



# NEWPORT BEACH

## City Council Staff Report

March 27, 2018  
Agenda Item No. 12

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** Dave Kiff, City Manager - 949-644-3001,  
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**PREPARED BY:** Dave Kiff, City Manager

**TITLE:** AB 2464 (Harper), Professional Services Agreement with Schmitz and Associates, Budget Amendment

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### **ABSTRACT:**

This item is back on the Agenda following a discussion on March 20, 2018 between me and Council Members Dixon and Peotter, along with contacts with Don Schmitz. That discussion led to the recommended actions presented below.

### **RECOMMENDATION:**

- 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;
- b) Authorize the Mayor to send a letter to Assembly Member Matthew Harper in support of AB 2464 or a similar Harper bill;
- c) Authorize the City Manager to execute a Professional Services Agreement with Schmitz and Associates, including work with Henschel Government Affairs, with a not-to-exceed amount of \$120,000;
- d) Identify Council Member Dixon and Council Member Peotter as the contacts to work with staff and Mr. Schmitz and Mr. Henschel on this issue as it progresses forward; and
- e) Approve Budget Amendment 18BA-032 in the amount of \$120,000 from the General Plan Update CIP, 01201928-980000-18M12, to the City Council Professional Services budget, 01005005-811008.

## **FUNDING REQUIREMENTS:**

The proposed Budget Amendment for FY 2017-18 would allow up to \$120,000 to be spent in this regard (generally set at \$16,000 per month plus incidental and travel costs from Schmitz and Henschel). Should the bill be passed into law, the City would have to undertake a fairly extensive planning effort to develop a Port Master Plan. While this will involve additional City expense, it likely will save an undetermined amount of money for our residents and businesses (and possibly the City) should the Port Master Plan be approved by the Coastal Commission.

## **DISCUSSION:**

In recent years, Council members have discussed the concept of a “Port Master Plan” for Newport Harbor, that would be akin to a Local Coastal Program (LCP) for the waters of Newport Harbor. With an LCP, a local community’s governing board steps into the shoes of the California Coastal Commission in interpreting the Coastal Act, allowing local residents to avoid following the Commission across the state at its monthly meetings to secure a permit.

In effect, having a Port Master Plan would allow the City Council and City staff to process environmental review and permits for modifications, removals, and installations of items like sea walls, private and public docks, mooring cans, swim lines, and more – assuming all of this occurred consistent with the California Coastal Act. Additionally, it would allow the City Council to more effectively manage small dredging projects, especially around private piers.

Starting with the Council’s planning session on Monday, January 29<sup>th</sup>, 2018, and then at the Council’s evening meeting of Tuesday, February 13, 2018, the Council gave direction to have legislation introduced that would create the Port Master Plan concept in state law. Assembly Member Matthew Harper agreed to introduce the legislation, which is now Assembly Bill 2464 (Harper, with CA Senator John Moorlach as co-author). AB 2464 as introduced is **Attachment A**.

AB 2464 would essentially align Newport Beach’s harbor with other significant harbors, calling out our harbor as a harbor able to have its own Port Master Plan. If the bill become law, the City would then have to develop and submit the Port Master Plan to the Coastal Commission for review and approval, similar to the City’s extensive Local Coastal Program effort. It is likely that developing and submitting a Port Master Plan may take a significant amount of time should AB 2464 became law.

Don Schmitz of Schmitz and Associates has been a long-term contractor to the City on advocacy before the Coastal Commission and to Coastal staff. Mr. Schmitz has partnered in the past with Sean Henschel of Henschel Government Affairs to communicate with state legislators and the Governor’s office.

As noted to you on March 13, 2018, a sole-sourced contract to Schmitz and Associates (working with Henschel Government Affairs) is proposed. Mr. Schmitz has a significant history of working with our city on past key Coastal issues, including Marina Park, Sunset Ridge Park, our Local Coastal Program, and more. Therefore, a sole-sourced effort here may be appropriate.

The billing rate collectively (for Schmitz and Henschel) is \$16,000 per month, not including other expenses (such as travel and incidentals). The contract envisions a not-to-exceed amount of \$120,000, including a payment of \$32,000 upon execution. See **Attachment B** for the proposed professional services agreement. A budget amendment would be required to cover these costs (see **Attachment C**).

It is challenging to know if AB 2464 will be successful immediately or if this second year of the Legislature's 2017-2018 session will be a discussion, education, and learning year for us and the Legislature and Commission about this important local need. Either way, we are appreciative of Assembly Member Harper's interest in sponsoring AB 2464 for the City and the harbor.

#### **ENVIRONMENTAL REVIEW:**

Staff recommends the City Council find that this action is not subject to 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, California Code of Regulations, Title 14, Chapter 3, because the adoption of City Council Policy A-3 has no potential for resulting in physical change to the environment, directly or indirectly.

#### **NOTICING:**

This agenda item was noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

#### **ATTACHMENTS:**

Attachment A – Text of AB 2464 (Harper, 2017)

Attachment B – Proposed Professional Services Agreement with Schmitz and Associates

Attachment C – Budget Amendment No. 18BA-032