of the acceptance of modifications to regulations that the Coastal Commission has found necessary for their certification.

The City staff report does not mention that Coastal staff was uncertain what the City was asking the Coastal Commission to certify, since the City presented to them both Resolution No. 2020-91, Ordinance No. 2020-26, and Resolution No. 2021-30 (the current Attachments C, B and D), some of which said in the fine print that some parts were contingent on CCC certification and others were not. In particular, Ordinance No. 2020-26 included extensive revisions to NBMC Chapter 5.95, a chapter that the City had never regarded as part of its Local Coastal Program, and only selected portions of which the City thought required CCC certification (see Section 16 on page 26-33). CCC staff did not seem to agree with that interpretation since the request in Resolution No. 2020- 91 asked the CCC to certify new references in the LCP Implementation Plan (NBMC Title 21) references to Chapter 5.95 (see page 26-40).

As a result, as part of an addendum to their original report for Item W14b on the October 13, 2021, agenda, CCC staff added a statement to the Commission action finding that if the City accepts the certification of the modified language "*the entirety of Chapter 5.95, currently not a*

[6] Noting that at least the first of the currently required findings in NBMC Subsection 20.52.090.F – that the subject property is different from the typical property in that zone – would seem difficult or impossible to make.

part of the certified LCP, becomes incorporated into the LCP by way of reference. The Commission considers the entirety of Chapter 5.95 as becoming incorporated into the LCP, not just those subsections that the City modified in City Council Ordinance No. 2020-26. Consequently, the LCP Amendment as submitted incorporates all short-term lodging permit conditions set forth in the NBMC Title 5 Chapter 5.95, thereby incorporating and incorporates NBMC Title 5 Chapter 5.95 into the certified LCP."

This would seem to mean that if the City proceeds with the certification, *any* future change to NBMC Chapter 5.95 – not just the provisions for which certification was explicitly asked – would require CCC approval to be effective in the coastal zone (where, according to City staff's presentation to the CCC, 96% of the short-term lodging permits are).

This difference of opinion as to whether all the regulations in Chapter 5.95 need CCC review, or just some of them, is important both because: (1) it limits the City's flexibility to unilaterally make future changes to Chapter 5.95, and (2) it appears the CCC has certified (subject to its minor modifications) all the language currently proposed in Chapter 5.95, despite having provided no analysis of most of it.

It also renders somewhat pointless the City's past effort to isolate all regulations needing CCC oversight in a single title of the NBMC.

Council members who have not had a chance to watch the October 13 CCC proceedings should also be aware that several of the Coastal Commissioners were sympathetic about the City's efforts to mitigate the impact of short term rental conversions on both the City's housing stock[7] and permanent residents' quality of life. However, those same Commissioners found fault with the City's prohibition of STL's in R-1 zones, feeling that unfairly placed the burden and loss on the portion of the housing stock the Commission would most want to protect.

[7] City staff said Council District 1 (the Peninsula Area) had lost 10% of its permanent population in the last 10 years, which they attributed to housing being converted to STL's. One Coastal Commissioner also asked if Newport Beach should have anti-discrimination policies in its STL regulation, to which City staff replied, in what sounded like a good answer but was apparently incorrect, that the City wanted to level the playing field between STL's and hotels both of which could refuse service to anyone they wanted.