

November 14, 2017, Council Consent Calendar 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 September 26, 2017 City Council Meeting

The passages shown in *italics* below are from the draft minutes with suggested corrections indicated in **strikeout underline** format. The page numbers refer to Volume 63.

Page 385: Item 6: “6. Bonita ~~Creek Canyon~~ Sports Park Pickleball Courts – Notice of Completion for Contract No. 8130- 2 (Project No. 17P12) [38/100-2017]”

Note: At the November 14 meeting, the Public Works Department distributed last minute memos noting that the newly-constructed pickleball courts are at “Bonita **Canyon** Sports Park,” not “Bonita **Creek** Sports Park,” and adding a proposed action “d) *Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project*” to this Item 6 and to Item 7.

The proposed minutes add the requested actions, but inexplicably continue to misstate the location of the pickleball courts.

I might further note that I do not believe the Brown Act allows such “corrections” to the published agenda to be made less than 72 before the meeting unless they are both items whose necessity staff could not possibly have foreseen at the 72 hour mark (something that obviously would not justify these) **and** the Council takes a special vote to add them, making that finding. I believe the proper action would have been for staff to ask the Council to continue Items 6 & 7 to the next meeting, at which they could have been correctly noticed (see my comment under Item III on page 382).

I might also note that although I found no other glaring typographic or grammatical errors in this set of minutes, unless one was there and is able to do a lot of “reading between the lines,” many of the comments are poorly presented.

For example, my comment under Item SS4 on page 382 is much diminished by failing to mention the missing consultant work I was commenting on was the promised creation of “*the framework for a citywide crosswalk policy.*” Similarly, under Item III, the core of my comment is completely omitted: namely, the first part was not just a comment that the Council members had asked no questions about the Consent Calendar under that afternoon’s Item SS1, but that during their entire tenures, none of the sitting Council members had *ever* asked for a clarification of a consent calendar item during *any* comparable Study Session opportunity (for those who don’t recall, in the past “Clarification of Items on the Consent Calendar” item was used primarily to direct staff to bring back additional information for public questioning at the Regular Meeting, before the items were acted upon).

I assume many other people’s comments are similarly garbled. Fortunately we have committed to preserving the videos.

Item 3. Resolution to Amend Recycled Water Commodity Charge

1. Although the fourth “Whereas” on page 2 of the proposed resolution (page 3-6 of staff report) asserts no Proposition 218 notice is needed for this rate increase, the staff report, as best I can tell, provides no plain English elaboration of this, or the circumstances, if any, under which such a notice might be needed.
2. There seems to be an obvious disconnect between the OCWD letter of Attachment B to the staff report, which sets rates by fiscal year, and the Exhibit A tables of the proposed City Council resolution, which appear to set rates by calendar year.
 - a. Even though Section 1 of the resolution says the new rates will be “effective January 1, **2018**,” (implying there will be no increase before then) **the tables of Exhibit A show the commodity charge for 2017 going from \$0.89 to \$1.69 per HCF.**
 - b. Assuming this is a typo that will be corrected, and the rate charged customers is indeed not going up until 2018, OCWD has been charging the City the “2018” rate of \$1.69 per HCF since July 1, 2017, but the City has been charging only \$0.89.
 - i. Who is picking up the \$0.80 per HCF difference?
 - ii. Is the City subsidizing the non-City customers through December 31, 2017? If so, how many total dollars does that represent? It is not too long ago those non-City customers received a substantial rebate for purported over-charges. Should they now be given a bill for under-charges?
 - c. The last sentence on page 3-3 of the staff report says “*It is anticipated that OCWD may increase their rates again in **2019** at which time staff will bring the item back to Council for a recommended change if needed,*” I believe this is referring not to the calendar year 2019 of the resolution tables, but to Fiscal Year 2018-2019, which starts on July 1, 2018. And the OCWD letter makes clear another increase is expected on that date. **So it appears the rate of \$1.69 per HCF being adopted for the “2018” column of the Exhibit A table of the present resolution will only be correct for the first half of calendar 2018, and during the second half the City will be back to failing to charge enough to recover its costs.**
3. If this is like other metered utility charges, compounding the preceding confusion, whatever date the City’s costs change on, the City, and its customers, likely won’t have a meter reading at the precise moment of change, so it will be difficult to accurately allocate a later reading to the amounts actually consumed under the old rates versus the new.
4. I believe the recycled water rates were one of the first in which a utility rate structure was moved out of the municipal code into a separate resolution. I continue to feel that is a bad idea, partly because it places a burden on the public to find the resolution and primarily because it’s difficult or impossible to be sure the resolution one finds is the

most current one. By contrast, when incorporated into the Municipal Code by adoption of an ordinance, the updating is seamlessly automatic and there is no question of whether the text one sees is current. I appreciate that adjusting rates by resolution is supposed to give the City nimbleness, but as long as OCWD adjusts rates on July 1 and the City on the following January 1, that nimbleness gains us nothing.

Item 4. Resolution in Support of the California WaterFix and California EcoRestore

The Abstract to the staff report uncomfortably refers to these (in the last sentence) as “*The California WaterFix and EcoRestore initiatives*.”

Although that term is used in the Discussion, as well, I gather these are, at least at this stage, “legislative initiatives” or “executive initiatives” as opposed to “ballot initiatives” (although the details of exactly what they are at this point and what future approvals the City’s support is need for is not made entirely clear).

Had they been ballot initiatives, I think it would be clear that using public resources to support one side or the other would be inappropriate.

Assuming they are just proposed “programs” (the term used in the draft resolution), and not potential ballot initiatives, the City’s support *might* be appropriate, but I don’t feel sufficiently informed about the alternatives to have any thoughtful opinion as to whether the City should be supporting these particular proposals and don’t think anyone else would, either, based only on a reading of the staff report. In that regard, I didn’t find the FAQ of Attachment B particularly enlightening. It seems completely devoted to promoting one out of what the staff report suggests was at one time a multitude of alternatives.

Before taking a position, it would seem helpful to hear the other side, if there is one. If there is none, the City’s support seems superfluous to me.

Item 8. Professional Service Agreement with PlaceWorks for Environmental Services for the Newport Crossings Project Located at 1701 Corinthian Way (PA2017-107)

The staff report fails to mention that a very similar proposal for this site, accompanied by a Mitigated Negative Declaration (prepared by a different company), was rejected by both the Planning Commission and the City Council.

This time staff appears to be recommending the same company and the same person within that company as guided the environmental evaluation of the nearby (and approved) Uptown Newport project. Although environmental evaluations are supposed to be objective, it would seem wise to seek fresh viewpoints.

In addition, although not borne by taxpayers, the estimated cost of \$184,728 to prepare a full EIR may be low. The contract with Kimley-Horn to prepare the EIR for the nearby Koll Center

Residences proposal, for about half the number of dwelling units, started very slightly higher at \$193,884, but has since grown to \$238,250.

Most remarkably, the City has announced a scoping meeting for the Newport Crossings EIR to be held on November 16, just two days after the City Council meeting. Since such meetings are generally led by the outside environmental consultant, this suggests the current proposer will have done substantial work (and per the contract expect to be compensated for it) **before** any formal consultant selection has been made or contract awarded. In other words, instead of being at the beginning, we already appear to be approaching the end of Task 3 outlined in the cost proposal on staff report page 8-39.

I continue to have trouble seeing how such things can happen. If PlaceWorks didn't get the contract, I don't think they would have a claim against the City for the costs of that self-initiated work. And I don't see how getting the contract would turn it into a claim. In other words, it would seem wise to follow our state Constitution and award contracts **before** work is done, not **after**.

Item 9. Investment Advisor Contract with Chandler Asset Management

The statement in the Abstract to the staff report (curiously not reported anywhere in the body of the staff report) that "*Staff's recommendation was presented and supported by the Finance Committee*" seems to me a rather inadequate conveyance to the full Council of the rather contentious discussion that occurred at that body, and what I believe was ultimately a non-unanimous recommendation with a strong dissent.

Item 15. Annual Reporting on Development Impact Fees & Development Agreements

I have not had time to study this in detail, but the last sentence on page 15-1 of the staff report says "***The Act also requires that the City make periodic findings in order to justify continued receipt of unexpended funds, or possibly be subject to refunding a portion of such funds,***" and the last sentence on page 15-2 says "***Attachments A and B provide additional narrative and all the required information related to the annual review and accounting of applicable development impact fees and Development Agreements, as well as periodic findings concerning unexpended funds.***"

Does the City Council need to make these findings? If so, the recommended action is to "Receive, review and file" the report, and nothing in that recommendation makes it obvious the Council is itself making any findings.