

## November 15, 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 1. Minutes for the October 25, 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 424**, paragraph 2: “*In response to Council Member Brenner’s question, Community Development Director Jurjis stated that the chances of a high-density project being submitted to the City while the project is being litigated is not reasonable and noted that the transfer ~~of~~ development rights ~~require~~ requires approval by Council.*”

**Page 426**, full paragraph 1, sentence 3: “*Community Development Director Jurjis reminded Council that this is a receive and file item and Council can accept the report or provide direction to staff to work diligently with the operator and ensure responsive Code Enforcement. Council Member Dixon encouraged residents to call Code Enforcement with issues so the data is collected.*”

**Page 427**, paragraphs 2 and 3: “*... Council Member Brenner **requested an A-1 item** to discuss Code Enforcement. ... Council Member Dixon relayed the uniqueness of this situation, how the City is powerless to enforce the Newport Beach Municipal Code, **supported the A-1 item**, and asked staff to keep moving forward with the proposed ordinance and an Ad Hoc Residential Care Facilities Committee meeting.*”

[comment: I do not see the requested A-1 item on the current agenda.]

**Page 429**, paragraph 1: “*Motion by Mayor Muldoon, seconded by Mayor Pro Tem Blom, to a) ...; and b) adopt Resolution No. 2022-80, A Resolution of the City Council of the City of Newport Beach, California, Adopting an Amendment to the Newport Beach General Plan Updating the Circulation Element (PA2017-141) as amended.*” [?]

[comment: I have not bothered to verify this, but from page 428 of the minutes it appears staff agreed to make several changes to the text provided in the agenda packet.]

### ***Item 3. Ordinance No. 2022-23: Amending the Newport Beach Municipal Code to Remove Reference to License Supervisor and License Inspector***

The existing NBMC Section 5.12.230(E) contains a grammatical error, that I would hope staff noticed in reviewing it.

It would seem the present code amendment should provide an opportunity to correct it.

I assume the intent is for Section 5.12.230(E) to read:

“Term -- Renewal. ~~All~~ A driver's permit shall expire on the last day of the twelfth month following its issuance. Applications for renewal shall be made with the Revenue Division of the Finance Department on or before the first day of the month in which the permit expires.

*The fee for renewal made within the prescribed period shall be as established by resolution of the City Council."*

or the less likely possibility:

*"Term -- Renewal. All driver's ~~permit~~ permits shall expire on the last day of the twelfth month following ~~its~~ their issuance. Applications for renewal shall be made with the Revenue Division of the Finance Department on or before the first day of the month in which the permit expires. The fee for renewal made within the prescribed period shall be as established by resolution of the City Council."*

The latter is less likely not only because it creates an internal inconsistency within Subsection "C", but because in [Section 5.12.230](#) the only other occurrence of "permits" (plural) would be in subsection "F", where it appears in the awkwardly archaic sounding "*any such driver's permits so issued.*"

#### ***Item 4. Ordinance No. 2022-24: Designating Portions of Fernleaf Avenue, Goldenrod Avenue and Dahlia Avenue in Corona del Mar as One-Way Streets***

While the untested change to Goldenrod seems to be by popular acclamation, the petition from property owners along Dahlia (agenda packet pages 4-16 and 4-17) appears to bear signatures from less than 50% of the addresses along the proposed one-way segment shown in Exhibit A on page 4-8. It is worrisome that the staff report does not indicate how or if the many Dahlia residents who may oppose the change were notified the City Council is considering making their street one way.

The first "Whereas" at the top of page 4-5 suggests the ordinance is making a change not only to Dahlia, Fernleaf and Goldenrod, but also to Hazel Drive. While it is not clear any change is actually being made, other than replacing "southbound" with "Southbound traffic only," it is disturbing this is not mentioned in the agenda announcement or staff report.

#### ***Item 5. Ordinance No. 2022-22: Approving a Zoning Code Amendment for the Lido House Hotel Located at 3300 Newport Boulevard and 475 32nd Street (PA2020-068)***

The adoption of these proposed changes to NBMC Title 20 seems premature since it will create an inconsistency with our Local Coastal Program if the California Coastal Commission does not approve the corresponding changes to it, or recommends approval of them with modifications.

I would again point out that in Exhibit B on agenda packet page 5-11, the last sentence of Section 1's "Additional Information" appears to be an inadvertent remnant of the earlier code. It says "*Municipal facilities are not restricted or included in any development limit.*" But since the fire station has been removed, no municipal facilities are expected on the site, nor are they allowed, any longer, by its General Plan designation.

As to the related Coastal Development Permit application which may be pending before the CCC, when I was cut off in mid-sentence at the October 25 public hearing, I was trying to point

out [page 16-79 from that staff report](#), which indicates the reason the CCC allowed the Lido House to go significantly over the certified 35-foot shoreline height limitation was that the greater height would allow clustering of the development resulting in more publicly-accessible open space. That justification remains memorialized in our Coastal Land Use Plan.

**The developer's current proposal to fence in and gate the open space along Newport Boulevard and 32<sup>nd</sup> Street is contrary to the promises made when the Lido House was allowed to go to its current height.**

***Item 6. Resolution No. 2022-81: Condemning the Government of Iran for the Physical Beating and Death of Mahsa Amini by Iran's Morality Police***

As I said on October 25, I agree with the sentiment of this resolution, but I do not think spending taxpayer money preparing it was a proper use of our resources.

How, exactly, did the actions in Iran impact our municipal corporation?

Should we expect future Newport Beach City Councils to take positions on behalf of the City on the multitude of abuses reported in the rest of world?

Will they be sending a message to Russia expressing outrage over the carnage they have inflicted on the people of Ukraine? Will they be expected to take positions on actions by China, North Korea and other sovereign nations?

And assuming this resolution is adopted, it is unclear from the staff report how the government of Iran will be informed of our Council's action. Who will the resolution be sent to? And do we fear economic retaliation as a result?

***Item 9. Approval of On-Call Maintenance and Repair Agreements for Asphalt and Concrete Street Repairs Services with Hardy & Harper, Inc., S&H Civilworks, and CT&T Concrete Paving, Inc.***

It is not clear from the report if staff expects the not-to-exceed amount of \$300,000 per year per vendor to be sufficient to cover five years of work (the initial three-year term plus two one-year extensions), or if it is expected the limit would have to be increased if the extensions are granted.

***Item 14. Purchase of Additional Police Patrol Vehicles***

The staff report refers repeatedly to the need to comply with [City Council Policy F-9](#) (City Vehicle/Equipment Replacement Guidelines).

My understanding is the expected service lives listed in that policy under "Replacement Schedule" are there primarily as a planning tool to ensure sufficient funds are set aside in time to make the expected replacement. But the actual replacement in any individual case could come before or after that time based on that particular vehicle's condition (i.e., its expected repair and maintenance costs versus the cost of replacement).

Apparently not just the age/mileage, but the actual condition of the six being considered here justifies replacement?

Furthermore, strict compliance with Policy F-9 would require the Municipal Operations Department<sup>1</sup> to perform the evaluation of condition, which, if that was done, is not mentioned in the staff report.

The substitution of non-hybrid models for the expected hybrid replacements also appears inconsistent with the policy, if perhaps unavoidable if the replacements have to be completed this year.

### ***Item 17. Confirmation of Appointments to the General Plan Advisory Committee***

Readers have to look at Attachment D (Full List of Applicants) to discover there were only 38 applications received for the 30 GPAC positions.

Although the General Plan Update Steering Committee rationalized that the 30 they chose represented a good mix, it seems important to note, as I did to the Steering Committee on October 13 (see minutes on page 17-11 of the present agenda packet), that when the City last went through this exercise in 2002, it received 252 applications, shortlisted down to 52 for the Council to consider for 37 positions (see [Item 17 staff report](#) from the February 26, 2002, City Council meeting).

Given the ratio of applications to positions having gone down from 6.8 applications per position to a mere 1.3 per position, I think the Steering Committee should have extended the application deadline and encouraged staff to more widely publicize the opportunity to serve.

Part of the difference is that in 2002 applications were solicited at an in-person Citywide Vision Festival as well as through a City newsletter (paper) mailing to all households.

I also understand some of the people who served on the previous GPAC don't wish to repeat the experience, for they felt the good recommendations they labored over went into a General Plan where they have either been ignored or misinterpreted.

### ***Item 18. Fiscal Year 2021-22 Year-End Budget Results***

It seems slightly odd to have this item on the consent calendar appropriating \$24.1 million toward the purchase of property for a possible future Police Headquarters when the Council won't be deciding whether it wants to make such a purchase until it gets to Item 23, later in the meeting.

Seeing such things gives readers the impression Council votes are a foregone conclusion and the public meetings are just for show.

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<sup>1</sup> My understanding is Municipal Operations is now a division within the Public Works Department, not a department of its own as Policy F-9 would imply.

***Item 21. Ordinance Nos. 2022-26 and 2022-27: Adoption of the 2022 California Building Standards Codes with Local Amendments and the 2022 California Fire Code with Local Amendments***

At 396 pages, this is a long staff report to attempt to digest. It is especially challenging since the proposals are presented as snippets of code that are difficult to picture in context.

For example, the last three changes highlighted on page 21-4, to NBMC Sections 9.04.380, 9.04.385 and 9.04.386 suggest all property owners in Newport Beach may have to make modifications to all existing structures. But from the presentation to the Building and Fire Code of Appeals on October 19, I have the impression that all of these, not just the last, may apply only in the Very High Fire Severity Zone. But they may have wider applicability. It is difficult to tell. Wherever they apply, it is also difficult to tell if there is a deadline for owners to bring their properties into compliance.

Of those, on page 21-349, I am pretty sure the first of these was intended to read:

*“Section 4905.2.1 Required ventilation screening for existing structures. All structures **with within** the identified Very High Fire Severity Zones with ventilation openings shall comply with all of the following:”*

Preceding that, I see pages 21-347 to 21-348 contain regulations that I recall created some confusion at the Harbor Commission as to their applicability to vessel raft-ups in the harbor, including whether raft-ups are regarded as a form of “multiple berthing” or something different. It looks like no clarifying changes are being proposed, including to the reference to the City’s [Guidelines and Standards A.10 Multiple Berthing and/or Rafting at Special Events](#), which were themselves difficult to tell if they applied to raft-ups in general or only during special events, however that might be defined.

Other random observations:

1. The second Whereas at the top of page 21-21 may be missing some words: it appears to be an incomplete phrase rather than a statement of fact. Possibly it was meant to start with something like “*The City makes efforts to improve ...*”
2. The top paragraph on page 21-25 refers to the Municipal Operations Department. Since this term is obsolete (see [NBMC Sec. 2.12.100](#)) it would seem useful to insert the correct term for whatever is meant.
3. I have not had time to review the remaining pages before the 5:00 p.m. Monday deadline for submitting comments on the Council agenda packet.

***Item 23. Agreement for Purchase and Sale of Real Property and Escrow Instructions with AG Dove Owner, L.P., for Property at 1201 Dove Street***

Taxpayers have financed a number of improvements to the current facility in recent years. Will the pace of those slow if the building is expected to be abandoned?

What became of the previous City Manager and Public Works Director's proposal to build a new Police Headquarters at the Corporation Yard on Superior?

With the current Police Chief scheduled to retire on December 30, wouldn't it be prudent to see if the new Chief thinks 1201 Dove Street would be an appropriate location?

The proposed large physical disconnect between the Police Headquarters and the location of the remainder of City Hall and other City departments seems a bit unusual. It could be seen as encouraging a culture of the Police Department being an entity unto itself, separate from other civic functions. How common is this? Should the PD have a presence at the City Hall?