

CITY OF NEWPORT BEACH

City Council Minutes Study Session and Regular Meeting October 24, 2017

I. **ROLL CALL - 4:00 p.m.**

Present: Council Member Brad Avery, Council Member Diane Dixon, Council Member Jeff Herdman, Council Member Will O'Neill, Council Member Scott Peotter, Mayor Pro Tem Duffy Duffield, Mayor Kevin Muldoon

II. **CURRENT BUSINESS**

SS1. **Clarification of Items on the Consent Calendar - None**

SS2. **Presentation to Burr-White Realty on its 50th Anniversary in Newport Beach**

Council Member Dixon read the proclamation and presented it to Craig Batley.

SS3. **Update on Traffic Signal Modernization and Technology**

Principal Civil Engineer Sommers utilized a PowerPoint presentation to discuss the City's traffic signal system, the field components, traffic signal operations, various timing methods, challenges to efficient traffic flow, signal technology, benefits of today's system, current improvements, system improvements being studied, future technology, and how to prepare for the future.

In response to Council questions, Principal Civil Engineer Sommers displayed the location map, discussed Bluetooth technology, addressed privacy concerns, explained how the data will be used to track travel trends to improve traffic flow, indicated that traffic bypass is a component of the system, provided the timeline for the installation of the BlueTOAD system, explained that this is different than the Coast Highway Signal Synchronization project, confirmed how advanced the data is compared to previous intersection counts, discussed how the system could respond to incidents quicker and assist drivers who are not using navigation tools or applications, and believed that municipalities and private companies may eventually share information in the future.

Council Member Dixon thanked Principal Civil Engineer Sommers for his efforts and commended the signal timing at Pacific Coast Highway and Crystal Cove.

Council Member Peotter thanked staff for their hard work and encouraged using the data to move toward automatically updating signal timing Citywide.

Jim Mosher asked if the system indicates what direction the vehicles are traveling, if it could be used in other parts of the City, and if the system is portable and could be relocated to different locations rather than purchase additional units. He expressed skepticism relative to the system's ability to keep information totally anonymous.

In response to Mayor Muldoon's question regarding the terms and conditions of the BlueTOAD agreement, Principal Civil Engineer Sommers and Public Works Director Webb discussed what information is collected by the system and noted there is State law governing what information is accessible to municipalities. City Attorney Harp indicated he will review the agreement, see if there is any provision relative to what information is gathered and how long it is stored, and will make modifications, if needed, to ensure privacy.

SS4. Peninsula Crosswalk Study *(continued from the 10/10/17 City Council meeting)*

Traffic Engineer Brine utilized a PowerPoint presentation to summarize the crosswalk study, locations of the intersections studied, crosswalk improvements studied, general and specific improvements, high-visibility crosswalk striping, and pedestrian caution signs. He also discussed recommended improvements at specific intersections, California Vehicle Code Section 21950, the various meetings conducted on this topic, and phases involved with the project. He indicated that the study can be found at newportbeachca.gov/crosswalkstudy.

In response to Council questions, Traffic Engineer Brine discussed pavement striping and reflective markings, the recommended removal of a parking space near Cassidy's Bar and Grill, the addition of street lights, and concerns around the Newport Elementary School area.

Jim Mosher noted the contract with Albert Grover & Associates, Inc., mentioned assisting the City in creating the framework for a crosswalk policy, the study did not evaluate all the crosswalks on the Balboa Peninsula, and requested clarification about "failure to yield" statistics and what is counted. Traffic Engineer Brine clarified that the study counted vehicles that are not yielding to pedestrians or bicycles that are already in the street.

Maureen Cotton, President of the Central Newport Beach Community Association, expressed her concerns with "failure to yield" traffic, referenced her correspondence, discussed conversations with Police Chief Lewis, encouraged more enforcement near Newport Elementary School, believed the palm trees near the school impede the crossing guards' view of oncoming traffic, and recommended exploring using solar powered push button blinking crosswalks and utilizing reflective walk sign posts and stop sign posts.

Mayor Pro Tem Duffield commended the effectiveness of the pedestrian improvements on 17th Street between Irvine Avenue and Dover Drive. Traffic Engineer Brine noted that the rapid flashing beacons are also being used at Via Lido and Via Oporto, and that they are proposing to use them near Newport Elementary School.

III. PUBLIC COMMENTS

Jim Mosher questioned Council for not requesting clarification on Consent Calendar items (Item SS1), took issue that no explanation was included with Closed Session Item IV.C, and believed that the memos requesting minor changes to the recommendation for Item 6 (Bonita Creek Sports Park Pickleball Courts – Notice of Completion) and Item 7 (Central Avenue Public Dock Project – Notice of Completion) should amend the agenda.

Mayor Muldoon indicated Council asks questions about Consent Calendar items when the item is before Council and the appropriate audience is in attendance.

City Attorney Harp announced that the City Council would adjourn to Closed Session to discuss the items as listed in the Closed Session agenda and read the titles.

IV. CLOSED SESSION - Council Chambers Conference Room

**A. CONFERENCE WITH LABOR NEGOTIATORS
(Government Code § 54957.6): 1 matter**

Agency Designated Representatives: Dave Kiff, City Manager, Carol Jacobs, Assistant City Manager, Barbara Salvini, Human Resources Director, Brian P. Walter and Peter Brown; Labor Negotiators.

Employee Organizations: Newport Beach City Employees Association (NBCEA); Newport Beach Firefighters Association (NBFA); Newport Beach Police Association (NBPA); Newport Beach Police Management Association (NBPMA); Newport Beach Lifeguard Management Association (NBLMA); and Newport Beach Professional and Technical Employee Association (NBPTEA).

**B. CONFERENCE WITH LEGAL COUNSEL
ANTICIPATED LITIGATION**

(Government Code § 54956.9(d)(2) (e) (2)): 8 matters

The Newport Beach Police Management Association (NBPMA), the Newport Beach Police Association (NBPA), the Newport Beach Firefighters Association (NBFA), the Laborers International Union of North America Local 777 (as affiliated with and on behalf of the Newport Beach Professional and Technical Employees Association (NBTEA) and Newport Beach City Employees Association (NBCEA)), on behalf of the current and former members of said unions, as well as Vladimir Anderson and Robert Salerno, in their individual capacities, are aware of the United States Court of Appeals for the Ninth Circuit's decision in the case of *Flores v. City of San Gabriel* (9th Cir. 2016) 824 F.3d 890 which may result in litigation against the City of Newport Beach related to the calculation and payment of overtime compensation.

**C. CONFERENCE WITH LEGAL COUNSEL
ANTICIPATED LITIGATION**

(Government Code § 54956.9(d)(2) (e)(1)): 1 matter

V. RECESS - 5:10 p.m.

VI. RECONVENED AT 7:00 P.M. FOR REGULAR MEETING

VII. ROLL CALL

Present: Council Member Jeff Herdman, Council Member Brad Avery, Council Member Diane Dixon, Council Member Will O'Neill, Council Member Scott Peotter, Mayor Pro Tem Duffy Duffield, Mayor Kevin Muldoon

VIII. CLOSED SESSION REPORT

City Attorney Harp reported that there were no reportable actions taken.

IX. INVOCATION - Council Member Peotter

X. PLEDGE OF ALLEGIANCE - Council Member Avery

XI. NOTICE TO THE PUBLIC

XII. CITY COUNCIL ANNOUNCEMENTS (NON-DISCUSSION ITEM)

Council Member O'Neill:

- Announced that the Newport Beach Chamber of Commerce Economic Forecast will be held on October 27, 2017; the OASIS Senior Center will be holding its 40th Anniversary events November 2-4, 2017; *Boss Baby* will be showing on November 3, 2017, in San Miguel Park; and the high school students who started OC Books on the Run (ocbooksontherun.com) will be at the November 14, 2017 Council meeting, he will be donating 100 books, and encouraged others to donate books to the organization
- Reminded everyone to drive safely on Halloween

Council Member Dixon:

- Attended the Fire Department promotional ceremony earlier today, along with all of Council
- Announced that the sculpture exhibit in the Civic Center Park will open on October 28, 2017
- Requested a future report from the City Manager relative to how the City can be prepared for changes in the homeless population due to the possible anti-camping laws being proposed for the Santa Ana River area.

Council Member Peotter:

- Requested and received confirmation from City Manager Kiff that the Corona del Mar Fire Station and Library project can be re-bid for its current location and will not need Council approval prior to going out to re-bid.

Council Member Herdman:

- Announced that the pickleball courts at Bonita Canyon Sports Park are officially open; the Newport Beach Animal Shelter will be holding a Halloween costume contest for dogs at Marina Park on October 28, 2017; and a Halloween Spooktacular will be held at Grant Howald Park on October 28, 2017

Council Member Avery:

- Attended the Fire Department promotional ceremony earlier today and the Environmental Nature Center (ENC) Fall Fair

Mayor Muldoon:

- Read and presented the ***National Nurse Practitioner Week Proclamation*** to Taylor Cwiertniewicz and Danielle Godino.

XIII. PUBLIC COMMENTS ON CONSENT CALENDAR

Referencing his comments from Study Session, Jim Mosher reiterated his belief that Council Members have either had no questions regarding Consent Calendar items or had them answered at another time.

XIV. CONSENT CALENDAR

READING OF MINUTES AND ORDINANCES

1. Minutes for the October 10, 2017 City Council Meeting [100-2017]

Waive reading of subject minutes, approve as amended, and order filed.

2. Reading of Ordinances

Waive reading in full of all ordinances under consideration, and direct the City Clerk to read by title only.

RESOLUTIONS FOR ADOPTION

3. Resolution Affirming the City Manager's Authority to Administer and Manage the City's Employee Deferred Compensation and Health Savings Plans and Authority to Sign Related Contracts (C-8420-1) (continued from the 10/10/17 City Council meeting) [38/100-2017]

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Adopt Resolution No. 2017-65, *A Resolution of the City Council of the City of Newport Beach, California, Affirming the City Manager's Authority to Administer and Manage the City's 457 Plan and Retirement Health Savings Plan.*

4. **Adopt a Resolution Supporting an Application by the City of Irvine for the OCTA Measure M2 Regional Traffic Signal Synchronization Program for the Culver Drive - Bonita Canyon Drive Project [100-2017]**
 - a) Determine that the action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because it will not result in a physical change to the environment, directly or indirectly; and
 - b) Adopt Resolution No. 2017-67, *A Resolution of the City Council of the City of Newport Beach, California, Supporting an Application by the City of Irvine for the Orange County Transportation Authority's Measure M2 Traffic Signal Synchronization Program Funding for the Culver Drive - Bonita Canyon Drive Corridor Synchronization Project.*

Mayor Muldoon recused himself from Item 4 due to his employment.

5. **Resolution Authorizing CalRecycle Rubberized Pavement Grant Program Application (C-8526-1) [38/100-2017]**
 - a) Determine that the action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because it will not result in a physical change to the environment, directly or indirectly; and
 - b) Adopt Resolution No. 2017-68, *A Resolution of the City Council of the City of Newport Beach, California, Authorizing Submittal of Application(s) for All CalRecycle Grants for which the City of Newport Beach is Eligible.*

CONTRACTS AND AGREEMENTS

6. **Bonita Creek Sports Park Pickleball Courts – Notice of Completion for Contract No. 8130-2 (Project No. 17P12) [38/100-2017]**
 - a) On April 25, 2017, City Council found this action exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Existing facilities) based on the project is a minor alteration of a public facility involving negligible expansion of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment;
 - b) Authorize the City Clerk to release the Labor and Materials Bond 65 days after the Notice of Completion has been recorded in accordance with applicable portions of the Civil Code;
 - c) Release Faithful Performance Bond one (1) year after acceptance by the City Council; and
 - d) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project.
7. **Central Avenue Public Dock Project – Notice of Completion for Contract No. 8197-1 (Project No. 17H12) [38/100-2017]**
 - a) On April 11, 2017, City Council found this action exempt from the California Environmental Quality Act (CEQA) pursuant to Class 4 Section 15303 Class 3 New construction or Conversion of Small Structures of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment;
 - b) Authorize the City Clerk to release the Labor and Materials Bond 65 days after the Notice of Completion has been recorded in accordance with applicable portions of the Civil Code;
 - c) Release Faithful Performance Bond one (1) year after acceptance by the City Council; and
 - d) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project.
8. **Corporation Yards Painting Project – Award of Contract No. 7153-1 (18F02) [38/100-2017]**
 - a) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Minor Alteration of Existing Public Facilities with Negligible Expansion) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment;
 - b) Approve the project drawings and specifications;

- c) Declare the bid submitted by Harry H. Joh Construction as non-responsive and reject the bid submitted by Harry H. Joh Construction;
 - d) Declare TL Veterans Construction, Inc. as the low responsive bidder;
 - e) Award Contract No. 7153-1 to TL Veterans Construction, Inc. for the total bid price of \$570,000.00, and authorize the Mayor and City Clerk to execute the contract; and
 - f) Establish a contingency of \$57,000.00 (10 percent) to cover the cost of work not included in the original contract.
- 9. Approval of Purchase of BlueTOAD Bluetooth Traffic Monitoring System (C-8527-1) [38/100-2017]**
- a) Determine that the action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines because it will not result in a physical change to the environment, directly or indirectly;
 - b) Approve Econolite, Inc. of Anaheim, California, via Single Source Selection for procurement of the BlueTOAD traffic monitoring system and Econolite Centracs related software module; and
 - c) Authorize the City Manager to execute a Professional Services Agreement with Econolite, Inc. of Anaheim, California, for the procurement of the BlueTOAD traffic monitoring system for a not to exceed fee of \$119,151.21.
- 10. Marina Management Services – Amendment to Agreement with Basin Marine and Budget Amendment (C-6333) [38/100-2017]**
- a) Determine that the action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines because it will not result in a physical change to the environment, directly or indirectly;
 - b) Approve Budget Amendment No. 18BA-009 appropriating \$137,700 from the Tidelands Fund unappropriated fund balance to Account 1008014-811044 for Marina Management Services at Marina Park for the balance of FY 2017-18; and
 - c) Approve Amendment No. 1 to the Professional Services Agreement with Basin Marine, Inc. to extend the term to December 31, 2018, and increase compensation by \$214,200, for a total contract value of \$581,400, for Marina Management Services at Marina Park.

MISCELLANEOUS

- 11. Planning Commission Agenda for the October 19, 2017 Meeting [100-2017]**
Receive and file.
- 12. Appointments to the Aviation Committee [24/100-2017]**
- a) Determine that the action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because it will not result in a physical change to the environment, directly or indirectly;
 - b) Confirm Council Member Avery's appointment of Charles (Steve) Byers as the District 2 Representative Member to the Aviation Committee; and
 - c) Confirm Council Member Herdman's appointment of Patricia Janssen as the District 5 Alternate Member to the Aviation Committee.
- 13. Balboa Peninsula Pedestrian Crossing Study (C-8528-1) (continued from the 10/10/17 City Council meeting) [38/100-2017]**
- a) Determine that the action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because it will not result in a physical change to the environment, directly or indirectly;
 - b) Receive and file the study; and

- c) Direct staff to prepare plans and specifications for the implementation of signing and striping improvements at uncontrolled crosswalks on the Balboa Peninsula, per the recommendations outlined in the Study. In addition, include funding in the FY 18/19 Capital Improvement Budget for sidewalk bulb-out installations and a flashing beacon installation.

Motion by Mayor Pro Tem Duffield, seconded by Council Member Herdman, to approve the Consent Calendar; and noting the recusal by Mayor Muldoon on Item 4, the amendments to the recommendations for Items 6 and 7, and the submission of the agreement for Item 9.

The motion carried by the following roll call vote:

Ayes: Council Member Jeff Herdman, Council Member Avery, Council Member Dixon, Council Member Peotter, Council Member O'Neill, Mayor Pro Tem Duffield, Mayor Muldoon

XV. ITEM REMOVED FROM THE CONSENT CALENDAR - None

XVI. PUBLIC COMMENTS ON NON-AGENDA ITEMS

Nancy Gardner, Friends of the Newport Beach Animal Shelter (FONBAS), announced that their Howl-O-Ween costume event for dogs will be held on October 28, 2017, at Marina Park from 10:00 a.m. to noon, and highlighted the judging categories.

Roberta Buchanan discussed coyote concerns in her neighborhood, announced that there are coyote dens below Castaways, took issue that the City is concerned more with sea lions than coyotes, and believed the City needs a comprehensive plan to deal with this issue.

Lenore Pittman expressed coyotes concerns for the pets and children in her neighborhood and agreed with Ms. Buchanan about the immediate need for a plan.

Jim Mosher discussed, with concern, details of the Civic Center audit and process, and asked if Council believed the matter is concluded, when this was decided and the vote, where the final audit report is, the cost of the audit, where he could locate the settlement agreement, and what the City learned and how that knowledge will be preserved for the future.

City Attorney Harp explained the audit process, why it was not reported until after the settlement was made, the use of the draft report as being the formal audit, and the cost of the audit and amount of the settlement. He noted that the public can view the settlement agreement and previous staff reports related to the audit. Mayor Muldoon believed that what was learned most from the audit was that government must have restrictions to control spending and pointed out that the current City Council is working on creating a Charter amendment that would restrict the amount of debt that could be issued without voter approval.

In response to Council Member Peotter's question, City Attorney Harp confirmed that the settlement agreement does not include a confidentiality provision to restrict Council Members from stating opinions about the audit or settlement agreement.

XVII. ORAL REPORTS FROM CITY COUNCIL ON COMMITTEE ACTIVITIES - None

XVIII. PUBLIC HEARING

14. Annual Review of Zoning Implementation for Sober Living by the Sea, Inc. (PA2010-150) (C-4145) [38/100-2017]

In response to Council Member O'Neill's question, Assistant Planner Whelan reported that out of the 204 beds allowed pursuant to the agreement, 43 are occupied.

Mayor Muldoon opened the public hearing. Hearing no testimony, he closed the public hearing.

Motion by Council Member Peotter, seconded by Council Member Dixon, to a) find this review exempt from the California Environmental Quality Act (“CEQA”) pursuant to Section 15321 (Enforcement Actions by Regulatory Agencies) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because this review enforces an entitlement for use adopted by the City and has no potential to have a significant effect on the environment; b) find that Sober Living by the Sea has demonstrated good faith compliance with the terms of the Zoning Implementation and Benefit Agreement; and c) receive and file documents submitted by Sober Living by the Sea to demonstrate good faith compliance with the terms of the Zoning Implementation and Public Benefit Agreement.

The motion carried by the following roll call vote:

Ayes: Council Member Jeff Herdman, Council Member Avery, Council Member Dixon, Council Member Peotter, Council Member O’Neill, Mayor Pro Tem Duffield, Mayor Muldoon

XIX. CURRENT BUSINESS

15. Ocean Piers Maintenance Project – Award of Contract No. 7126-1 (17H03) [38/100-2017]

Deputy Public Works Director Vukojevic utilized a PowerPoint presentation to highlight the pier inspection process, how piers can be damaged, the damage that occurred October 17-18, 2017, the constant corrosive marine environment, previous ocean piers maintenance projects, and the current proposed project. He discussed the bid process and announced that the work will be started later this year, if approved.

In response to Council questions, Deputy Public Works Director Vukojevic reported that the repairs in 2002 were for concrete decking and indicated various maintenance projects are conducted every two years. He discussed what was done recently to stabilize the Balboa Pier and displayed a video to show what broke during the last storm. He also reported on the sewage spill and announced that Ruby’s Diner was able to open later that same day.

Mayor Pro Tem Duffield stated he will talk with Public Works about using composite piles in lieu of wood piles.

Motion by Council Member O’Neill, seconded by Council Member Duffield, to a) find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (minor alteration of existing public facilities with negligible expansion) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment; b) approve the project drawings and specifications; c) award Contract No. 7126-1 to John S. Meek Company Inc. for the total bid price of \$1,182,395.00, and authorize the Mayor and City Clerk to execute the Contract; d) establish an amount of \$236,000 (20%) to cover the cost of unforeseen work not included in the original contract; e) authorize the City Manager to execute an Amendment on a form acceptable to the City Attorney to the current Professional Services Agreement with COWI Marine North America Inc. for up to \$50,000 for additional design, inspection and construction support services that may be necessary to execute the construction contract; and f) approve Budget Amendment No. 18BA-010 appropriating \$937,000 from Tidelands Capital Fund unappropriated fund balance to Account No. 10101-980000-17H03 (Ocean Piers Maintenance and Repairs Project).

The motion carried by the following roll call vote:

Ayes: Council Member Jeff Herdman, Council Member Avery, Council Member Dixon, Council Member Peotter, Council Member O'Neill, Mayor Pro Tem Duffield, Mayor Muldoon

XX. MOTION FOR RECONSIDERATION - None

XXI. ADJOURNMENT - 7:41 p.m.

The agenda was posted on the City's website and on the City Hall Electronic Bulletin Board located in the entrance of the City Council Chambers at 100 Civic Center Drive on October 19, 2017, at 4:00 p.m.

Kevin Muldoon
Mayor

Leilani I. Brown
City Clerk