

October 25, 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), 2210 Private Road, Newport Beach 92660 (949-548-6229)

Item VII. MATTERS WHICH COUNCIL MEMBERS HAVE ASKED TO BE PLACED ON A FUTURE AGENDA (NON-DISCUSSION ITEM)

I continue to believe listing this as a non-discussion item, as [Council Policy A-1](#) directs, is poor public policy, especially since Policy A-1 was modified last year to allow members to ask clarifying questions: with or without those questions, how can making decisions without discussion ever be in the best interest of our City?

It is, after all, *on* the agenda and the Brown Act not only *allows* full council discussion of items on the agenda ([Gov. Code Sec. 54954.2](#)), it *requires* allowing public comment on them even if the council chooses not to comment ([Gov. Code Sec. 54954.3](#)).

In addition, the original intent of adopting the “rule of three” in Newport Beach – whereby three Council members have to agree to put an item on the agenda – was to *invite* discussion of whether a topic was of enough interest to devote public resources to developing a staff analysis and recommendation before directing staff to do that.

But I personally think the Council should rethink embedding the “rule of three” in its Policy A-1, especially considering the controversy that [Measure B](#) (which asked voters to place the rule in the City Charter) generated about how things are placed on the agenda. Such a rule has brought shame on the City of Anaheim, where the same rule introduced by former Mayor Sidhu meant the Council members who wanted public discussion of the Anaheim Stadium deal were unable to get the three votes necessary for that to happen. Moreover, it invites Brown Act violations when members attempt to learn how much support they have prior to the meeting at which the “rule of three” vote will be taken.

While Anaheim has simply abandoned it, a possible compromise, adopted by some other cities, is to allow a single council member, or less-than-a-majority group of council members, to submit their own informal report describing an issue that will then be automatically placed on the agenda for discussion, with a possible outcome being direction from the council to staff to prepare a full analysis and recommendation.

In any event, the current agenda clearly violates Gov. Code Sec. 54954.3 by providing no opportunity for the public to directly address the Council before or during its consideration of the two sub-items listed.

Although written comments are not always a good substituted for the required opportunity to directly address the Council, my comment on the second Council member proposed agenda item (“*Consider adopting a Resolution condemning the government of Iran for the physical beating and death of Mahsa Amini by Iran’s morality police*”) is that however heinous the act being condemned might be, this is a matter as far outside the jurisdiction of our City Council as any I have seen. In short, I applaud the sentiment, but this is not what I elected my representatives to do, nor is it something I want my City’s resources used on. There are far too many issues in the world to cover them all, and I don’t see this one impacting our municipal corporation.

Item 1. Minutes for the October 11, 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 408, paragraph 3 from end: *"In response to Council Member Dixon's question, Traffic Engineer Brine relayed that Policy ~~CE817.17~~ CE 8.1.17/Avon Street Municipal Street Parking Lot Relocation was carried over from the 2006 Circulation Element and provides for parking flexibility in Mariner's Mile with no plan to relocate it."*

[comment: I, too, noticed this, and find it strange the Council would be asked to reaffirm policy to move a lot the City has no intention of moving.]

Page 408, paragraph 2 from end, last sentence: *"Traffic Engineer Brine encouraged the public to submit comments via **collective** associations."*

[comment: "**collective**" is indeed the term that was used, but "**neighborhood**" would be more readily understood.]

Page 408, last paragraph: *"In response to Council Member Dixon's question, Deputy Community Development Director Campbell clarified that the 2006 General Plan Circulation Element was not submitted to voters for approval and that there is no law requiring an approval by the voters."*

[note: Mr. Campbell said certain General Plan tables and traffic estimates were presented to voters, but not the policies such as the Circulation Element. In fact, certain tables and land use maps were presented for approval. The text of the measure can be found in City Council [Resolution No. 2006-77](#).]

Page 413, Item XIV, paragraph 2, sentence 1: *"Brent Mardian noted having previously spoken to Council about the Confined Aquatic Disposal (CAD) project, expressed the opinion that the Subaqueous Capping Guidance Manual is missing from the project evaluation, showed a photo of collected sediment samples in unsuitable areas, and noted beach quality sand below the dredge material in the Newport Channel One area."*

[comment: The expression "*Subaqueous **Capping** Guidance Manual*" was used consistently throughout the comment. The correct title of this Army Corps of Engineers publication seems to be [Guidance for Subaqueous Dredged Material Capping](#).]

Page 413, Item XIV, paragraph 2, sentence 2: *"He believed that the sampling did not split the samples like this, noted mercury samples over ~~nine~~ 9 parts per million in the main channel, relayed that most contaminated material is below the dredge depth at 20-22 feet, and expressed concern regarding the dredged material."* [or "9 ppm" – "9 parts per million" is mentioned at the very end of the comment]

Page 413, Item XIV, paragraph 6, last sentence: *"They asked Council to not ~~reconsideration~~ reconsider Item 15 from the September 27, 2022 City Council meeting."*

Page 413, Item XIV, paragraph 7: *"Dalen Lawrence requested that Council vote down the Tennis Club at Newport Beach's Plan B and submitted a handout."*

[comment: the handout, the subject of which is not made clear in the minutes, is [page 13](#) of "Non-Agenda Items" in the archived materials from the meeting.]

Page 414, paragraph 9, sentence 2: “Public Works Director Webb indicated that the consultants followed the rules; the EPA, U.S. Army Corps of Engineers, California State Water Resources Control Board, and CCC have looked at *i it*, and *is are* recommending approval.”

Page 414, paragraph 5: “In response to Council Member Dixon’s question, City Manager Leung clarified that the resolution provides for *uniformed uniform* content on City plaques and includes the names of Council Members involved in the decision-making.”

Item 3. Resolution No. 2022-73: Adopting a Revised Employee Policy Manual

The very brief staff report fails to inform the Council or public as why the precise changes proposed were selected and whether there are any alternatives to them that the Council could consider.

Item 4. Resolution No. 2022-74: Establishing an Ad Hoc Citizens’ Advisory Committee to Provide Input and Make Recommendations that will Address Residential Crime and Burglary

The proposed committee size of just three members seems to me far too small to provide any meaningful diversity of thought.

I say this in part because of the surreal feeling I have addressing the [General Plan Update Steering Committee](#), consisting of just three rather arbitrarily-selected citizens overseeing a matter of considerable significance.

When combined with the extraordinarily brief application window of just one week from notice to deadline, this makes me think (despite the creation of a selections committee) that the Mayor already has his three appointees selected, and they may be among the few who will even know the opportunity exists.

This is certainly contrary to the spirit of California’s Maddy Act ([Gov. Code Sec. 54970 et seq.](#)) which cites the common failure to tap unknown talent that results when agencies give public notice short shrift and resort to appointing their “usual suspects.”

I am also suspicious of the statement under “Fiscal Impact” that “*There is no fiscal impact related to the establishment of the Citizens’ Residential Crime and Burglary Advisory Committee*,” unless that is meant only to say there is enough money in the Police Department budget to cover the committee. There will certainly be costs associated with this activity, and would be good to know how large they are estimated to be.

Item 11. Planning Commission Agenda for the October 20, 2022 Meeting

As I attempted to explain orally at the last meeting, for most of the many years this Planning Commission report has been on the Council agenda, it has either been a regular discussion item, or a consent calendar item that was routinely pulled for discussion, direction to staff and calling up for review PC decisions Council members had questions about.

It might also be noted that prior to the most recent comprehensive revision of the City's Zoning Code in 2010, the Planning Commission had a lot more decisions to make, but much of that work has since 2010 for staff to self-approve via the Zoning Administrator (a process the PC is supposed to be overseeing, much as the Council oversaw the PC -- although it is unclear the PC does that or even knows they are supposed to).

As to the present report, "Item No. 5: Code Update Related to Fractional Homeownership (PA2022-0202)" remains concerning.

At least in my view, in appointing a committee to develop regulations *allowing* fractional homeownership in all the City's residential districts, the PC is doing something completely contrary to the clear direction given to them by the Council on September 27, and promised to the Council by staff: namely, to speedily develop a timeshare definition that would *prohibit* (not allow) fractional homeownership in residential districts, which could come back to Council as an ordinance for introduction and possible adoption in November.

Although it is not evident from the report, it is perhaps good that the committee was encouraged to complete its task in 60 days, rather than the previously considered 90 days. But it is bad that staff has the PC is going off on this undirected tangent at all.

It is further curious that the volunteers identified for the committee at the October 6 meeting, according to its minutes, were "Lowrey, Harris, and Rosene," but the appointments made on October 20 were "Lowery, Weigand, and Rosene."

Item 12. Annual Review of Visit Newport Beach Audited Financial Statements and Expenditure Report

I do not share the auditor's confidence that these reports shed adequate light on how City money flows through the various entities under the "Newport Beach & Company" (a name I regard as exhibiting considerable hubris) umbrella or where it winds up.

As to the transparency of the documents, I'm not sure why in reviewing the Expenditure Compliance Report the auditor does not question the mismatch between the two items marked with a red "A": how can there be "\$153,000" of "Community Sponsorships" when the detail totals only \$150,000? Where does the other \$3,000 go? And doesn't some of the City money wind up sponsoring other things on which I see the Visit Newport Beach or NB&Co logo, such as the [Film Festival](#) (a "Premier Sponsor"), the [Christmas Boat Parade](#) (the same or separate from the \$199,083 of advertising expense?), the [Newport Beach Foundation](#), and heaven knows what else.

The Newport Beach & Company [What We Do](#) page gives me even less confidence I understand how this organization works. For example, its final statement that "*Headed up by former Newport Beach Mayor Dennis O'Neil, the Newport Beach Foundation supports the business community and provides scholarships*" hardly seems to comport with current reality. Nor does "*Enterprise Newport Beach works collaboratively with the boards of the Balboa Village and Balboa Island BIDs,*" since those [BIDs](#) dissolved several years ago, as did what I believe is the Newport Beach Restaurant Association described under "Dine Newport Beach." And if there is no longer a Restaurant Association, who is paying VNB to [advertise restaurants](#) and why are they prioritized over other local businesses?

Something else not evident from these also bothers me: that we fund an organization much smaller in both employees and budget than the real Newport Beach, yet which pays its CEO about the same as our City Manager.

Item 15. Ordinance Nos. 2022-19 and 2022-20: Reconsideration of the Tennis Club at Newport Beach Project Amendment (PA2021-260)

I [commented on this item](#) when the Council last voted on it on as Item 15 on September 27.

I thought the Council made the right decision in not approving a plan for tennis when the applicant promised it was really a plan for pickleball. I was also puzzled by his statement that he had no plan to touch any of the existing (unpermitted) pickleball courts when the plan presented showed part of the resort construction on top of a substantial number of those courts along the north edge of the property. And I wondered how the tennis players feel about this, since I have seen large numbers of them there since the pandemic started.

But more important than any of that, I continue to be bothered by the City's sidestepping the Greenlight issue accompanying this proposal.

As previously explained in detail, voters, in considering the General Plan revisions in 2006, approved high enough development limits to accommodate either Mr. O Hill's Plan A "approved" in 2012, or his new Plan B, with 14 extra hotel rooms and more. But by the time Mr. Hill's Plan A got to the City Council, all that were left of those allocations were the 24 tennis courts and 3,725 sf clubhouse shown in the approved General Plan Table LU2 plus 5 dwelling units.

Despite the Council's questionable approval and issuance of a development agreement for Plan A in 2012, no additions to the General Plan beyond the 24 tennis courts, 3,725 sf clubhouse and 5 dwelling units have ever been tracked toward Greenlight.

City staff is offering to finally come clean by formally adding Plan B to the General Plan. But everything beyond the 24 tennis courts, 3,725 sf clubhouse and 5 dwelling units is new to the General Plan, and by the clear terms of [City Charter Section 423](#) requires voter approval if the addition exceeds 40,000 sf, 100 new dwellings or adds more than 100 peak hour trips.

By even the most generous reckoning, adding to the general plan what according to [Condition of Approval No. 5.b](#) in the proposed resolution of approval is a 41-room hotel development of 61,870 sf exceeds that limit and requires voter approval unless Mr. O Hill agrees to scale it back.

Item 16. Ordinance No. 2022-22, Resolution Nos. 2022-76 to 2022-79, and Lease Amendment: Lido House Hotel Expansion at 3300 Newport Boulevard and 475 32nd Street (PA2020-068)

I have not had time to study this in detail before the deadline for submitting written comments, but when it was before the Planning Commission, I found the request to fence in and gate the open space fronting the public streets, especially along Newport Boulevard, both unnecessary and aesthetically displeasing.

Item 18. Resolution No. 2022-80: Adopting the General Plan Circulation Element Update (PA2017- 141)

I continue to find problematic staff's claims that these policy proposals are the result of thorough public input and vetting.

Among other things:

- A promise was made on October 11 to provide the Council, for its review, the trail of public comment received on the various drafts. But the only comments I can find attached to the staff report are those submitted to the October 11 meeting, which the Council has already seen.
- I believe the record of the extensive Zoom workshops was maintained on the City's "[Newport, Together](#)" website. But that site no longer appears to exist. As a result, neither the Council nor the public knows what comments were responded to and which were rejected, or why.
 - Wouldn't it have been helpful for the Council to see a table of the comments and their disposition?
- Most recently, the public was invited to review an [August 16, 2022, draft](#), which they were told would be reviewed by the Planning Commission on September 8, with a "October 11, 2022 – City Council public hearing"
 - Not only is there no hint, on that page, that the hearing is actually October 25, but for those who actually studied the August 16 draft, there is no explanation in the present staff report of how what is being presented to the Council for adoption differs from it.

The correspondence from October 11, Attachment E to the current staff report, provided without comment, consists of general comments from me, a request to include Suggested Routes to Schools maps from Jimmy Thomas, detailed comments and requests from the Coalition to Protect Mariner's Mile, and even more detailed comments with numerous suggestions from Dave Tanner.

Why does the staff report not indicate what, if any, changes were made as a result not just of the workshops, but of this recent correspondence, or the oral comments received from the Planning Commission or Council? Or from Mr. Tanner or me, orally, at the October 11 study session?

Since I do not have time to untangle what may or may not have been done before the deadline to submit comments, I will just say I remain uncertain if the expectation is that the still-to-be-appointed General Plan Advisory Committee will be doing its own review of the Circulation Element, with the present document having merely the status of a placeholder, or if the Council is being asked to adopt what staff sees as our definitive Circulation Element for the next 20 years.