

January 24, 2023, City Council Agenda Comments

The following comments on items on the Newport Beach City Council agenda are submitted by:

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

The present request is for an item to limit the range of topics that can appear under this heading on future agendas.

While I appreciate the sentiment of wanting to keep Council discussions focused on important matters, imposing further limitations on an already cumbersome process may not be the best approach. Especially since Council discussion can occur only on agenda items, to maintain a healthy marketplace of ideas Council members should not feel overly constrained as to what they can discuss.

As I indicated in my written comments under this heading for the January 10 meeting, I think the City would benefit from a broader discussion of how items get placed on the Council agenda. Other cities differ widely in how they handle this. Possible defects in our own City's system, including concerns about the proper roles of the City Manager, Mayor and other Council members in the process, were raised by both proponents and opponents of Measure B (the Elected Mayor proposition) last Spring, but since its defeat they were never formally discussed or resolved.

The Council should be aware our City Charter does not place the agenda setting power with either the City Manager or the Mayor. In fact, unlike Measure B, it is entirely silent on the matter, which means it remains entirely at the discretion of the Council.

I think a broader discussion, informed by our own desires and experiences, and by practices in other cities, is long overdue.

Item 1. Minutes for the January 10, 2023 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 465, Item XII, Council Member Weigand, first bullet: "*Commended City staff for its ~~children~~ childrens programs at the Community Youth Center (CYC)*"

Page 465, Item XII, Mayor Pro Tem O'Neill, first bullet: "*Commended contributors ~~of~~ to the Christmas Boat Parade*"

Page 466, last paragraph: "*Jim Mosher expressed concern for an outreach plan and the architect selection rankings in Item 9, and suggested identifying the selection panel and ranking criteria. In response to his inquiry regarding the ~~Environment~~ Environmental Quality Affairs Committee (~~EQA~~ EQAC) in the Annual Mayor Appointments (Item 12), Mayor Blom indicated that, as Chair of EQAC, he will assess the future of EQAC.*"

Comment: Regarding the first sentence, part of my comment was about the four-person evaluation panel that selected the architect to be recommended to the City Council for the Balboa Library/Fire Station replacement design. Those of us who attended the Board of Library Trustees meeting on January 17 learned that the selection process was conducted by the Public Works Department, and that no one from the Library Services Department (or BLT) was on the scoring panel, which, in a near tie, selected a new architect over the one that had successfully completed the similar project in Corona del Mar.

Page 469, Item 13, paragraph 3: *“Coralee Newman, representing the applicant, stated that she has reviewed the documents, staff report and findings, and noted the Planning Commission unanimously approved the item and staff recommendation.”*

Comment: If she was paid for her effort, Ms. Newman appears to have been acting as a lobbyist, yet I am able to find only one lobbyist registration form filed with the City Clerk in the last year, and it is not Ms. Newman’s. So, she is not currently registered, and certainly not for this matter. City staff clearly needs to be more diligent in reminding applicants’ representatives of Newport Beach’s lobbyist registration regulations.

In addition, although Item 13 was legislative in nature, it was initiated for the specific benefit of an applicant and it would have seemed appropriate for the Council members to disclose any ex parte communications resulting in information received outside the hearing that may have influenced their decision.

Item 4. Resolution No. 2023-7: Big Canyon Habitat Restoration Project – Phase 3: Adoption of License Agreement and Design Plan

This sounds like a very worthy project, which I fully support.

However, I find the discussion of what the Council is being asked to approve, and of who will be doing what, where and when, very hard to follow.

In particular, Section 1 of the proposed resolution (page 4-10) says *“The City Council hereby approves the Big Canyon Habitat Restoration Project - Phase 3, as depicted in the plans attached hereto as Exhibit “A” and incorporated herein by this reference.”* But Exhibit “A” (pages 4-13 and 4-14), is nothing more than a schematic diagram that is not only wholly inadequate to complete an actual project, but does not even include all the component projects mentioned in the staff report.

For example, the description of the “Proposed Project” on page 4-3, says *“The City will also incorporate fuel modification on the surrounding sloping parcels the City owns as part of the project scope to reduce fire risks to nearby homes.”* But I see no indication of this being proposed in Exhibit “A.” I am also unable to find any formal description of the full “project scope,” let alone who will be doing what parts of it.

The closest I can find is the reference in the Section 3.1 (page 4-18) of the “License Agreement and Memorandum of Understanding with the California Department of Fish and Wildlife,” which the Council is also being asked to approve, of “The Project” needing to be completed *“in substantial conformance with the plans approved by City, which are on file with the City.”* One

assumes those are more detailed plans describing more precisely who is expected to do what, where and when. It would have been helpful to provide a link to them.

The very limited information attached to the Agreement is confusing and seemingly contradictory. For example, the “License Area” map of “Exhibit B” on page 4-34 shows the “Project Area” ending at Back Bay Drive. But unlabeled map on page 4-35 (apparently part of “Exhibit B”) shows a “restoration area” outside that, and the unlabeled map on page 4-36 (also apparently part of “Exhibit B”) shows still more of the “Phase 3 Site Boundary” extending onto the bay side of Back Bay Drive (including the existing parking lot and visitor display area), whose ownership is nowhere defined.

Item 5. Newport Beach Mariners Library, Corona del Mar Lifeguard Substation, and Ben Carlson Lifeguard Headquarters Heating, Ventilation, and Air Conditioning Replacement Project – Award of Contract No. 8760-1 (22F02)

See comments on Item 7 (below), which cites “*the rehabilitation of various heating, cooling, electrical, and security systems*” as examples of “*facility maintenance projects that require supplementary expertise and coordination for delivery.*”

Will additional third-party services be required to manage completion of this contract? If so, how much additional expense is expected?

Item 7. Approval of On-Call Professional Services Agreements for Project Management Services

Project management seems like it would be an expected function of permanent City staff.

The staff report suggests delegation of management services to outside firms is needed only on certain specialized City contracts.

Yet Item 5 on the present agenda (see above) involves a contract in an area cited as needing such attention, and that item makes no mention of a need for outside management services.

What criteria govern staff’s use of these contracts?

See also my comment on Item 8 (below) regarding the lack of public visibility of the “Letter Proposals” generated by these contracts.

Item 8. Award of On-Call Plumbing Maintenance and Repair Services Agreements with Pacific Plumbing of Southern California, Verne’s Plumbing, Inc., and ACCO Engineered Systems

Actual on-call service requests are memorialized through “letter proposals” prepared by the contractors and agreed to by the City (see the references to them on pages 7-4ff and 8-4ff of the present agenda packet).

Quite some time ago, in keeping with the City Charter requirement that copies of all contracts be kept in books maintained by the City Clerk, the Finance Committee recommended, and City staff agreed, that letter proposals over some dollar amount should be archived in the City's online contracts database.

I am not aware of this happening. Certainly not on a systematic basis.

Item 9. Amendment No. 8 to CAD/RMS Software Maintenance Agreement with Superion, LLC

The staff report does not explain what the term of the current Agreement is, and whether the Council is being asked to extend it. No modification to a "Term" section is proposed, yet the City Clerk lists [C-5505\(A\)](#) as expiring on "7/26/2023."

It also confusingly asks the Council to authorize payments through 2031 when it says the "expected service life of the system is through 2029."

Nor does it explain how the proposed annual expense amounts compare to the most recent ones, which seem to have "exhausted" the previous limit.

Finally, covering calendar year 2022 through a staff-approved increase slightly under the staff limit when an amount more than that was known to be needed seems to be a slight bending of the rules. Why did it not come to Council for authorization before the contract went into arrears?

Item 10. Maintenance/Repair Services Agreement with C3 Office Solutions LLC dba C3 Tech for Copier Maintenance and Repair Services

This item is a little confusing since copiers sometimes double as printers and it is not clear if the City has printers in addition to the devices listed in the contract.

The reference to a Library copier is also a little confusing since it does not appear to be to the self-service copiers at the Central Library and branches. Those are apparently managed under a different contract and deliver copies to the public at a much higher cost than the ones covered by this contract. One has to wonder if some consolidation and cost-savings to the public could be obtained.

Item 11. Planning Commission Agenda for the January 19, 2023 Meeting

This item, as the Council may or may not be aware, is a vestige of a former item in which the Planning Director provided an oral report on the Planning Commissions most recent actions, in part to give Council members a chance to call them up for review.

Although there is no longer an oral report, the Council retains that authority to call items up for review.

As the present written report indicates, at its January 19 meeting, the Commission approved two requests for variances for residential construction. Both requests were prompted by past

improvements on or adjacent to the lots, rather than the traditional standard that the lot itself has some physical peculiarity distinguishing from it the other lots to which the Zoning Code applies.

In the first case, the “Richardson Residence,” a former owner had constructed the garage in an orientation requiring a large portion of what would normally be buildable lot area to be devoted to a vehicular turnaround area. Had the garage been rotated 90 degrees, the required 20-foot front setback would have provided the new owners the same access as their neighbors.

Acknowledging there were no special physical limitations to the lot itself, the variance allowing the current owner to build into the rear setback area contains a condition causing it to expire if the home is ever substantially rebuilt.

In the second case, the “Day Residence,” a variance was requested to allow an existing duplex facing the Balboa Pier area and immediately adjacent to the Balboa Inn to be rebuilt with no separation between it and the hotel building, where a 3-foot side setback would normally be required.¹ Again, there was nothing peculiar about the lot, only about the existing improvements— in this case on the adjacent lot, where the hotel building, constructed, it was said, in the 1930’s, having been built to the property line. And, apparently unknown to the associate planner handling the application, if the hotel were to be rebuilt to current code, it would have to stay back 5 feet from the property line.

In other words, because the variance was granted based on existing improvements rather than on some permanent physical peculiarity of the lot, the reason for granting it will disappear when and if the improvements change. Namely, if the hotel is ever brought up to code, and the future owner of the Day Residence lot would enjoy the special privilege of being able to rebuild up to the property line adjacent to the hotel for no particular reason. To prevent this, as with the Richardson Residence, the Day Residence variance should have contained a condition causing it to expire if circumstances change. But it did not.

In addition, the Day Residence was granted a height increase which could prove detrimental to hotel guests by blocking views from some rooms. One of the requirements for granting a height increase, found in NBMC Sec. 20.30.060(C)(3) is that the increased height will allow the builder to provide onsite improvements, such a design that increases open space or avoids blocking public views. In this case, the “additional project amenity” offered was not better architecture, but rather the applicant’s promise to pay \$30,000 to the City’s Public Arts fund.² Much as I support public art, this strikes me as a perversion of the City’s codes into a “pay to play” mode.

For both these reasons, I think a Council member should call the Day Residence approvals up for review.

¹ The 3-foot space between the existing duplex and the hotel was said to have created a public nuisance by being attractive to vagrants even though the only access is through a gate. The applicant stated the gate had to be left unlocked because the setback served as the emergency exit from bedrooms in the existing duplex. It was not explained why this or a future gate could not be set up so residents could exit from inside but vagrants not easily enter from outside.

² Although City Council [Policy I-10](#) refers to a “Reserve Fund for Culture and Arts,” I am not sure such a fund currently exists, as I am unable to find any reference to it in recent budgets.

Item 14. Status on Planning Commission's Efforts Related to Fractional Homeownership (PA2022-0202)

I appreciate the code enforcement difficulties that might ensue, but the lack of resolution to this issue is a matter of deep disappointment to members of the public who heard the Community Development Director say in September that staff could craft a definition of "time-share" that would include the Pacaso model, but not cast so wide a net as to include more traditional jointly-owned but informally shared homes, and get that revised definition through the Planning Commission and back to the Council by November for introduction and subsequent adoption.