August 14, 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 July 23, 2018 City Council Special Meeting, July 24, 2018 City Council Meeting, and July 30, 2018 City Council Special 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 569, Item III, paragraph 2: "*Council Member Muldoon requested Council discuss and provide an update to the public on the City Manager recruitment and City Attorney Harp agreed he would give a report after **the** Closed Session*."

Page 569, Item III, paragraph 3: "*City Attorney Harp reported the City Council would adjourn to Closed Session to discuss the ~~**remaining**~~ items as listed in the Closed Session agenda and read the titles*."

Page 577, Item III, paragraph 3: "*~~**Alan**~~ **Allan** Beek encouraged city manager candidates to follow the model set by City Manager Kiff*."

Page 578, just before Item IV a sentence like this is missing: "***City Attorney Harp reported the City Council would adjourn to Closed Session to discuss the item listed in the Closed Session agenda and read the title***."

Page 578, Item V, paragraph 1: "*City ~~**Clerk**~~ **Attorney** Harp read a statement which reported on the recruitment process, the reason for calling the special meeting, and the next step*."

Item 4. Resolution Setting a Second City Council Meeting for August 28, 2018

The California Legislature adopted the Brown Act in 1953 largely to solve the problem of local governmental bodies escaping public scrutiny by meeting at unpredictable times and places. Its solution was to require the bodies to adopt a regular meeting schedule. This remains a prominent feature of Section 54954.

More recently, to solve problems discovered in the wake of the City of Bell scandal, the Act was amended by adding (among other things) Section 54956(b), requiring discussion of compensation for key executives to occur only at one of those regular meetings.

In order to accommodate the possibility that the Council may wish to discuss City Manager compensation before its next regular meeting on September 11, this item turns the concept of "regular" meetings on its head by suggesting the Council is free to deviate from its announced

schedule by creating, on short notice, an additional "regular" meetings at which, presumably, any sort of regular meeting business could be newly introduced and approved.

Not only is the idea that "special" can be regarded as "regular" an odd perversion of the common meaning of "regular," but the tortured process offered here is completely unnecessary to accomplish its stated purpose: namely, to provide an opportunity for the Council to *complete* its discussion of city manager compensation (Item 23) if it is unable to do so on August 14.

Section 5495 of the Brown Act has, since the Act's inception, allowed an agenda item that cannot be completed at the regular meeting for which it was originally noticed to be continued to an "**adjourned regular meeting**" (whose date and time is announced prior to adjournment), and "*the resulting adjourned regular meeting is a regular meeting for all purposes*."

While the City Clerk's more elaborate solution may in some sense appear to offer greater transparency than a last-minute announcement of the continuation of an existing regular meeting to a future date, it in fact opens a possibility that regular meeting city business that had never before been noticed for discussion could be introduced and acted upon at the special and unexpected "regular" meeting the proposed resolution creates.

Speaking of resolutions, it may be interesting to note that despite the City Clerk publishing an advance list for each year of the Council's normal regular meeting dates based on the notion that the Newport Beach City Council meets on the **second and fourth Tuesdays** of each month except in August and December (when the Council skips the second meeting), that concept appears no longer to be in a writing adopted by resolution as required by Brown Act Section 54954!

As recently as 2015, that schedule was a prominent feature of the first sentence of Section A of former Council Policy A-6 each time it, and revisions to it, were adopted by resolution.

However, exactly a year ago, as Item 18 on the August 8, 2017, agenda, the Council approved (by Resolution No. 2017-55) massive revisions to the Council Policy Manual, including "consolidation" of former Policy A-6, along with eight other former "A" policies, into a new Policy A-1.

No redlining was shown, and since no copies of the former policies were provided, the implication seemed to be that no substantive changes were being made.

But in fact, many seemingly small changes were. Among those, **Section A of the new Policy A-1 no longer declares the Council meets on the second and fourth Tuesdays**.

As a result, since last August it appears the Council has been posting agendas and meeting on dates that had not been officially declared as regular meeting dates for purposes of the Brown Act.

If true, I think this underscores the folly of rubberstamping staff-proposed changes so massive and numerous that no one is likely to read them, as is the case again this year with the next

item on the present agenda (Item 5 - “City Council “L” Policies Update 2018 Regarding Public Works/Traffic/Utilities”) – this time receiving so little scrutiny it is on the consent calendar.

Item 5. City Council "L" Policies Update 2018 Regarding Public Works/Traffic/Utilities

I find this item deeply troubling.

The Council is being asked to rubber-stamp massive amounts of staff-suggested redlining to what are officially supposed to be “Council” policies (not “staff” policies) adopted for the benefit and protection of the public, and to do so on the consent calendar with no public debate or discussion.

The Council is apparently expected to believe their review is not really necessary because the Planning Commission has done that job for them – when in reality most of the Planning Commission has likely paid no more attention to this than they.

Indeed, the associated Resolution No. 2018-58 gives the impression the 215 page report is entirely the product of an independent Planning Commission effort, with almost no mention of City staff involvement. If the process was anything like the City Charter Revision Commissions/Committees I know of, the PC committee members were most likely spoon-fed staff-generated changes with limited review and independent analysis. But I don’t know, because the meetings of the committee where all this happened were not noticed and the public was not invited to observe, let alone participate in this revision of public policy. Hence the public (and Council) has no idea what broad alternatives were presented, considered or rejected – nor the extent to which the detailed staff-suggested language was questioned.

Tellingly, in the staff report, I don’t see the number or names of the Planning Commissioners who served on the ad hoc committee. Nor do I see attached the minutes of the single June 21, 2018, Planning Commission meeting at which (in a very few minutes) the Commission as a whole purportedly reviewed and recommended to you the present changes. I believe the Council will find the PC as a whole recommended no changes at all (the Chair requested better graphics on two pages – but as was pointed out to him, those were pages and graphics staff was proposing to delete).

The last part of my comments on Item 4, above, recalling the previous huge package of policy changes in Item 18 from a year ago, highlight the poor results of this approach (with Council, for the last year, having apparently held a series of improperly noticed “special” meetings that it thought were “regular” meetings held on days it thought had been adopted by resolution). As here, eliminating words from the Council Policy seems to have been regarded as a goal laudable in itself – even though in the specific case of Policy A-1, eliminating the words calling for meeting on the second and fourth Tuesdays of the month also defeated one of the state-required functions of the policy.

The staff report mentions with some pride that the PC ad hoc committee met for six hours and deleted over 9,500 words, for an average of 1,583 words deleted per hour or 26 words per minute. One has to wonder how much thought went into that. Since laws and policies are supposed to be carefully and concisely crafted with no superfluous words at all, if those 26 words per minute were truly unnecessary, one also has to wonder how this City's policies became so bloated with surplusage.

One also has to wonder if the new words are any better than the old.

A good example of this sadly broken process is Council **Policy L-16** ("Temporary Banners Extending over the Public Right-Of-Way").

1. I know for a fact that the Corona del Mar Business Improvement District Board, which hangs banners from streetlight poles along PCH in CdM in compliance with Policy L-16, has been trying for at least two months to inject itself into the present process so the resulting revisions would achieve changes that would make life easier for them (see, for example, Item G on their July 26, 2018, agenda).
2. In particular, their vendor finds the requirement of Section IV.A.7 (staff report pages 5-37 and 5-153) -- that the poles be wrapped with rubber -- to be expensive, cumbersome, unsightly and unnecessary for poles of the type they use.
3. That request seems to have gone nowhere with City staff, and it is disturbing that rejected attempt at public involvement is not even mentioned in the staff report.
4. Instead, staff continues, with no obvious oversight, to push for its own misguided and misinformed revisions to that very paragraph.
5. In particular, the passage in question currently reads "*Poles or standards must be wrapped with forty five (45) ml thick black rubber sheet …*"
    a. "**ml**" is evidently a typo for the word "**mil**" – a term meaning one-thousandth of an inch.
    b. As is evident from page 5-153 of the present report, some member of City staff, apparently with no engineering background or understanding, has mistakenly assumed "**ml**" was an abbreviation for "**milliliter**" – a measure of liquid volume, which has nothing to do with thickness and makes no sense in this context.
    c. Possibly the anonymous reviser thought milliliter was the same as "**millimeter**" – a metric system unit of thickness equal to 0.0394 inches. But 45 mm of rubber would be nearly **2 inches** thick, where the existing requirement was intended to call for **0.045 inches**.
    d. As a result, a minor but decipherable typo has been transformed by the present revisions into an far more confusing typo whose intended meaning will be indecipherable to those unfamiliar with the tortured history of the policy – and potentially far more burdensome on the CdM BID (trying to come up with 2-inch thick black rubber wraps), rather than less burdensome.

6. **The sloppiness, lack of oversight and outright error found in this single passage that the public (indeed, a Council-appointed public board) has attempted to draw attention to should give the Council pause in approving in bulk a 215 page staff report (133 pages of redlining) that may be equally riddled with errors and "dis-improvements" of existing Council policy.**

As another example, I have looked briefly at **Policy L-23** ("The Siting of Wireless Telecommunications Equipment on City-Owned Land [or Property?]"), which I commented on verbally, and I thought with no effect at all, at the Planning Commission's June 21, 2018, meeting.

1. Policy L-23 is of special interest to me because my introduction to Newport Beach City government was a non-publicly made promise by a former City Manager to site private wireless equipment on the City-owned property (a streetlight pole) in front of my Back Bay view windows, supposedly pursuant to Policy L-23, and this policy, with all its flaws, was the first I ever looked out.
2. I suppose I should be grateful to see that at least one of the suggestions I made verbally on June 21 has been incorporated into the version being presented to the Council for approval: namely, having the policy title read "City-Owned **Property**" rather than "City-Owned **Land**" (as it had been presented to the Planning Commission). However, since that comment was neither acknowledged nor accepted by the PC, it now makes wonder what other changes to the policy package seen by the PC may have been made, and by whom.
3. I see a reference to the "**Utilities**" Department that had been proposed to be changed to "**Municipal Operations**" Department in June has been changed back to "Utilities" – but again, by whom, and has this been done with the other "L" policies?
4. I see Section VIII continues to refer to "*Encroachment Permits (Telecom)*" as specified in NBMC Title 13, even though, as I pointed out on June 21, no such animal exists in Title 13 (at least that I know of).
5. Although I didn't mention it on June 21, I also notice, Proposed Policy IV.A mentions the need for applicants to "*receive a permit under the provisions of Chapter 20.49*." [of the Newport Beach Municipal Code]. But as best I can tell, it continues to fail to tell applicants that to place telecom equipment on City-owned property within the Coastal Zone, they will also have to receive a Coastal Development Permit as provided in NBMC Chapter 21.49
6. I also see no changes have been made to the newly numbered Section VII ("Effective Date and Council Non-Consent").
    a. This section has been my biggest beef since 2009.
    b. City Charter Section 421 is much harder to read and understand now than it was in 2009, but it continues to say that contracts not "in" the Council-approved

budget (such as telecom leases) need to be approved by the City Council – which means they have to be approved at a noticed public meeting.

c. Section VII of Policy L-23 violates the Brown Act by allowing the Council to grant its Charter-required "approval" to the contract by an absence of private objection. In effect, it asks the City Manager to quietly "poll" the Council outside of a noticed public meeting, thereby conducting an illegal "serial" one.

d. Given the absence of public knowledge that a lease is being signed at all, this is a flawed policy on many levels beyond its ignorance of the Brown Act.

7. I *do* see that in proposed Section V.B.3, City staff has inserted, without public discussion, a prohibition on offering City traffic light poles as a possibility for private telecom equipment. I think that is a bad recommendation, as those would often be the least obtrusive location and such siting is allowed in other cities.

The above said, I have not had time to thoughtfully consider the revised state of Policy L-23, nor to have considered at all the revisions to the many other policies. Somehow I doubt most of the Council members have, either.

Based on examining a few random pages, it looks to me like many of the changes are ill-advised, such as changing "*must*" and "*will*" to "*shall*" when modern jurisprudence and bill drafting guidance suggests the opposite is what is wanted.

Rubber-stamping all of this on the consent calendar simply doesn't seem appropriate to me. The implication of the adopting resolution would be it had been thoroughly and publicly debated before the Planning Commission, which it was not.

Finally, if the policy change process in Newport Beach is staff-driven, as it appears to be, it has to be noted that the City is about to make a change in city managers, and one has to question whether major re-evaluations of City policy should wait for input from the new manager. He or she may have very different ideas about how the City should be managed.

Item 6. Approval of the 2017 Urban Areas Security Initiative Grant Program Transfer Agreement with the City of Santa Ana

The acceptance of funding under the "UASI" banner is always of concern to me since I believe it encourages the militarization of the local police force – something alien to the concept of "community policing" we claim to embrace in Newport Beach.

The brief staff report mentions some broad (and not clearly defined) County objectives.

It appears to be left to me, the reader, to discover, in 48 pages of densely written contract-like language, exactly what (in terms of dollars, programs or supplies) Newport Beach is asking for.

I hope the Council has a clearer picture of that than I do.

A quick skim-through of Attachment A does not make what the City is asking for at all obvious to me.

Item 17. Donation Agreement with Crystal Cove Conservancy for Cottage Restoration

The proposed donation of $250,000 (over five years) to a private organization – however worthy they may be -- strikes me as close to, if not, a gift of public funds.

While the staff report makes it sound like a good investment that will advance public interests and generate more revenue than it costs, the reference, without further explanation, to the Conservancy having a "*for profit subsidiary*" is disturbing.

I'm not sure I understand how a non-profit can have a for-profit subsidiary, or what assurance I have that the City's donation will not allow other funds to be turned into "profits" for the benefit of those seeking the donation.

And I don't see the projected revenue to the City as being something taxpayers would *not* receive if they chose *not* to make a donation. It seems obvious the Conservancy could seek funding from other sources – most obviously, like other developers, by borrowing against the anticipated revenues. And it would seem to me the eventual improvements and hence the future TOT to the City would be the same.

In short, if a smaller level of donation worked in the past (and if none at all may actually be required), I'm not sure I understand why a much higher level of donation is now somehow appropriate or needed.

Giving extra money with no clear extra benefit would seem to me a gift.

Item 18. Planning Commission Agenda for August 9, 2018

> Note: there was a time in the past, under former Planning Directors, when the Council, at its regular meetings, actually discussed and reviewed the Planning Commission action report. My written comments to the PC on Item 3, below, provide some additional information on that particular item.

I would like to call the Council's attention to Item 3 on the Planning Commission's August 9 agenda – the **Hinton and Maloney Residence (PA2017-208) at 3200 Ocean Boulevard** in Corona del Mar (on the inland side of the street, at the corner of Larkspur, above Big Corona State Beach).

To the extent the Council shares their constituents' concerns about the proliferation of maximum-sized, lot-filling homes, and its effect on the character of our community, this is an a case where the Council should use its power under NBMC Chapters 20.64 and 21.64 to call the Planning Commission's decision up for review.

The approved project goes beyond the maximum legally allowed home size, allowing something bigger than is permissible under any reasonable interpretation of the City's written development standards.

The public understands those standards to limit the floor area (and thereby the bulk) of residential development to the "buildable area" of the lot (the lot area minus the required open space setbacks) times a multiplier called the "Floor Area Limit" (FAL). Throughout Corona del Mar the largest FAL allowed by the Council's development standards is 1.5 – and residents are *already* concerned about the large, lot-filling homes a FAL of 1.5 allows.

In the present case, to accommodate the owner's wish to replace an existing *large* home with an *even larger* home (having a basement, alone, nearly as large as the entire existing home), the Planning Commission agreed not only to *increase* the legally defined *buildable area* by *decreasing* the standard 10 foot rear yard setback to 5 feet, but *then* allowed the owner to *multiply that modestly increased buildable area by an FAL of 1.7* instead of the 1.5 that applies to everyone else in CdM.

While a (debatable) argument could be made for reducing the rear setback to 5 feet, absolutely no reason was provided for then, additionally, allowing this property a larger floor area multiplier than the law allows anyone else.

This is a case where the public is going to see a very large lot-filling home constructed in a very public area and wonder how that got approved? In this case it got approved because the Planning Commission arbitrarily decided the laws enacted by the City Council don't apply when they impede what an owner would like to build.

Given the public's concern about mansionization, this is a decision crying out for review – and any single Council member can make that happen by filing a "call for review" with the City Clerk by the close of business on August 23 (14 days from the PC's decision).

The need for a public discussion of this item is especially acute because the City staff announced the Planning Commission would be hosting a community discussion of mansionization concerns back in February (Feb. 8, 2018, Item 4), but abruptly cancelled that meeting and appears to have no plans to reschedule it – despite a promise at the time to do so.