

January 11, 2022, City Council Agenda Comments

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

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Item 4. Resolution No. 2022-1: Updating the List of Designated Positions for 2022 Under the City's Conflict of Interest

Exhibit 2 (page 4-10) defines a Disclosure Category 5 for employees in "Positions Which Involve City Self-Insurance Benefits." Yet, as best I can tell, there is no job title assigned to this category.

Are employees whose job functions might affect City self-insurance benefits included in some higher category requiring disclosure of the potential conflicts listed under Category 5?

Item 5. Resolution No. 2022-2: Creating the General Plan Update Steering Committee (PA2017-141)

This strikes me as a rather extraordinary proposal, and not in a good way.

While there may be a use for a steering committee, it seems bizarre that the appointment of its members would be left wholly to the unchallengeable discretion of a single Council member (the Mayor) and possibly without any public application process at all.

While the next to last paragraph on page 5-2 says "*If the Mayor decides for residents to apply for the opportunity to serve on the Steering Committee, then the City Clerk will publish an ad for residents to submit applications for City Council consideration,*" there is nothing I can find to that effect in the proposed resolution. Indeed, page 5-8 of Attachment "A" to the resolution gives the Mayor, beyond the requirements of state law, complete "*discretion to determine the process for selecting Committee*" and waives any duty of him to "*comply with any other procedural or timing requirements set forth in Council Policy A-2*" (where the requirements for advertising are found). And as to any protection provided by state law, our City Attorney has previously claimed (I believe erroneously) that while state law requires a public process for filling vacancies on existing boards, commissions and committees, there is no such requirement when creating new bodies.

In other words, despite the statement in the staff report, there is nothing in resolution to guarantee an application process, and certainly nothing that would be presented "*City Council consideration.*" The appointments, and whether they are even citizens, council members or non-residents, is left entirely up to one person, the Mayor. That is bad government.

Moreover, the proposed Steering Committee is quite different from the General Plan Update Committee that oversaw the successful 2000-2006 update of the General Plan or even the more recent, but aborted, Steering Committee instituted in 2019.

The latter, established by [Resolution No. 2019-7](#) and refined by [Resolution No. 2019-20](#), consisted of seven citizen members appointed by the Mayor from a public application pool and confirmed by the full Council.

The Council's former 2000-2006 General Plan Update Committee (which oversaw a still larger citizens General Plan Advisory Committee) was first established by [Resolution No. 2000-45](#) (while the vote on Greenlight was pending), and refined by [Resolution No. 2000-102](#), [Resolution No. 2001-17](#) and [Resolution No. 2003-21](#).

Those resulted in an 11-member GPUC consisting of 3 Council members appointed by the Mayor, 7 additional representatives selected by the City's various boards and commissions from among their own members, plus 1 person designated by the Greenlight petitioners.

Why is this being scaled back to just three people with no Council input on who they are?

Item 11. Approval of Professional Services Agreement with Moffatt & Nichol for Harbor Piers Rehabilitation Project (19H02)

The staff report says the City received five proposals for this work.

It is normal for staff reports of this sort to contain a table showing how the bidding firms were rated. This one says only "*Moffatt & Nichol received the highest total score and was selected by staff as the most qualified and responsive firm for this project.*"

Why is no hint of the names and ratings of the other bidders provided?

Item 12. Newport Bay Trash Wheel Project – Approval of Amendment No. One to the Professional Services Agreement with Burns & McDonnell Engineering Company, Inc. (Contract No. 7127-3)

Some of the "new tasks" described on page 12-2, seem things that should have been anticipated in the original bidding. Did the City not expect "fee payments for agency permits" or the need to prepare a "Habitat Mitigation and Monitoring Plan," or "fish habitat consultation with US Fish & Wildlife Service"?

Item 14. Approval of Side Letters of Agreement with the Newport Beach City Employees Association (CEA) and Newport Beach Professional and Technical Employees Association (ProfTech)

The agenda listing fails to disclose the purpose of these "side letters" is to approve the payment of one-time \$2,000 cash bonuses to the 172 existing members of these two associations.

I have previously expressed my opinion regarding the propriety and legality of such arrangements (see, most recently, [my comments on Items 7 and 8](#) on the December 14, 2021, agenda).

In short, while I appreciate the service that has been provided by these employees, I do not think after-the-fact bonuses are either proper or legal. Any reward, I feel, should be in the form of an incentive for future work, not that already completed.

Item 16. Annual Mayor Appointments

I am doubtful that body IV.C, the [Orange County Coastal Coalition](#), still exists. It used to hold meetings in the Friends Room or Community Room organized by OC Public Works through the office of then-Supervisor Pat Bates. If it still exists, I have not seen notices for its meetings for many years.

I would likewise suggest that the City bodies that have not met for years – III.A., the Environmental Quality Affairs Committee (EQAC), and III.C., Newport Coast Advisory Committee – be repurposed into something functional.

I would also note that the latter two are listed as “Citizens Advisory Committees,” so it is odd Council members would be appointed to them. It is even more odd that the Mayor is seeking the Council’s consent to confirm his designation of a chair for three of two of the “Citizens Advisory Committees.” Just as I think it is wise for the Council to choose its own chair, I think it would be wise to follow the directive in [Section 704](#) of our City Charter to the effect that when the Council sees a [need for an advisory board or commission](#) it allow the body to choose its own chair. And [Section 702](#), incidentally, prohibits the appointment to these advisory bodies of anyone who holds “*any paid office or employment in the City government*,” which would seem to exclude Council members.

Item 20. Approval of Proposed Residential Solid Waste Collection & Recycling Contract with CR&R Inc. Residential Solid Waste Collection

Please see previous comments on [Item 5](#) from November 30, 2021, [Item 28](#) from November 16, 2021, which dealt with revisions to the Municipal Code to accommodate SB 1383, [Item 18](#) from March 23, 2021, which claimed to justify an increase in recycling fees charged to residents receiving curbside solid waste collection.

It continues to bother me that the Council (and residents) receive much incorrect information from our Public Works Department.

Among other things, we have been told that although our City Charter provides for free residential trash collection, there is a difference between “trash” and “recyclables.” First, as explained in the previous comments, there is no such provision in our City Charter. It is a voter-enacted ordinance found in our Municipal Code, which, because it was enacted by the voters, cannot be changed without their vote. Second, it makes no distinction between “trash” and “recyclables,” but, on the contrary, embraces all of them equally. At the recycling charge increased on March 23 was never intended to cover the cost of collecting and disposing of recyclables, but rather was intended as a nominal service charge to have someone else do the separation of recyclables rather than having residents do it themselves. Now the residents are not only being asked to do the separation themselves, but are being asked to pay more for less service. There is something fundamentally wrong with this. In addition, no consideration seems to be given to the possible profit the vendor may make selling the recovered materials, or the fact that it may cost more to landfill than to recycle.

I have not had time to read in full this lengthy contract, but it is disturbing that the misinformation continues on page 1.

The Abstract tells us that under the new state law *“the residential solid waste collection program must include a three-cart, source-separated, collection program for solid waste, mixed recyclables, and organic waste recycling, defined as food waste and landscaping waste items, by January 2022.”*

But I know that while it may be the easiest option to implement, the state law does *not* require a three-cart, source-separated, collection program. The law involves recovery of organic material only, and the [CalRecycle SB 1383 regulations](#) allow achieving this through many different kinds of collection programs, including one- and two-cart varieties. And organic waste recycling is *not* defined as *“food waste and landscaping waste items.”* The “organics” that must be recovered at a higher rate than in the past include paper, cardboard and many other materials.

City staff has now for months been advertising the terms of the new contract as accomplished fact even though the Council has formally and publicly approved nothing.

The Council may sincerely believe that the evolution of the City’s solid waste collection program, and the development of this new contract, apparently approved largely by an unappointed Council Solid Waste Working Group, has been a highly transparent one. It has not been so from my point of view.

Under “Volumes and Cart Sizes” on page 20-5, the staff report says *“This revised collection program will include the provision of up to **96 gallons of City paid for municipal solid waste** (and appropriate desired cart(s) to accommodate this 96-gallon volume), up to two, 96-gallon recycling carts, and up to one, 96-gallon organics cart at no charge to residents.”*

The implication is the City does *not* pay for the recycling or organics collection. Is this correct?

If so, it is in blatant violation of the voter-enacted ordinance, which requires the City, in [NBMC Sec. 6.04.140](#), to pay *“The cost and expense of collecting, hauling away and disposing of **garbage, refuse and cuttings**,”* where (see November 16, 2021, [Item 28 comment footnotes](#)):

- “The term **'garbage'** shall mean and include all animal and vegetable refuse incident to preparation or handling of food,”
- “The term **'refuse'** shall mean and include rubbish and trash such as paper, newspapers, rag, cardboard, fiber, metal, glass, carton, container, box, bottle or jar, and other articles or materials of a similar nature normally discarded as household or business refuse.”
- “The term **'cuttings'** shall mean and include trimmings from trees or shrubs, plants, grass cuttings, or removed or discarded branches, shrubs, or plants.”

In connection with this supposedly free curbside collection, page 20-6 of the staff report says there are 9,967 households where the drivers of side-loading collection vehicles currently have to leave the vehicle to move a cart 15 feet or less for loading, which, under the proposed contract, will become a surcharged “standard valet service.” Where is this occurring? And why?