

November 27, 2018, 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 November 13, 2018 City Council Meeting

The passage shown in *italics* below is from the [draft minutes](#) with suggested corrections indicated in **strikeout underline** format. The page numbers refer to Volume 63.

Page 631, Item SS3, paragraph 1, line 4: “..., *highlight proposed Newport Beach Municipal Code (NBMC) **Section Chapter** 5.97, ...*”

Page 634, Item XI: “*Without objection, Mayor Duffield combined Items XII and ~~XVIII~~ **XVII**.*”

Page 634, Item XI, Dixon bullet 4: “*Announced that City Manager Leung would be speaking at Speak Up Newport on November 14, 2018, in the Civic Center Community Room.*” [This is indeed what was said. However, the announcement *should* have been that the event would be held in the **Central Library Friends Room**. Incidentally, the speech can now be viewed via the City’s [streaming video](#) site.]

Page 635, bullet under “Mayor Duffield” at top of page: “... *and thanked Senior Civil Engineer Kappeler and volunteer Billy **Benton Dutton** for all their efforts on making this project successful.*”

Page 638, Item XVI, last paragraph: “***Ann Sandra** Ayres thanked Council for their service to the City, discussed her disappointment that the Planning Commission granted a Conditional Use Permit (CUP) for another auto dealership along Mariners Mile, ...*”

Page 638, Item XVI: [should indicate it was combined with Item XII]

Page 638, last paragraph, line 2: “..., *the difference between a ~~stationery~~ **stationary** vendor and a roaming vendor, ...*”

Page 638, last paragraph, line 6: “... *and provided **a** code enforcement’s phone number (949-644-3215).*” [or: “a code **enforcement’s enforcement** phone number”]

Item 3. Ordinance No. 2018-17 - Amending Titles 1 and 17 Related to the Harbor Department

At the Council’s November 13 meeting I only urged reconsideration of the harbor speed limits Ordinance No. 2018-18 (the present Item 4), which, as originally adopted immediately after Ordinance No. 2018-17, caused unintentional damage to the Harbor Code (Title 17) appeals process.

I am very pleased to see that staff recommended a re-introduction of a slightly modified Ordinance No. 2018-17, as well, so that all the nomenclature changes related to the creation of

the Harbor Department, including changes to the names cited in the appeals process, could be consolidated in one place. That, as the staff report indicates, allows the *older* Ordinance No. 2018-18 (reviewed by the Harbor Commission *before* plans for a City Harbor Department had been completed) to stand on its own and eliminates the need for it to “correct” nomenclatural matters in Title 17 that are no longer relevant to its fundamental purpose of changing harbor speed limit rules.

That said, **the new version of Ordinance No. 2018-17 contains at least one new typo**: now that the changes are being made to the entire appeals process section, and not just isolated subsections, **Section 62 of the ordinance (staff report page 3-36) should refer to NBMC Section 17.65.010**, not NBMC *Subsection* 17.65.010.

Additionally, I hope staff and the Harbor Commission will not forget the larger problem that caused me to notice the inadvertent damage to the [Chapter 17.65](#) appeals process. Namely, [Section 17.60.080](#), which formerly just referenced Chapter 17.65, was modified in 2013 to, as the Council was told at the time, provide a quick and inexpensive mechanism for outside “hearing officers” to resolve disputes about City staff’s calculation of the newly-imposed annual rental charge for private docks over public waters (the so-called “dock tax”). Five years later, that language is being interpreted to give hearing officers the authority to reconsider and substitute their judgment for decisions of the Harbor Commission and, potentially, the City Council in all matters involving permits for structures in the harbor. That is clearly not what the Council was told their approval of the new passage would do, and as a result it needs to be reworked.

Regarding the substance of Ordinance No. 2018-17 as it is being re-introduced, the Discussion’s highlighting of some of the changes is a helpful addition to the staff report. Nonetheless, some of it raises questions:

1. Since the Harbormaster is assuming code-enforcement responsibilities, it is understandable he or she is being given citation-writing authority in Title 1. It is less clear why that authority, if it doesn’t currently exist, is being given to the Public Works Director, as well, and how that authority is being limited to matters related to the Harbor Department, as the ordinance title proclaims they should be.
 - a. What, specifically, will the Public Works Director be issuing citations for?
 - b. Is this intended to give the Public Works Director citation-writing authority for non-harbor-related aspects of the codes cited?
 - c. In any event, **adding the Public Works Director to Subsections 1.12.020(B) and 1.12.020(G) seems redundant since he or she is already given total code enforcement authority in [Subsection 1.12.020\(E\)](#).**
2. The current role of the Fire Chief in Subsection 1.12.020(B), which is being modified by the present ordinance, is similarly unclear. Part of it may stem from his or her supervision of the City lifeguards, and part may be a legacy from when the Fire Chief oversaw the Marine Services Division (which was very similar to the new Harbor Department).

- a. The mention of “Title 14 of the California Administrative Code” in Subsection 1.12.020(B) appears to be an outdated reference to what, [since 1988](#) has been known as the [California Code of Regulations](#).
3. As indicated when this ordinance was first before the Council, and partially acknowledged in the “Discussion” portion of the new staff report, some of the proposed changes are not strictly related to the creation of a Harbor Department.
 - a. One example not mentioned in the “Discussion” is the proposed change to NBMC Subsection 17.25.030(A) (staff report page 3-53), whereby a firm 2 hour limit is set on the time a vessel can be left unattended on a public beach.
 - i. The appropriateness of that limit has never been reviewed by the Harbor Commission.
 - ii. The existing ending of that subsection is itself rather strange. An “unattended” vessel would seem by definition to be “not in the possession or control of the owner or user” – making it a mystery what the author intended to achieve by taking that phrase on.

Finally, I noticed that although the final sections of both Ordinance No. 2018-17 and Ordinance No. 2018-18 direct the Mayor to sign them (if approved), the earlier versions were signed by the Mayor Pro Tem, presumably because the Mayor recused himself from the discussion and voting. I suspect this is a misreading of the codes. **City Charter [Section 412](#) requires the Mayor (and only the Mayor) to sign ordinances approved by the Council.** That is a ministerial duty imposed on the Mayor which he or she is required to perform whether he or she voted for or against the measure (and, I presume, whether or not he or she has a financial interest in it). [Section 404](#) allows the Mayor Pro Tem to perform the Mayor’s duties only “*during the Mayor’s absence or disability,*” which I doubt was the case here.

Item 4. Ordinance No. 2018-18 - Amending the Newport Municipal Code Title 17, Pertaining to Vessel Speed Limits

The revisiting of this ordinance, and the removal from it of now-unnecessary changes to the Title 17 appeals process (see Item 3 comments, above), is much appreciated.

In addition to deleting the unnecessary changes, the staff report mentions adding to Section 17.01.030(R)(1) the sentence: “*“Vessel” shall also mean and include human powered vessels and wind powered vessels.*” That seems harmless, but unnecessary to me, since the definitions of human powered and wind powered vessels that follow this already say they are “vessels.”

In this connection, I might observe that:

1. The “***shall mean***” language used here and in other parts of the Municipal Code strikes me as a rather silly affection. Simply saying “***means***” would have entirely the same effect – and make more sense (by removing the mystery of who the “shall” applies to).

2. The importance of definitions in the Municipal Code would be more clear if the City adopted the convention, used by many others, of distinguishing the defined words where they appear in the regulatory text. For example, by setting them **bold type**, or *italicizing*, or printing in CAPITAL LETTERS.

Item 5. Second Reading and Adoption of Ordinance No. 2018-14 - Updating Regulations Regarding Accessory Dwelling Units (ADUs) (PA2018-099)

Since abstracts normally summarize the important points made in a larger piece, the present staff report is a bit unusual in that it features an Abstract with no body.

Since nothing in the proposed ordinance text seems to have changed, it remains unclear to me why the second reading was delayed by two months.

The Abstract does refer to October 12, 2018, California Coastal Commission action on similar language the City requested to be added to Title 21 (the Local Coastal Program Implementation Plan). Possibly the delay was to see if the CCC would agree to that language, but their decision has been known for more than a month, and, although not mentioned in the present staff report, the text approved by the CCC differs in some small ways from that proposed for Title 20 by this ordinance (see the [staff report](#), [exhibits](#) and [addendum](#) for Item 15b from the Coastal Commission's [October 12, 2018, meeting](#)).

One of the differences is in the choice of language used to express the parking requirement.

Ordinance No. 2018-14 says (staff report page 5-9), in Section 20.48.200(C)(9)(a): "A ***minimum*** of one parking space shall be provided for an accessory dwelling unit." [there is, incidentally, an extraneous "1." on the otherwise blank line just below this]

The CCC, which had been presented with an earlier version of the City's proposed ADU code, but attempted to modify it to match Ordinance No. 2018-14, chose "A ***maximum*** of one parking space shall be **REQUIRED** for an accessory dwelling unit." CCC staff chose this based on their reading of Government Code Section 65852.2: "Parking requirements for accessory dwelling units shall not exceed one parking space per unit or per bedroom, whichever is less." The CCC apparently takes this to leave open the possibility of an ADU with **no bedroom** and hence **no** parking requirement. As a result, they found the City's language – requiring at least one space for *all* ADU's not otherwise exempted -- inconsistent with the state law.

There also seems to be a disagreement of interpretation regarding the parking requirement for ADU's *within* single family homes. Both agree that no new parking can be required for a conversion within an existing single family home or other structure. But in Section 20.48.200(C)(6) (staff report page 5-8) the City imposes a three year waiting period, so that owners cannot evade the parking requirement by expanding a home then immediately converting the expansion. This implies the City thinks there is can be a parking requirement for new structures. Yet it is unclear what the City's understanding of the parking requirement is if an ADU is built *with* a home. The CCC, in their Section 21.48.200(C)(9)(c)(i), goes with the

Government Code and prohibits any parking requirement for “conversions” in all **proposed or** existing homes, making the applicability of the three-year waiting period uncertain, at best, in that case: for by its own language the three-year wait applies only to existing structures and a proposed new home is not an existing structure. Ordinance No. 2018-14, in the proposed parallel Section 20.48.200(C)(9)(c)(i) eliminates the parking required only for conversions within existing homes converted as described in Section 20.48.200(C)(6).

***Item 6. Second Reading and Adoption of Ordinance No. 2018-19 -
Creating a Program to Regulate and Permit Sidewalk Vending
Pursuant to California Senate Bill 946***

As noted both orally and in writing at its introduction on November 13, this is, in my view, an extremely flawed ordinance, largely at odds with the intent of SB 946. Changing the terminology used to refer to the Balboa Island (aka. “Bayfront”) Boardwalk is hardly enough to fix it.

Most of the restrictions it imposes on the time, place and manner of vending are not, in my view, rationally related to truly **objective** concerns regarding public health, safety, or welfare, as SB 946 requires. For example, regarding the proposed total prohibition against vending in the Civic Center (which may, or may not, be understood to include the Central Library, in whole or in part), it is hard to believe an impartial outside observer would agree the City could objectively find an existential threat to its emergency operations apparatus from a single daytime vendor selling pretzels or (cold?) hot dogs outside the City Hall when City staff finds no similar threat from actively inviting 2,000 or more people to fill the same darkened space for a “Concert on the Green.” The City *could* in this case, consistent with SB 946, probably choose to limit certain kinds of food vending as a result of its exclusive food catering agreement with the successor of [24 Carrots](#) (contract [C-5454](#)), but then, it no longer seems to honor that agreement anyway (the Bungalow Restaurant having somehow mysteriously become the preferred special events caterer).

Overarching all of this, **one has to wonder why 22 pages of new code are needed to regulate an activity that may never be common enough in Newport Beach to require special regulation at all.**

As additional comments to supplement those made previously:

1. The public discussion on November 13 completely failed to mention the primary purpose of SB 946, which was to decriminalize sidewalk vending, by turning criminal infractions into non-criminal administrative citations.
2. As a result of being introduced without adequate review or discussion, and now “needing” to be adopted without further improvement, **Ordinance No. 2018-19 unnecessarily adds numerous new imperfections to our Municipal Code**, including regulations that will either be ignored or enforced in an arbitrarily uneven and likely illegal manner.

- a. **Page 6-4:** The reference in the opening “Whereas” of proposed Ordinance No. 2018-19 to “*California Governor Edmund Gerald Brown*” seems (much like chastising a child by emphasizing their middle name) gratuitously intended to make fun of the Governor, who is never, to my knowledge, called this. He is, instead, universally known as either “[Jerry Brown](#)” or “[Edmund G. Brown, Jr.](#)” The City’s reference is further incorrect because without the “Jr.” it would technically refer to the present Governor’s father (more commonly known as “Edmund G. ‘Pat’ Brown”).
- b. **Page 6-5: Section 1’s** insertion of proposed NBMC Section 5.11.070 may handle sidewalk vendors, but it leaves intact [Section 5.11.020](#), which continues to prohibit “street kitchens,” which I take to include food trucks – a provision the City does not seem to enforce (they seem to be allowed to operate freely on the street at construction sites, and are actually promoted on public property, in apparent violation of the code, at City special events).
- c. **Page 6-5:** I believe the first paragraph of proposed NBMC Section 5.97.010 should refer to “*Statutes of 2018.*”
- d. **Page 6-6:** Where the previous paragraph continues, at the top of the page, in the second (and last) line, the apostrophe is misplaced: “*publics*” should read “*public’s*”.
- e. **Page 6-7:** I assume proposed NBMC Section 5.97.020.A is trying to refer to the “*the most **obviously applicable** dictionary definition*” rather than “*the most **common***” one. Words in English can have many, quite different meanings, and the meaning intended in a particular situation is understood by context, not by whether assuming it is the one listed first in the dictionary.
- f. **Page 6-7:** In proposed NBMC Section 5.97.020.B.2, the Balboa Island Boardwalk actually borders the *beaches* rather than the *water*, or, more precisely, it is the walkway adjacent to the seawall.
- g. **Page 6-8:** In proposed NBMC Section 5.97.020.B.8, I believe “*provided*” was intended to read “*described*” or “*listed*”.
- h. **Page 6-8:** Proposed NBMC Section 5.97.020.B.13’s reliance on Council Policy B-1, Exhibit A, for a list of City parks and for the distinction between “active” and “passive” City parks remains wholly, and embarrassingly, inadequate. That was never the purpose of the cited Exhibit, and it has little or no relevance to the present ordinance.
- i. **Page 6-9:** The requirement in proposed NBMC Section 5.97.020.B.14 that a “*pathway*” on which “sidewalk vending” is allowed must be paved seems more restrictive than SB 946 contemplated. The state law appears to apply to any public “*pedestrian path.*”
- j. **Page 6-9:** In proposed NBMC Section 5.97.020.B.15, “*Massachusetts **Trust***” was presumably intended to read “*Massachusetts **Trusts***,” but why this passage is even included is beyond me. The general definition of “person” in NBMC [Sec. 1.08.120](#) (and applicable to the entire NBMC) seems entirely adequate for the present

purpose, without any need to refer to another state. Why does the present ordinance need to alter the existing definition?

- k. **Page 6-9:** Proposed NBMC Section 5.97.020.B.18 seems to be grammatically missing a word: "... or **that** is designated ..."
- l. **Page 6-10:** In proposed NBMC Section 5.97.020.B.21, "*Sidewalk vending receptacle*" is an extremely peculiar choice of words, adding a comic measure of bureaucratic humor to the entire ordinance. How about "*Sidewalk vending device*" or "*Sidewalk vending apparatus*" or much more to the point "*Sidewalk vending cart*"? Los Angeles, by comparison, takes the even simpler approach of defining and using the word "**Cart**" to encompass all the variations (including what they describe as "Mobile Carts" and "Stationary Carts") that might be used for sidewalk vending. **Is everyone on the Council embarrassed to ask: Why do we call a cart a "receptacle"?** According to [Google](#), Newport Beach may be the first in the world to introduce this innovatively awkward terminology.
- m. **Page 6-10:** In proposed NBMC Section 5.97.020.B.23, I am guessing "*maintenance*" was intended to read "*operation*." "Maintenance" would normally imply someone engaged in the *repair* or *upkeep* of the vending cart itself, which I don't think is what was meant here.
- n. **Page 6-12:** Proposed NBMC Section 5.97.030.B.17 contains an extra word on the last line: "... vendor uses public property at **the** their own risk;"
- o. **Page 6-12:** Proposed NBMC Section 5.97.030.B.18 is missing a comma: "*An acknowledgement that the sidewalk vendor will obtain and maintain, throughout the duration of any permit issued under this chapter, any insurance required by the City's Risk Manager;*" [or the existing one could be deleted]
- p. **Page 6-13:** In the opening paragraph proposed NBMC Section 5.97.040.A, it is unclear if the Finance Director is *required* to issue a permit to a person meeting the qualifications, or only "*may*." If it is a ministerial duty, the "*may*" should probably read "*shall*."
- q. **Page 6-14:** Proposed NBMC Section 5.97.040.C declares permits expire after one year. It does not indicate if there is a process for renewal. It also does not make clear if there is a right to appeal the decision of the Finance Director regarding the issuance of a permit (which seems to involve unusually subjective findings). Proposed NBMC Section 5.97.080 ("Appeals") appears to deal only with administrative *citations* and decisions to *revoke* a permit.
- r. **Page 6-15:** In proposed NBMC Section 5.97.050.B, I have trouble visualizing the requirement that "*each person shall wear their permit on their person in a conspicuous manner*." How big is the permit? What does it look like? If it's an 8.5x11 inch piece of paper signed by the Finance Director, that would seem difficult to wear.

- s. **Page 6-16:** Proposed NBMC Section 5.97.050.I prohibits use of propane, natural gas, or batteries, while Section 5.97.060.C.4 and 5 (page 6-17) outlaw flames and electricity. Exactly how is heat supposed to be generated if the vendor is preparing warm food? With charcoal? If so, might that be even more dangerous?
- t. **Page 6-18:** As previously indicated in oral comment, proposed NBMC Section 5.97.060.C.13 seems especially peculiar in prohibiting vendors from moving their carts off the sidewalk – something that would seem to alleviate many of the concerns the City has.
- u. **Page 6-18 through 6-20:** Most of the location restrictions in the proposed NBMC Section 5.97.060.D seem completely arbitrary and unnecessary. Most address situations that could much better, and more universally, be addressed simply by imposing a requirement that vendors move if asked.
- v. **Page 6-19:** With respect specifically to proposed NBMC Section 5.97.060.D.5, I have trouble imagining public squares, such as McFadden Square, and public piers do not fit the definition of pedestrian pathways on which “sidewalk” vending would be allowed. Beaches, likewise, (and most City parks) are to the best of my knowledge limited to pedestrian use.
- w. **Page 6-22:** Proposed NBMC Section 5.97.080.A.1 seems to be missing a pronoun in the fourth line: “... *by completing a request for hearing form and returning **it** to the City's Finance Department ...*”
- x. **Page 6-23:** Proposed NBMC Section 5.97.080.B does not indicate if there is a charge for making an appeal (and if so, how much it is). The same can be said for proposed NBMC Section 5.97.080.A. Is there no charge?
- y. **Page 6-25:** Proposed NBMC Section 11.04.140.C was probably intended to read: “*Notwithstanding this chapter, unlawful sidewalk vending activities shall be punished **solely** in accordance with Chapter 5.97 of this Code, or any successor chapter.*” [this, or some refinement of this, such as “*Notwithstanding this chapter, violations of Chapter 5.97 shall be punished solely in accordance with that chapter, or any successor chapter, of this Code,*” seems particularly important, since the primary purpose of SB 946 was to avoid punishment of sidewalk vending violations under criminal codes if the violation is not related to food safety regulations]
- z. **General comment:** The proposed code could be made more readable, and a great deal of wasted paper avoided, if it could be inserted as a general principle of construction at the beginning of the NBMC as a whole that references within the code to NBMC sections refer to the section cited at the time of ordinance adoption “**or any successor section.**” The present compulsion to add the later phrase over and over and over again could then be avoided entirely. In fact, what appears to be an attempt at such a declaration, making that verbiage as unnecessary as repeating numbers with numerals, already exists in NBMC [Section 1.08.070](#). Perhaps that section should be cleaned up if its intent is not clear to our legal department?

Item 7. City Council L-6 Policy Update - Encroachments in Public Rights-of-Way

The Planning Commission has heard two requests for encroachments under the existing confusingly revised policy ([Item 3](#) and [Item 4](#) on their October 18, 2018, Consent Calendar), and they were tentatively scheduled to hear two more on December 6, but those appear to have been pulled from the agenda pending the Council's action on the present revision.

The handling was awkward, because when this function was performed by the City Council, the Council had the authority to waive the policy in its entirety, then approve the encroachment. The prior revision handed the approval role to the Planning Commission, but with the PC having uncertain authority to waive the Council's policies or (in the absence of a policy waiver) to approve structures the Council had deemed "prohibited."

Part of the confusion, I think, arises because a section that was [formerly](#) labeled "A. Private encroachments requiring prior Council approval and a permit from the Public Works Department" was changed on February 13, 1989, to read "A. Prohibited private encroachments" (see [Item J.1](#) starting on page 24 of Laserfiche minutes), requiring the Council to not just review, but also grant a kind of "variance" from the strict application of the policy.

The new revision gives greater clarity to the PC's role, and is especially an improvement in its effort to provide notice to neighbors. Those neighbors might well have comments about problems created by the encroachments which would otherwise be unknown to City staff. At present, the neighbors have no idea a permit to use the public right of way is being requested.

I would strongly suggest the Council look even more closely at the proposed noticing provisions:

1. Sending mailed notices within a radius of the affected property (next to top paragraph on page 7-6) is likely to reach not only the immediate neighbors on either side of the affected property but also neighbors on the street behind the property, who likely have no interest in the matter. It will miss members of the public who may use the street but not live on it, or live further away from the requestor.
2. It would seem to me that **posting a sign at the site of the requested encroachment** (as is done for most other Planning Commission and City Council meetings) **would be a much better way of notifying the public**. That would get the word out to everyone who passes by the site and might be affected by it. After all, it is the **public** right of way, so the whole public that uses it should have a realistic chance to comment.

Specific comments:

1. **Page 7-3:** The second "Whereas" seems to have some extraneous words: "*WHEREAS, on August 14, 2108, the City Council approved revisions, additions, and deletions to the City Council's "L" Policies regarding Public Works/Traffic/Utilities-~~for potential improvements and revisions~~; and*"
2. **Page 7-3:** The third "Whereas" seems to be missing a word: "... *proposes revisions to provide clarity regarding the City's Planning Commission's authority ...*"

3. **Page 7-5:** While I greatly appreciate the revisions, one thing that is *not* an improvement is the awkward numbering of the paragraphs in the revised policy.
 - a. The [existing Policy L-6](#) has a single section labeled **A**, a single section **B**, and so on, making it possible to unambiguously refer, for example, to policy Section A.6 or E.2.b.
 - b. The proposed revised policy has many paragraphs **A**, many paragraphs **B**, and so on, with no easy way to refer to one paragraph A or B versus another.
 - c. **I strongly recommend that the first bold italicized section heading** (on page 7-5) **be labeled A**, **the next two** (on page 7-6) **be labeled B and C**, and so on, **and the high level paragraphs under them be assigned sequential numbers**, with lesser letters below them, **as they are formatted in the existing Policy L-6**.
 - d. This would also eliminate the need for much of the redlining shown in Attachment B, which is simply moving paragraphs up a level in the paragraph numbering.

Item 8. Resolution Amending the Term of the Balboa Village Advisory Committee (BVAC)

1. The third “Whereas” of proposed Resolution No. 2018-80 (staff report page 8-6) incorrectly refers to a “***Balboa Village Business Merchants Association Board Member.***” There is no “Balboa Village Business Merchants Association.” In keeping with the existing Resolution 2016-50, and the attached Exhibit A, this was presumably intended to read “***Balboa Village Merchants Association Business Board Member.***”
 - a. Regarding the BVMA, on August 2 (effective July 1), 2018, the City Manager, via contract [C-8132-4](#), gave BVMA, Inc., \$40,000.
 - i. The contract says “*The City Council determined the Grant Proposal is for a worthy project that will benefit the City’s residents’ quality of life.*” and “*The City Council approved a grant in the amount of Forty Thousand Dollars and 00/100 (\$ 40,000.00) (“ Grant Funds”) to Grantee pursuant to certain conditions regarding expenditure, reporting, and accounting requirements.*”
 - ii. I am unable to find any record of any such Council determination or approval. A Public Records Act Request for the same came up empty (providing only a copy of the request and contract).
2. Even without counting the \$40,000 gift to BVMA, I agree with Council member Peotter that a great deal of public funds have been spent on this area with little clear result, at least in terms of the promised economic revitalization.
3. In my view, the resolution is defective in perpetuating the moving target of the committee’s termination date, but never making clear what the terms of the appointees are.

4. I don't, personally, think the City is well served by appointments for life.

Item 9. Irvine Avenue Pavement Rehabilitation - Notice of Completion for Contract No. 8515-2 (17R21)

I live just past the north end of this work area and travel the route frequently, most often by bicycle.

From my observations, the job was well and efficiently executed. The new surface is, for the present, very nice and a pleasure to ride on. There was, however, especially during the work on the southbound lanes, a brief time after the main resurfacing when the dugout rings around the metal utility covers in the street (sewer manholes, water access covers and so on) were, without warning, left open and unfilled for several days. Car tires seemed able to pass over these inch or two inch deep circular trenches without much difficulty, but when they occurred in the bicycle lanes I thought this created a serious safety hazard, especially at night, when they were hard to see coming.

Incidentally, and unrelated to the completion of this contract, one of the many peculiarities of the Newport Beach Municipal Code is that [Section 12.52.080](#) designates "*Irvine Avenue from a point three hundred thirty (330) feet south of Westcliff Drive to Holiday Road*" (essentially the part resurfaced here) as a one-way street for "*Northwest bound traffic only.*" Irvine Avenue, is, obviously, *not* a one-way street. The code is, evidently, a somewhat imperfect attempt to distinguish the Newport Beach-controlled side of the road (where traffic flows generally north) from the Costa Mesa side (where traffic flows generally north) – see the diagram on staff report page 9-4. Adding to the confusion, should anyone ever read or attempt to understand our NBMC, it's impossible to drive "**northwest**" on either side of Irvine Avenue. Like all our "north-south" roads, it runs **northeast** and southwest.

Item 14. Ownership Transfer of Jamboree Road Sewer Line from Orange County Sanitation District to City of Newport Beach

Is it a *requirement* that the City accept future maintenance of the line? Or is the City doing this simply to accommodate a "wish" (the word the staff report uses) of OCSD?

The agreement (page 14-3, paragraph 2) states that OCSD owns other "local" sewer lines. Are any more of those in Newport Beach? If so, how many? And where?

How about the sewer mains along PCH that OCSD recently spent a great deal of effort replacing, and the pump stations that go with them? According to their [Service Area Map](#), most of those, also, at least the parts east of Costa Mesa would not appear to serve any areas outside Newport Beach.

Item 16. 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)

According to the Planning Division's [case log](#), the RFP for this contract was distributed on February 1.

[Item 10](#) on the Council's July 10, 2018, consent calendar was identically titled to the present item, but was "[pulled](#)" by staff at the last moment, without explanation, for reconsideration at a future date.

The new staff report, which appears to be identical to the July 10 staff report, continues to provide no explanation of the delay.

The only change in the proposed Agreement that I can see is that the completion dates promised in the Scope of Services have been delayed by about six months.

In a transparent government process, one would hope there would have been at least a modicum of explanation of why an approval that was deemed non-controversial in July suddenly became problematic and now, five months later, without any public awareness of what might have happened since then, is non-controversial again.