

## January 22, 2019, 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 January 8, 2019 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 64.

Note: In other Newport Beach minutes, the full names of City employees are provided at their first mention, just like the full names of the seven Council members are given at the start. In my view, that is valuable information to preserve for the benefit of the future generations who might read these minutes. The start of a new volume seems like a good time to restore that practice to the City Council minutes, so it will be suggested here.

**Page 1**, Item SS1, paragraph 1: “City Manager **Grace** Leung announced that, due to a distribution error with the newspaper ...”

**Page 1**, Item SS2, paragraph 1: “Utilizing a PowerPoint presentation, Community Development Director **Seimone** Jurjjs and Deputy Community Development Director **James** Campbell provided background ...”

**Page 1**, Item SS2, paragraph 3, first sentence: “In response to Council questions, Community Development Director Jurjjs, City Attorney **Aaron** Harp and Deputy Community Development Director Campbell indicated ...”

**Page 1**, Item SS2, paragraph 3, last sentence: “... and discussed the Regional Housing **Need Allocation Needs Assessment** (RHNA) number and the impact it would have on the GP.”

**Page 2**, paragraph 6 from end: “Carol **Andrew Ann Dru** expressed her concern about the makeup of the steering committee.”

**Page 2**, end of paragraph 3 from end: “... being **in** compliant with State law, and if there **is are** any consequences for taking longer than 36 months to complete the update.”

**Page 4**, Item XII, Avery: “Attended the Orange County Sanitation District (OCSD) meeting and explained the **committees committee’s** purpose”

**Page 4**, Item XII, Brenner, first bullet: “Announced she met with Department Directors and Council Members to be informed about the **inter-workings inner workings** of the City ...” [see [video](#), 1:51:20]

**Page 5**, Item XII, Dixon, first bullet: “Displayed slides to announce she conducted the swearing in of **reappointed reelected** Orange County Board of Supervisor Michelle Steel ...” [Although I have heard the expression used by Supervisor Steel’s field representative, I personally find the words “Board of” unnecessary and unnatural]

**Page 7**, Item XVI, next to last speaker: "***Lynn Lynne*** Riddle, retired Federal Judge, provided a flyer to invite the community to the Third Annual Women's March – Orange County ..."

**Page 7**, Item 11: "Library Services Director ***Tim*** Hetherton utilized a PowerPoint presentation ..."

**Page 8**, fifth speaker: "***Mariam Miriam*** Baker, City Arts Commissioner"

**Page 8**, Item 12: "Utilizing a PowerPoint presentation, Deputy City Manager ***Tara*** Finnigan discussed the definition of what a Public Education or Government (PEG) channel is, ..."

**Page 9**, paragraph 2: "Administrative Analyst ***Mary*** Locey displayed a slide to discuss the revised recommendations for the contract production hours."

### ***Item 3. Resolution No. 2019-5: Proposed Revisions to City Council Policy A-1, City Council***

The present Policy A-1 is the result of a consolidation and possible revision of policies presented to the Council on August 8, 2017, as part of the 338-page agenda [Item 18](#). That process was confusing, at best. The present staff report suggests the current A-1 is a combination of the former A-1 with the former A-3, A-6, A-8, A-10, A-11, A-13, A-15, A-16 and A-20. Even that does not seem to be correct, for it appears the former A-16 ("Conflict of Interest Procedures") was renamed to replace the former A-3, but was *not* made part of the new A-1. Of the remaining policies, the only one the August 8, 2017, staff report says (on [page 18-2](#)) any changes were made to is A-20 ("Expression of Official City Position"), but [page 18-151](#) contradicts that by saying no change was recommended to A-20 other than its consolidation with A-1. Of all these, the only one for which a redline was provided in 2017 (on [page 18-158](#)) was A-16 (renamed A-3, and not part of the new A-1). As a result, the public and Council assumed nothing of substance was altered. However, tracing what went where, and determining what changes were made, intentionally or not, was, and remains, extremely difficult.

But changes *were* made. For example, even though the Council continues to have a separate "Conflict of Interest Procedures" (the old A-16, now A-3), the new A-1 continues to have its own "Disqualification for Conflict of Interest" section on page 11 under "City Council Voting Procedures" (see page 3-15 of the present staff report), which appears to derive from the [former A-10 \(page 8\)](#). However, that section of the current A-1 contains a sentence about handling conflicts on Consent Calendar items that does not seem to have been present in any former Council policy. Hence, new policies were added without anyone knowing it, other than the authors of the staff report.

At the same time, existing policies were discarded, again without any acknowledgement of this in the August 8, 2017, staff report. As an example, the [former A-6](#) fulfilled the Brown Act requirement of stating the days the regular meetings of the Council are held: "***The City Council shall hold regular meetings on the second and fourth Tuesdays of each month except in December and August when there shall be at least one regular meeting held on the second Tuesday ... When the day for any regular meeting falls on a legal holiday, no meeting***

*shall be held on such holiday, but a regular meeting shall be held at the same hours on the following business day.*” The present A-1 retains the second sentence, but has lost the first, forcing the City Clerk to present to the Council a separate resolution setting the meeting days each year. No one was told about this change, and the rationale for omitting the first sentence is, at best, difficult to fathom. It appears to have been a blunder.

The first of the three changes proposed in the present staff report appears intended to return the rules for placing items on the Council agenda to what they were prior to August 8, 2017. It does not entirely succeed in doing that. The [former A-6 \(page 2\)](#) placed all Council members on an equal footing for putting an item on the agenda (through a process requiring a request at a public meeting gaining support from two colleagues). It also said: “*Additionally, the City Manager may place an item(s) on the agenda **in the course of operating the City.***” That latter sentence could reasonably be read to give the City Manager license only to place such items on the agenda as require a vote by the Council for the City to operate.

The newly proposed language “*Additionally, the City Manager may place an item(s) on the agenda **at the City Manager's discretion***” is much broader. It could be read as allowing City Council members to privately bring ideas about anything they like to the City Manager, which she could then place on the agenda if she, at her discretion, found them interesting. This sounds to me like a bad policy. It places improper power in the hands of the City Manager and creates a situation in which one can expect accusations of either the Manager playing favorites or members of the Council badgering the Manager to get what they want. This has already been abused since 2017, with odd items, not essential to running the City, appearing on the agenda out of the blue. I don't think it should be perpetuated. On the contrary, **I think the pre-2017 phrasing should be restored.**

The second of the three changes – combining Oral Reports with Council Announcements – is innocuous, and I support it. Some Council members have been confused about the distinction between these two headings in the past. More importantly, in recent years Council members have not been systematically informing their colleagues about committee activities they have been involved in since the last meeting (especially activities of non-City committees they have been appointed to). Unfortunately, this will not correct that problem.

**The third proposed change looks innocuous but is not.** Taken at face value, it merely deletes the word “Reserved.” However, “Reserved” first appeared in the August 8, 2017, version, where, without telling anyone a substantial change was made. The word replaced a paragraph from [page 7](#) of the pre-2017 policy A-10. That paragraph read: “*8. Privilege of Closing Debate. The Council Member moving the adoption of an ordinance, resolution or motion shall have the privilege of closing debate.*” **I don't know if that was a good or a bad policy, but it's disturbing that it was deleted from the Policy Manual without explanation or debate.**

Many other changes could be made to Policy A-1. Two I would particularly like to see would be restoring the right of members of the public to speak on agenda items for five minutes (as it was for most of the City's history prior to 2013), and for them to pull items from the consent calendar for separate discussion and vote (as is still the case in many other cities).

Beyond that, since the 2017 staff report was so uninformative, and since there is such great uncertainty as to how the present A-1 compares to the pre-2017 Council policies, **it would seem useful for someone to prepare a comprehensive redline showing exactly how the language has changed, highlighting the words that have been added, and the ones that have been removed.**

As to the proposed resolution, I notice that in the first line of Section 5 (page 3-3), “*find*” should be “*finds*.”

#### ***Item 4. Resolution No. 2019-6: Adopting a Memorandum of Understanding with the Newport Beach Employees League (NBEL) and Associated Salary Schedule***

The public review of these labor agreements is a good thing. However, they are long and densely written documents, riddled with jargon. Commenting on them seems rather pointless, as nothing happens as a result of the comments. Unless a Council member were to request it, not even obvious typos are corrected between the initial presentation and the adoption – and the Council members never publicly comment on these.

For example, as previously pointed out, it is unclear why the paragraph labeled “2.” at the top of page 4-12 (beginning “*The practical consequences of a Management Rights decision ...*”) is repeated near the bottom of the page, just above “E”. Isn’t that a typo?

And in the new Non-Discrimination provision added on page 4-34, wasn’t “*protected classification*” intended to read “*protected class*”? And shouldn’t the non-italicized “*because of*” just before that be omitted? This formerly read “*or because of his/her race, creed, color, national origin, religious belief, political affiliation, sex, sexual orientation, gender identity or age.*” The intention seems to have been to replace the list with a reference to “membership or non-membership in ... any protected class.”

Is the City unable to correct such errors, and possibly less obvious errors in the substance of the agreement, because prior to the public seeing the draft the employees association has agreed to a particular version? If so, does anyone keep track of the errors so they can be corrected in a future negotiation? Or do agreements like this become an accumulation of errors?

#### ***Item 5. Resolution No. 2019-7: General Plan Update Initiation and Creation of a Steering Committee (PA2017-141)***

This item is unnecessarily disturbing, particularly as to the method of appointment of the proposed Steering Committee.

For a process the public has been told will be open, inclusive and transparent, it’s a bit startling to see the GPU will be directed by a committee of people privately selected by the Mayor.

While it's true that the mechanisms for appointment to non-Charter committees in Newport Beach have always been a bit murky, in a truly open and transparent city, the entire council would interview the candidates at a public meeting and make their selection in public, after public discussion. Even in Newport Beach, if the Council were to follow its Policy A-2, then if a nominations committee has been formed, the committee (and in the past such nominating committees were publicly appointed, not privately designated by the Mayor) would, from among the applicants, be expected to advance to the full Council a number of nominees at least equal to twice the number of positions to be filled, and from among those the full Council would make the appointments.

Since Newport Beach does not have a "strong mayor" form of government, it is unclear why the ceremonial Mayor is being given the power to make the selections privately and unilaterally. Since the public will never know how the selections were made or what alternatives were considered, the process as outlined in this resolution is about as far from open and transparent as it could be. Will individual Council members have an opportunity to suggest modifications to the Mayor's slate? The resolution suggests they will not, and will, instead, have to either confirm or reject the entire slate.

**I would suggest the body of the resolution be revised to have the nominating committee be publicly appointed, and for them to publicly select at least 10 nominees, which the full Council can add to, for the Council as a whole to vote on in choosing the final five..**

Regarding the function of the Steering Committee, it's not clear from the enabling resolution if the RFP will be coming back for review by the Council, or if the Council will see only the Committee's recommendation of a consultant, to be made after staff issues the RFP. I hope the Steering Committee members have enough independence of mind to resist staff's wish for them to commit to a single multi-million dollar consultant to run the entire show for three years before anyone knows what the public wants, or doesn't want, the City to do with the General Plan.

As to the proposed Resolution 2019-7, in the third "Whereas" (on page 5-3), I believe "*effect*" was supposed to be "*affect*."

In Attachment 1, I have to wonder why the statements under "Membership" are disconnected fragments of sentences? Grammatically, it seems unusually tortured.

### ***Item 6. Architecture Services – Amendment No. 1 to On-call Professional Services Agreement with WLC Architects, Inc.***

The staff report says the amendment is for a specific purpose, but the contract gives no hint of what it's for. Why is that?

Also, the staff report mentions prior work on the Police Headquarters. Isn't WLC also the architect on the CdM Fibrary? And happy as staff seems to be with them, are there architectural firms headquartered in Newport Beach that could do the work equally well?

### ***Item 7. Lower Sunset View Park Design – Approval of Professional Services Agreement with LSA (15T09)***

The Abstract to the staff report does not disclose that although this contract is below the Department Director's signing limit for a previously-budgeted item, it may need Council approval because it is a sole source contract with a former City Council member.

The Council formerly had a stand-alone [Policy F-20](#) requiring Council approval of contracts with former City employees. That has been subsumed into [Policy F-14](#). And although it has never explicitly said "former Council members," Council members are regarded as employees in the budget and an explicit reference to them is proposed to be added to the passage in F-14 in a version recently reviewed by the Finance Committee.

This contract with former Council member Tony Petros is therefore expected to receive heightened scrutiny.

*Policy F-14 contains language noting that "service contracts cannot always be awarded as a result of a competitive bid process. However, competitive proposals should be obtained whenever possible before resorting to negotiated awards." And that "Professional consultants should be individually selected through a qualifications-based selection process for a specific project or service on the basis of demonstrated competence and qualifications for the types of services to be performed and with the objective of selecting the most qualified consultant at a fair, reasonable and verifiably appropriate cost. The procedures for achieving this goal shall be adopted and applied by the City Manager in the Administrative Procedures Manual."*

Since the content of the City's *Administrative Procedures Manual* is not readily available to the public (that is, as best I can tell it is not posted on the City website), it is not entirely clear to me how these goals have been implemented. But in this case staff appears to have dispensed entirely with its normal selection process, competitive or otherwise, and concluded on some basis that the former Council member is uniquely qualified to perform the management services desired.

I do not doubt that Mr. Petros is a good and honorable man, but I believe many would have unease with the idea that service on the Council should be a platform for promotion of projects which will serve as a source of income to the persons promoting and making the decisions on them. That is, after all, what the conflict of interest rules and Government Code Section 1090 are supposed to prevent. Rightly or wrongly, actions such as that proposed here create the impression decisions on the dais are being made not just with the public's interest in mind, but with future self-interest as well.

In view of that, although Mr. Petros, as the original proponent of the project, may be "uniquely" qualified, it would seem there should have been at least a token discussion of whether there might be others who could perform the services required.

Beyond this, exactly how much service is being contracted for is difficult to discern from the contract. The Scope of Services in Exhibit A calls for a good deal of work over a 29 month

period. But how much Mr. Petros will be charging is unclear from the Billing Rates of Exhibit B. As a principal of LSA, it looks like his rate could be anywhere from \$165 to \$350 per hour. If he charges \$350 per hour, the City would seem to be contracting for  $\$48,500/\$350 = 139$  hours of service or less than 5 hours per month. Is that correct and realistic for the effort described?

If, alternatively, Mr. Petros is planning to perform most of the services with less highly-paid LSA personnel, one might have hoped to see a more detailed and carefully itemized billing proposal. I believe most contractors provide that to justify the budget they request, and seeing such a detailed justification seems particularly important under the circumstances.

### ***Item 8. Amendment No. One to Maintenance/Repair Services Agreement with International Line Builders, Inc. for Citywide Streetlight Maintenance and Repair Services***

The staff report is less than clear about when the current contract expires, and what portion of the remaining time the additional \$125,000 is supposed to cover. The answers appear to be that the present contract ([C-6212](#)) is a five-year one expiring at the end of July 2020 (18 months from now), but the present fix will only be sufficient to keep it funded for a few months more. Hence the need for a replacement contract, possibly with a different vendor, which staff promises in "Spring."

Attachment A proposes a number of changes to the present contract that seem unrelated to the request for increased compensation. As best I can tell, the reason for those is not explained in the staff report.

### ***Item 9. Tentative Agreement with Newport Beach Police Management Association (NBPMA)***

Although the opportunity to review these agreements prior to their ratification by the Council is appreciated, as indicated in connection with Item 4, the absence of any public discussion or debate by the Council accompanying the public review leads to a certain sense of futility. The public is left wondering if the Council is also seeing the finished agreement for the first time here, or if in their many closed sessions under the heading of "Conference with Labor Negotiators" (see, for example, Item IV.A on the present agenda) they have already thoroughly discussed and debated the agreement's detailed language.

That said, as a somewhat random example of the reasonable questions the public might raise about the proposed content of the agreement, on page 9-16, new language has been inserted citing 36.99 hours as the amount of flex leave accruing in 3 months pursuant to the chart in paragraph A1 (on the preceding page). Not only is it completely unobvious how "36.99" was derived from any of the numbers in the chart, but the idea that there would be a single, universally applicable number is surpassingly strange since the chart indicates different employees accrue flex leave at different rates depending on their years of service.

I think the public can also reasonably question such things as the motorcycle compensation passage being added at the top of page 9-15. Management employees using motorcycles are proposed to be paid an extra 6 hours per month at 1.5 times their normal pay rate for wiping down motorcycles in their off hours. Not only would one expect that management personnel assigned to motor duty spend less time on their motorcycles than rank and file motor officers, but the compensation paid to uniformed police and fire officers is extremely high based on the idea they are putting their lives at risk. Wiping motorcycles does not seem like a high risk occupation deserving of that high rate of pay, let alone 1.5 times that rate. Couldn't the City find a lower paid employee or outside contractor to perform this function at much lower cost?

At least equally importantly, Exhibit "A" (referred to on page 9-41 and presumably giving the proposed NBPMA Pay Rates) is missing. It seems important to understanding what has been agreed to.