

May 8, 2018, City 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 April 24, 2018 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 491, paragraph 6: “*Jim Mosher asked if there is a difference in time limits if construction is stopped, never begins, or has a lapse in construction, should Council ~~reviewthe~~review the policy **for** projects that request extensions from the Building Division, and if the Balboa Theater was included in the count of long standing permits.*” [“reviewthe” = run-on word, space missing]

Page 493, paragraph 3 from end: “*Mayor Pro Tem O’Neill noted that **all the proposals contemplated using the same steps mentioned by Council Member Dixon** and provided a timeline, but they would be involved in every step of the process.*” [the “steps mentioned by Council Member Dixon,” whatever they may have been, are not mentioned in the minutes]

Page 494, Item 10, paragraph 3: “*Don Schmitz, Schmitz and Associates, utilized a PowerPoint presentation, believing a Port Master Plan (PMP) for the City could be different than what the slide is depicting ...*”

[Although Mr. Schmitz offered this caveat with respect to the first slide he showed, much of the information presented at this meeting, and at other presentations I have heard him give *without* qualification, seems incorrect to me. As an example, at the May 8 meeting he promoted the PMP primarily for its preventing local approvals from being appealed to the Coastal Commission (a concept, incidentally, I believe would be very hard to sell anywhere outside Newport Beach). As part of that, [he showed](#) on a later slide the list of appealable approvals under a PMP from [Public Resources Code Sec. 30715](#), and assured the Council (and public) “*nothing there really applies to Newport Beach.*” However, if one actually read the slide, appealable development included “*residential buildings not principally devoted to the administration of activities within the port*” [all other “ports” in California include both land and water] and “*recreational small craft marina related facilities.*” First, there are obviously “recreational small craft marinas” in Newport Harbor for which local approvals *would* be approvable. And second, while it’s true that the appealability language in the Coastal Act doesn’t specifically mention individual residential piers over state waters, that’s presumably because there are none in any of the four industrial ports covered by the act. The idea that a possible technical loophole in the language would allow the residential piers in Newport Harbor to *not* be regarded as falling in one of the existing appealable categories seems farfetched. There are many other examples of misleading or flat out wrong information from this gentleman.]

Page 494, Item 10, paragraph 5 (below middle): “*Mr. Schmitz reported on what occurred before and at the March 27, 2018 Coastal Commission meeting, adding they were concerned with maintaining their authority and jurisdiction, and setting ~~precedence~~precedent, ...*”

Page 495, paragraph after “The motion died”: “He took issue with Mr. Schmitz indicating at a previous meeting that this would be supported by Coastal Commission staff, the City was not made aware that the Coastal Commission’s legislative lobbyist, ~~Sheryl Christy~~ **Sarah Christie**, contacted Assemblyman Harper’s office and Mr. Henschel to inform them the Coastal Commission could not support AB 1196, ...”

Page 495, paragraph 4 from end: “Susan Skinner believed Council has its answer if it considers the Coastal Commission’s vote and discussions with Ms. ~~Christy Christy~~, asked what the City cannot do without a PMP, and encouraged Council to find an alternate method to achieve local control.”

Page 497, Item XIII:

“Consideration of changes to Council Policy A-1 (City Council) relating to methods by which agenda items are placed on the Council Agenda (Dixon)

The item was continued to the May 8, 2018 City Council meeting.”

[This item does not appear on the present agenda.]

Page 497, Item XIV: “In response to Jim Mosher’s question regarding Item 3 (Notice of Completion of the MacArthur Boulevard Slope Landscaping Project), **Public Works Director Webb confirmed that the project was on City-owned property.**”

[The staff report contained an illustration identifying the “project area” as a rectangle that was (according to the mapping available in the City’s Community Development lobby) about half City property and half Big Canyon Country Club property. The actual area landscaped at City expense was considerably less, but appears to include a small amount of Big Canyon property at the north end of the project.]

Item 3. Approval and Award of Agreement with Ed Building Maintenance Services for Restroom Portering and Paper Good Delivery Services

This would seem to a quintessentially “Municipal Operations” type of function. Since it does not appear to involve building anything, let alone something of permanence in the city, it seems strange to me the contract would be overseen by the Public Works Department.

I would not guess from the agenda, but *do* understand from the City Manager’s *Insider’s Guide* that there may be talk, in the Study Session, about merging the two departments. But to the best of my knowledge, they are not merged yet.

I also have trouble with the math. Memorial Day (May 28, 2018) through Labor Day (September 3, 2018) is 99 days. For 6 people (3 teams of 2) working 8 hours per day at \$19 per hour (per staff report pages 3-2 and 3-23), that comes to $6 \times 99 \times 8 \times 19 = \$90,288$ of “portering.” Add 12 months of paper products delivery at \$2,500 per month and we have \$120,288 per year. Yet the contract is

for \$200,000 per year, nearly twice what one would expect, even at what seems the rather high rate of \$19/hr. Why?

It would seem helpful if reports like this provided information about the current contract. However, as the staff report indicates, the current contract expired April 30, and even though the City Clerk is required by the Charter to maintain for inspection a complete book of City contracts, the expired ones are not visible to the public on-line (I have never understood why). I would assume it was the same as the one approved as [Item 15](#) at the Council's June 23, 2015, meeting – which, it might be observed, was indeed a Municipal Operations Department contract.

Finally, since the staff report indicates the main daily cleaning is performed by a different company (ABM), it would have seemed useful to compare the cost of the “light” service provided by the “porters” to the cost of the “full” cleaning.

Item 4. Big Canyon Nature Park Restoration Monitoring and Resource Management Services (15X12)

I may be missing something about the “qualification-based selection process,” but before making an intelligent decision about awarding a contract shouldn't the Council see a table of how the seven respondents rated in qualifications and what their relative costs would be?

Also, wouldn't it be helpful to know how each firm scored in the various qualification categories listed (as the Council might want to weight them differently)?

Item 5. CAD/RMS Server Replacement

In acting on an item with the present agenda announcement, the Council is quite likely in violation of the Brown Act, since it uses a jargon known only to the person who posted it and is totally opaque to the average citizen. In other words, nothing that can be found in the posted agenda gives the public, or the Council, the slightest hint what they are being asked to appropriate \$125,116 for – and, therefore, what the topic of discussion is (this is similar to several recent “Port Master Plan” discussions, in which that phrase appeared nowhere in the agenda, and the Council and public saw only, instead, “AB 2464” or some such – another expression whose meaning was known only to insiders).

To me, “CAD” stands for “Computer Aided Design” and “RMS” stands for “Root Mean Square.

Evidently these abbreviations mean something different to people in police work – but that is something I learn only from reading the staff report, since the agenda says nothing about this having to do with policing.

Quickly reviewing the staff report, it appears the Police Department earlier selected **Computer Aided Dispatch/Records Management System** software that no longer works on five year old computer hardware, and is asking to scrap the system and buy from the same vendor completely new software and hardware (the new hardware coming from the existing manufacturer, DELL, but this time through the software vendor and at a markup?).

To me, five years seems a remarkably short life even for hardware/software. It therefore seems reasonable to ask if the present vendor makes any representation as to the “life expectancy” of the

new system the City is being asked to purchase – something that does not seem to be mentioned in the staff report – and if there are other vendors who could offer an equally functional system with a longer life or lower maintenance costs.

One might also wonder if the City's IT "Department" has been consulted about the problems the Police Department has been encountering with the existing system, or the Police are taking direction solely from the outside vendor.

Item 6. A Request to Modify the Categorical Exclusion Order to Exclude Some Residential Dwellings from Coastal Development Permit Requirements

This item comes as a complete surprise. I recall nothing before giving any inkling "the City" was considering such a request.

Like many things the City does, it is strange in several ways.

First, it is asking the Council for permission to request a modification of the Categorical Exclusion Order, but the exact language of the requested modification is not provided (as best I can tell).

Second, it is strange because although it is not technically a change to the language of the Implementation Plan, it does seem to be a change to how the LCP is implemented, and changes to the LCP are supposed to go to the Planning Commission for review and recommendation before going to the Council.

Third, although maps showing the present extent of the Cat Ex are provided in Attachment A, there is nothing I can find illustrating the properties that would be affected by the proposed change, which I take it is only lots: within the appeal area AND with lot sizes of 4,000 square feet or less (OR in areas in which that is the predominant lot size) AND where the allowable Floor Area Limit in the LCP is greater than 1.5 times buildable area. Given all those limitations, I would guess the areas affected by the proposed change are rather limited.

Fourth, the report glosses over a significant distinction between the 2016 Cat Ex and the 1977 Cat Ex it replaced. The 1977 Cat Ex exempted residential development if it conformed to the City Zoning Code. The 2016 Cat Ex exempts residential development only if it conforms to the LCP (which strikes, at least me, as rather circular reasoning: it's exempt from the LCP if it conforms to the LCP).

Fifth, the report indicates the problem it is trying to solve is an inability to grant waivers under the LCP, but fails to indicate if that could be fixed by amending the LCP (rather than the Cat Ex), or if it's a problem forced on the LCP by the Coastal Act.

Sixth, the penultimate paragraph about the Lovell Beach House (on staff report page 6-24) is strange since, "quite obviously," I would think, the Beach House is in the first row of houses abutting the beach and (to the best of my knowledge) is not in the area covered by the Cat Ex. The statement that it "*is located within the geographic of the Cat Ex*" seems erroneous.

Regarding the substance of the request, I have a number of ongoing concerns about the Cat Ex.

1. It seems primarily a way to make development approvals less visible to the public, making it even more difficult to know if the plans are being properly evaluated for compliance with the LCP.
2. In that connection, I think the report takes an overly simplistic approach to the concept that development within the allowable envelope will have no Coastal Act issues. The LCP is a mix of potentially conflicting policies and regulations. Last year's approval of the project at [2607 Ocean Blvd](#) is an example. That property happens to be in the Cat Ex area (even though I think it should not be). But building within the "allowable envelope" has a potential to obstruct public views, thereby conflicting with other LCP policies. Or to damage resources.
3. The Cat Ex system clearly presents opportunities for abuse, as in the case of the Dawson Residence at 2741 Ocean Blvd, a 10,000 square foot bluff-face home approved by the Planning Commission as [Item 3](#) on April 6, 2017, soon after certification of the LCP. It was approved with no LCP scrutiny at all because it was said to be within the Cat Ex area. But it clearly did not qualify for the Cat Ex because the development proposal required variances and the structure impacted public coastal views.

Finally, I would assume that when the 1977 Cat Ex was approved, there was some reason for wanting extra scrutiny of proposals that exceed a 1.5 Floor Area Limit on lots under 4,000 square feet. It does not seem wise to remove that extra scrutiny without knowing the original reason for it. And the staff report provides no explanation of it.

And beyond finally, it cannot escape notice that there is a growing proliferation of three-story houses throughout the City. One would naively think that if you fill the complete area allowed by the setbacks, then a FAL of 1.5 would limit you to one floor and half a second story, while a FAL of 2.0 would limit the owner to two full floors. Yet many have the impression that an FAL of 2.0 is somehow allowing two complete buildable-area filling floors plus a partial third story on top of that. One wonders how that can be?