

July 10, 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 June 26, 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 540, end of paragraph 2 from end: “... suggested ~~placing a~~ requiring 55% voter approval with a \$25 million threshold, and agreed that an emergency exemption should be included.”

Page 541, paragraph 2: “Council Member Dixon suggested exempting police and fire facilities, and having a \$30 million or \$40 million threshold with a 2/3 vote.” [This sentence appears out of sequence. It complies comments made before the bond counsel spoke, not after.]

Page 542, paragraph 2: “Lesley Miller discussed the agreement between the City and residents relative to the alley between Ocean Front and East Ocean Boulevard, and requested that, before the City deems ~~the a~~ project complete, it require the developer or contractor to restore the alley and replace the pavers.”

Page 542, Item IV.A, list of employee organizations: “...; Newport Beach Professional and Technical ~~Employee Employees~~ Association (NBPTEA); ...”

Page 542, Item V: “RECESSED - 5:44 p.m.” [I don’t believe the Council “recessed” at 5:44 p.m. That sounds, instead, like the time at which they started their closed session. If the Council took a recess, it would have come at the end of the closed session.]

Page 542, Item VI. “RECONVENED AT 7:07 P.M. FOR REGULAR MEETING” [The paper copy of the draft minutes that I picked up on July 5 says “7:00 P.M.” “7:07” sounds more correct, but apparently the draft minutes have been amended since their first posting.]

Page 543, Item XII, Dixon, second bullet: “Announced the upcoming Finance Committee meeting on June 28, 2018, ~~and~~ the 4th of July is for Families Bike Parade and Community Festival in Channel Place Park”

Page 546, motion (after Item 17): “... and noting the recusal by Mayor Duffield on Item 3, recusal by Mayor Pro Tem O’Neill on Item 7, and recusal by Council Member Muldoon on Item 7.” [I am unable to find anything in the draft minutes indicating that O’Neill or Muldoon recused themselves from Item 7, or why.]

Page 547, paragraph 2: “Council Member Dixon reiterated the importance of this movement with all the Orange County cities working together, indicated Senator John Moorlach, and the Orange County Board of Supervisors, are in support of the bill, ...” [delete unnecessary, and confusing, commas]

Page 547, paragraph 4: “*Jim Mosher discussed the legislative analysis of AB448 and clarified that Council would not be voting to create the JPA itself, which can be formed without legislation, but would be voting to allow the JPA to issue bonds ~~to-itself~~ and go into debt.*” [I may have said the AB 448 would allow the JPA to issue bonds **itself** (as opposed to relying on the member agencies to issue them), but the bonds are always issued **to** third parties.]

Page 548, Item XVII: “*Mayor Duffield reported on the Executive Watershed Committee meeting and indicated issues with sediment, trash and vegetation collecting in the Harbor are being addressed by beach cities upstream.*” [Add comma between “sediment” and “trash.”]

Page 548, Item 18 (Restaurant BID renewal): “*Mayor Duffield recused himself due to business interest conflicts.*” [Mayor Duffield’s conflict of interest on restaurant issues is a mystery. The only financial interest mentioned on his Statement of Economic Interests [on file with the FPPC](#) is his investment in Duffy Boats. Does Duffy Boats own a restaurant? California [Government Code Section 87105\(a\)\(1\)](#) requires an official with a conflict of interest to “*Publicly **identify the financial interest that gives rise to the conflict of interest or potential conflict of interest in detail sufficient to be understood by the public, except that disclosure of the exact street address of a residence is not required.***” I don’t think that standard is being met in Newport Beach.]

Page 549, paragraph 3 from end: “*In response ~~to Council~~ **to Council** questions, Police Chief Lewis encouraged residents and visitors to be proactive ...*” [Add space.]

Page 550, Item 21 (TBID modification): “*Mayor Duffield recused himself due to business interest and source of income conflicts.*” [See comment on page 548, Item 18. Does Duffy Boats own a hotel?]

Page 550, Item 21, last paragraph: change “*TBID*” to “***the TBID***” in all locations except first.

Page 552, paragraph 3: “*Council Member Muldoon believed this is an opportunity to give the voters more power over how their money is spent and **it** should go to a vote.*”

Page 552, paragraph 5: “*Council Member Avery noted he does not feel this is particularly good public policy, **but** since Council Members are chosen to make the best decisions for the City, **but** he indicated he will be supporting this because the community probably wants a say in these types of issues and in reaction to the cost of the city hall and park project.*”

Page 553, paragraph 6 from end: “*He expressed concern with adding another **layer for restriction on** the citizens’ **right** to redress and another layer of bureaucracy.*”

Item 3. Creation of a Harbor Department - Second Reading of Ordinance Nos. 2018-10 and 2018-11

I commented on the draft language submitted to the Council for introduction as Item 3 on the June 26, 2018, Consent Calendar.

Since the Council chose to make no changes to the submitted language, the problems noted then remain, and are destined to become enshrined in the City's Municipal Code.

Item 4. Medi-Cal Managed Care Rate Range Intergovernmental Transfer (IGT) Program

Council members have in the past expressed doubt about signing onto this program, since it requires a commitment of funds with no guarantee of return. City staff's assurances that this is safe bet have, in the past, proved true. One hopes, and expects, they will remain so.

Specific comments:

1. The staff report implies the net return to the City is only half what the federal government is paying, with CalOptima keeping the other half. In view of that, it might have been helpful to remind the Council (and public) if there is any way for the City to make the claims directly, keeping something closer to the full amount.
2. The present staff report is not clear in explaining the circumstances under which the transferred funds and/or the 20% assessment fee might **not** be returned to the City.
3. The estimated net return of \$301,265 seems high if the staff report and resolution is correct in saying that to date the **total** net return for **three** years was \$305,110.
4. This becomes especially hard to understand in view of the last "WHEREAS" in proposed Resolution No. 2018-53 on page 4-4, which says the previous net return of \$305,110 was generated by transfers into the program of \$725,812. How could it be that the present transfer of \$227,514 (plus 20%) is so much smaller, yet the expected return is almost the same as the previous total?
5. In line 5 of the suggested title to Resolution No. 2018-53 on page 4-4, "**HEALTHCARE**" is given as one word. I should be two ("**HEALTH CARE**") to match the abbreviation of DHCS.
6. There seems to be a word missing on the last line of page 4-4: "... *the terms upon which the City is paid its previously unreimbursed **costs** for providing ...*"

Item 5. Notice of Completion for Fire Station No. 6 Apparatus Bay Replacement - Contract No. 6422 (Project No. 16F11)

The change order charging to this contract work on preparation for the Corona del Mar Fire Station No. 5 replacement project seems a bit strange. Doesn't that have its own contract?

Item 6. 2017-2018 Streetlight Improvement Project - Award of Contract No. 6269 (17V02)

In mentioning that Belco has satisfactorily completed similar projects for “*Santa Monica, Chino Hills and other municipalities*,” it seems strange the staff report does not mention they previously had the contract for the Streetlight Improvement Project in Newport Beach (as well as for several Newport Beach traffic signal rehabilitation projects). See, for example, [Item 8](#) from May 10, 2016 (which had some overruns and took longer than expected to complete, apparently not the fault of the contractor).

The difficulty of knowing who the City has previously contracted with underscores the City’s odd practice of not keeping completed contracts visible in its Laserfiche [public contracts archive](#).

Item 7. Geotechnical and Material Testing Services - Approval of On-call Professional Services Agreements

From the staff report it appears this is a major, ongoing and continuous need, not a sporadic one.

In view of that, and although the staff report indicates “*the City does not have the resources to perform these services in-house*,” has consideration been given to the relative costs and efficiencies of adding the resources to make it possible to perform **some** of the services (such as sending samples to certified labs) in-house?

Item 8. Marine Avenue Storm Drain Pump Station and Drainage Systems Design - Approval of Professional Services Agreement (Project No. 19D12)

1. Near the end of the first paragraph on page 8-2, “*exist*” should be “*exit*” and “*potable*” was intended to read “*portable*.”
2. The staff report says (page 8-2), “*In concept, the storm drain system would potentially collect water from Marine, Onyx and Amethyst Avenues (See the attached figure)*.” The attached figure shows no drainage system on Amethyst. Task 7 of the proposed Scope of Services says only “*Advise if the drainage area can be enlarged to include Amethyst*.”
3. It is unclear from both the staff report and the Balboa Island Drainage Master Plan (Project No. 19D11 in the Capital Improvement Program approved on June 12), if the direction to “*prepare a concept level plan to provide similar flood protection for the entire island*” (contract Task 8) encompasses both sides of the Grand Canal, or just the “Big” island. That would seem important in terms of the scope of the contract.
4. Even though the contractor may have been selected through a “*qualification-based selection process*,” it would have seemed helpful to identify all eight respondents and show how they compared on the criteria considered, especially the two finalists. That would help the

Council (and public) know if they agree with the recommendation (see also my comment on Item 9).

5. In the bold-faced description of Task 8 on page 8-25, "**Marina Avenue**" is presumably meant to read "**Marine Avenue.**"
6. In the title given to Task 12b on page 8-28, "**Internal Initial City**" is presumably meant to read "**Internal Initial Study.**"

Item 9. Concrete Street Pavement Reconstruction Project Design - Approval of Professional Services Agreement (18R21)

It is good to see the entire list of respondents, and their scores, on page 9-2. It would have been even more helpful to see how the three staff members independently rated them on the various criteria considered. As with Item 8, that would help the Council members evaluate whether they would have weighted the criteria the same way and reached the same conclusion.

In that connection, it might be noted that in purchasing supplies (but not necessarily services) the City Charter contains a clause ([Section 1111](#)) giving preference to local businesses "*maintaining an established place of business within the City.*" It is unclear (but seems unlikely?) such a criterion is current among those considered in the City's qualification-based selections, but it would be good to know what the criteria were.

Item 10. Professional Services Agreement with Environmental Science Associates for Environmental Services for a Proposed 275-Room Hotel Project Located at the Newport Dunes Resort (PA2016-175)

It seems clear (as seems to be acknowledged in the second and third sentences of the Discussion on page 10-1) that this is a large project in a sensitive area which will need an Environmental Impact Report.

Although the developer will be paying the costs, it is unclear why the contract is calling for the preparation not only of an EIR but also of an Initial Study – something not mentioned in the staff report, but evident as Task 3 (page 10-20) and Documentation Schedule (pages 10-31 through 10-32) in the Scope of Services of the proposed contract.

Since per California Code of Regulations [Section 15060\(d\)](#) (Title 14, Division 6, Chapter 3, Article 5), Initial Studies are not required when an EIR is going to be prepared, this would seem, on the one hand, extra and unnecessary work which could actually result in a less readable EIR if the latter dismisses matters as having been previously dealt with and settled in the Initial Study.

Given that, the justification for requesting and requiring the applicant to pay for unrequired work should have been explained in the staff report.

That said, several possible justifications for preparing an Initial Study in addition to an EIR are suggested in CCR [Section 15063](#). I tend to agree with those, but I think the Council (and public) should know this is being asked for and why.

Item 11. Temporary Suspension of a Portion of City Council Policy B-17, Parks, Facilities and Recreation Program Donations

I support staff's recommendation to suspend this program pending revisions to the policy.

For the same reasons that the Council has shown reluctance to permanently name entire parks and facilities after notable recently deceased residents, there are a limited number of locations in need of new "street furniture" and, to a lesser extent, trees, and the donors' focus seems to have become more on the plaque recognition than on the benefit to the City. Eventually, the acceptance of new donations will require the removal of older ones.

I'm not entirely sure I am correctly interpreting staff's references to their concerns about "*Donor expectation levels*" and "*Growing memorialization of our Public Rights-of-Way, Parks and Spaces*," and I don't want to sound crass, but I believe the revision of Policy B-17 in August 2017 to include the "In Loving Memory" plaque option (a revision that was not publicly reviewed by the Parks, Beaches and Recreation Commission, but which has been being informally sanctioned by PB&R for a year or two) may have created the impression Newport Beach is offering itself as a low cost alternative to the funeral industry.

Although nearly all the recent requests passing through PB&R (with the exception of two tree donations by Arbor Realty) seem to have been of the "In Loving Memory" kind, it might be noted that donations don't have to be from people and one can easily imagine over use of the current policy for corporate advertising and brand recognition. That could create the impression the City is unable to pay for its own improvements, and must rely on the charity of corporate donors to meet its most basic needs.

In all cases, clearer standards for when a donation can be refused, or when recognition should be discouraged, may be needed.

In addition to the promise to review the proposed policy changes with PB&R, and for them to create a recommendation to Council, it would seem good if staff could prepare and publicly review with PB&R a complete inventory of places in the city where it believes bench, tree and other donations are currently *needed to benefit the public*, as opposed to the current system in which new locations seem to be invented for the memorial needs of individual donors. In an ideal world, if the City cannot afford to make those improvements itself, one might hope donors would then come forward to fund the City's needs.