

## August 23, 2022, City Council Agenda Comments

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

Jim Mosher ( [jimmosher@yahoo.com](mailto:jimmosher@yahoo.com) ), 2210 Private Road, Newport Beach 92660 (949-548-6229)

### ***Item 1. Minutes for the July 26, 2022 City Council Meeting***

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

**Page 361**, Council Member Brenner, last bullet: *“Requested a future agenda item to discuss efforts to improve relations with the California Coastal Commission (CCC) starting with an informational session on the makeup of CCC and their role, the City’s use of consultants, and gain a greater understanding of how we work with Commission staff and Commissioners.”*

[**Comment:** What has become of this? No “Matters Which Council Members Have Asked To Be Placed On A Future Agenda” appear on the present agenda.]

**Page 365**, Item XVII, end of paragraph 1: *“..., according to a recent ~~Fanny-May~~ Fannie Mae and Freddie Mac report on housing needs.”*

**Page 365**, Item XVII, paragraph 6, sentence 1: *“Wade Womack utilized a presentation to share a comparative slip fee survey of low-to-moderate marinas and noted gaps and missing information and the inclusion of luxury marina slip rates, Newport Dunes Marina amenities, affordable berthing protection in Newport Harbor from the ~~Local-City-Coastal-program~~ City’s Local Coastal Program, and the 2010 Balboa Yacht Basin resolution.”*

**Page 366**, paragraph 1: *“Finance Director Catlett utilized a presentation to review the number of sewer and recycling customers, limited options and related challenges for collection, proposal to change the method of collection to the property tax ~~role~~ roll, unanimous endorsement from the Finance Committee, and staff recommendations.”*

**Page 366**, paragraph 6: *“Finance Director Catlett explained **that the Finance Committee endorsement occurred at its May meeting**, and Public Works Director Webb clarified that the recycling fee is used to recover costs associated with the State’s recycling mandates.”*

[**Comment:** The only mention of the idea of adding sewer and recycling fees to property tax bills that ever appeared in the Finance Committee meeting materials was its listing in [the Work Plan Review](#) at the [April 14, 2022, meeting](#) of a possible *future* agenda item on that topic at the Committee’s May 12, 2022, meeting. The [draft minutes](#) of the **April 14** meeting say “City Manager Leung advised the City is spending a lot of money trying to collect the funds and it makes sense to move it to the Property Tax bill. **The dais agreed it did not need to come to the Finance Committee.**” And indeed, it did not appear on the [May agenda](#).

Draft minutes of the Committee’s two meetings in May are not yet available, but the Brown Act prohibits the Finance Committee from taking action on matters not publicly pre-announced on its agendas, and whether in April or May, a decision *not to discuss* a staff recommendation can hardly be construed as an “endorsement” of it.

In other words, the present minutes may correctly record what was said at the July 26 City Council meeting, but what was said appears to have been incorrect both as to the month and as to an endorsement having been made.]

***Item 3. Resolution No. 2022-52: Approving Side Letter Agreements with the Labor Groups Representing City Employees, Approving an Amendment to the Key and Management Compensation Plan and Amending the City's Salary Schedule***

I do not know what mechanisms might available to avoid this, but it seems like it must be noted the employees presenting this proposal to the Council are themselves affected by it.

I was also quite surprised to be asked a question about it at the August 18 [Wake Up! Newport Candidates Forum](#) (One-minute Question 6)– since the forum took place eight hours before the present agenda was posted, that agenda being the first inkling the public in general would have that an inflation correction to City salaries was under discussion.

It made me wonder how the Chamber of Commerce organizers would have been aware of this while I was not. And it made we suspicious this might have been the reason for the otherwise mysterious [Closed Session Item IV.A](#) on June 14, 2022, in which it was announced the Council would privately discuss negotiations with all the employee bargaining units shortly after the public thought those negotiations had been wrapped up with the approval of [new MOUs](#) effective for the next several years.

This made me wonder if someone had “leaked” the subject of the June 14 closed session – something which, for reasons unknown to me, the City normally keeps a deep secret to the extent revelation of the subject is not absolutely required by [Section 54954.5](#) of the Brown Act.

But then it occurred to me that both the Council members and the employees know what is being negotiated. So why was the public in general kept in the dark? And what was the public benefit of keeping them uninformed?

That said, I have to say the Wake Up! Newport moderator stated what is being proposed more clearly than I can find it stated in the staff report.

She said: “*There is talk of the City Council increasing employee labor contracts increases by one percent across the board.*”

By contrast, the staff report says only “*the City Council wishes to increase the currently scheduled COLAs to three percent (3%).*” I am hard-pressed to find anything in the staff report telling me the currently-agreed-to rate of [annual increase starting in 2023 is 2%](#), so that 3% represents a 1% increase.

The staff report is likewise silent on how the proposal to go from 2% to 3% was arrived at. One might guess someone reasoned 3% raises next will be insufficient to correct for the current high rate of inflation, but that inflation might moderate such that the wages would catch up as a result of the following to 3% increases. But that is only a guess.

***Item 5. Resolution No. 2022-53: A Resolution of the City Council of the City of Newport Beach, California, Amending the Annual Parking Permit, Master Parking Permit, and Overnight Parking Permit Systems***

This strikes me as the kind of regulation that would be better regulated by ordinance than by resolution. The text of ordinances is kept in the Municipal Code, where it is always up-to-date, having been corrected to show each change.

Resolutions, by contrast constitute a hodgepodge of individual postings with it being essentially impossible to tell if a resolution passed on one date has been superseded by one adopted on a later date.

Additionally, and more importantly, I am not sure this one has been crafted carefully enough to accomplish the purpose it claims to have been requested for.

The report says staff wants to use revocation of the parking permits as a hammer to improve enforcement of other violations related to a vehicle.

But, excepting only NBMC [Title 12](#) parking violations, the proposed resolution (Attachment A) says mandatory revocation for two years will be triggered by “**Two or more violations within any 12-month period by the permittee of any condition of a Permit or of the Newport Beach Municipal Code, state or federal law that relate in any way to the vehicle listed on a Permit.**”

I read that to mean a speeding ticket in Temecula coupled the next year with a moving violation at Lake Tahoe, possibly issued to a driver other than the permittee, will result in revocation.

Somehow I suspect that was not the intent and the City Manager may grant relief. But then we will have yet another poorly written law about which staff may claim it knows the intended meaning, but the public does not.

Since staff seems to want to use this resolution to enhance its ability to punish Municipal Code violations it currently feels unable to effectively enforce, did it mean to restrict this provision to retribution for an accumulation of violations occurring *in Newport Beach*?

***Item 11. Approval of Amendment No. One to the Newport Beach Public Library Lecture Hall Memorandum of Understanding with the Newport Beach Public Library Foundation, and Approval of a Naming Rights Donation Agreement***

The City of Newport Beach has historically had an aversion to naming public buildings after donors, as it can give the impression we are a city that is for sale, or that we find those with money somehow more important and deserving of recognition than those without.

I have also thought it would be nice if there were donors who wished to name something after someone other than themselves – which does not seem to be the case here.

I have particular trouble with instances where naming rights are given to a donor whose contribution, though large, is only a small part of the overall public fundraising. That seems an

insult to the many other donors whose collective contribution is larger. Here, the \$4 million contribution represents a substantial fraction, but still less than the majority.

The Council will do what it will do, but I would have liked to see the staff report provide a better analysis of what our current facility naming policies are, why this requires a waiver, and what staff believes justifies the waiver.

The mere statement that “*the Library Lecture Hall creates a unique opportunity for the City to acquire a state-of-the art facility to be paid for, in part, by private donors*” doesn’t cut it for me.

Isn’t every opportunity unique in some way?

I might also ask if there is any mutual understanding among the parties as to how permanent the naming may be? I have observed that in other locales, after a respectful lapse of time, one sees one donor’s name taken down to be replaced by another (“[Philharmonic Hall](#)” becomes “Avery Fisher Hall” becomes “David Geffen Hall” and so on).

#### ***Item 14. Amendment No. One to Professional Services Agreement Extension with Willdan Engineering for Code Enforcement Services***

The agenda notice does not indicate the dollar amount of the contract approval under consideration.

That is unusual.

#### ***Item 16. Agreement with All-City Management Services, Inc. for Crossing Guard Services***

I don’t doubt the need for this service. But since the Newport-Mesa Unified School District receives much more of our basic 1% property tax than the City (in my case, [Tax Rate Area](#) 07-052, 39.3% to NMUSD versus 17.1% to the City of Newport Beach), shouldn’t NMUSD be helping with the cost?

The staff report suggests the full cost is paid out of City revenues with no NMUSD contribution.

#### ***Item 17. Response to the 2021-2022 Orange County Grand Jury Report "Where's the Fire? Stop Sending Fire Trucks to Medical Calls"***

I am not sure why our City Council has decided it should meet only once in August, but I would note that in this case it has led not only to a [1,182-page agenda packet](#) for this single August meeting, but it has forced our Fire Department to request an extension from the Superior Court because our Council was not available to review the required response to the Grand Jury report by the date it was originally due (in fairness, it [looks like](#) most other cities have requested far longer delays).

In addition to the present required (per staff report page 17-23) response, I see from page 17-24 that the Grand Jury “requested” a response to the same items from the Fire Chief, due 30 days earlier. Was that provided?

Having spent some time reviewing the Orange County Board of Supervisors totally defiant response to a Grand Jury [report](#) about last year's attempted improper sale of a part of Upper Newport Bay (Item S37J on their [August 23 agenda](#)) it is refreshing to see the present response acknowledges at least some merit in a few of the Grand Jury's findings and recommendations.

I might note the Grand Jury also has a [report](#) out on Homelessness requiring a response from Newport Beach, and which, for the response to be timely, will have to be reviewed at the Council's first meeting in September.

***Item 19. Ordinance No. 2022-18: A Code Amendment Updating Density Bonus Regulations to Comply with State Law (PA2020-032)***

Please see my [previous comments](#) to the Council ([Item 10](#) from July 26) when they were informed the Planning Commission had recommended approval of this.

While I appreciate City staff's good intentions in believing they can bring clarity to the state's every-changing density bonus rules by restating them in our Municipal Code, I think the effort is not only futile, but dangerous.

As previously stated, my fundamental reason for believing this is that we have been told local variations on the regulations will be deemed unlawful unless they are more generous in granting bonuses than the state ones. I do not believe the Council's intent is to be more generous, but any rewording that inadvertently could be read that way will become our law.

In addition, those availing themselves of density bonuses will almost certainly be highly sophisticated developers whose legal teams may look for and capitalize on those inadvertent increases in latitude, but to whom misstatements in the other direction will be irrelevant since they will know them to be unenforceable.

Finally, because the state law changes so frequently (see Table 4, on page 19-9, of pending legislation), if this attempted restatement is not already out-of-date by its effective date, it will almost certainly become so before long. And adjusting a restatement to accurately reflect all the nuances of future adjustments to the state law will be challenging, time consuming and costly.

As a result, unless the Council actually wants to create more generous local density bonus provisions, then instead of adding more than 13,000 words to our Municipal Code, it would seem much wiser to simply state in our Code that the City is obligated to grant the density bonuses described in state law (without attempting to restate those laws), and then lay out any uniquely local administrative rules we have for processing such requests.