

City Council Minutes  
Study Session and Regular Meeting  
May 28, 2019

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I. ROLL CALL - 4:30 p.m.

Present: Council Member Brad Avery, Council Member Joy Brenner, Council Member Duffy Duffield, Council Member Jeff Herdman, Council Member Kevin Muldoon, Mayor Pro Tem Will O'Neill, Mayor Diane Dixon

II. CURRENT BUSINESS

SS1. **Clarification of Items on the Consent Calendar**

In response to Council questions regarding Item 4 (Initiation of Planning and Zoning Code and LCP Amendments Related to Design Standards for Single-Family and Duplex in Multi-Family Residential Zoning Districts), Community Development Director Jurjis explained the initiation process, confirmed more work needs to be done and public meetings will be held, and described how building sizes could change.

Regarding contracts, in general, Mayor Pro Tem O'Neill received confirmation from City Attorney Harp and City Clerk Brown that they would work on the best practice to place contract letter proposals online and bring back a policy.

SS2. **Review of the Proposed Fiscal Year 2019-20 Capital Improvement Program (CIP) Budget**

The following CIP project conflicts were announced:

- Council Member Avery: Balboa Peninsula Crosswalks Improvements Phase II and Balboa Boulevard Pedestrian Crossings Phase II projects due to real property interests
- Council Member Duffield: Mariners Mile Parking Study due to business interest conflicts
- Council Member Muldoon: Assessment Districts 111, 113, 116, 116B and 117, Southern California Edison (SCE) 20A Credit Purchase, Advanced Meter Infrastructure, and Grant Howald Park Rehabilitation projects due to business interest conflicts; the West Coast Highway Median Landscaping Phase III project since he previously recused himself on April 28, 2018 from Phase I due to business interest conflicts; and Streetlight Rehabilitation Program (Eastbluff) and Slurry Seal projects due to real property interests
- Council Member Brenner: West Coast Highway Median Landscaping Phase III, Marguerite Avenue Pavement, and Grant Howald Park projects due to real property interests
- Council Member Herdman: Bayside Drive Roadway Rehabilitation, Marine Avenue Reconstruction, Balboa Island Enhancements, Beach and Bay Sand Management, Grand Canal Dredging, Balboa Island and 10<sup>th</sup> Street Swim Platforms, Fire Station No. 4, and Balboa Island Draining Master Plan/Pump Stations projects due to real property interests

Public Works Director Webb, City Engineer Sinacori, and Administrative Manager Copeland utilized a PowerPoint presentation to explain the purpose of the CIP; provide a recap of the 2018-2019 CIP projects; list the completed projects, projects in progress/in construction, and major projects in design; discuss the proposed 2019-2020 CIP budget; review City Council priorities; highlight projects by CIP budget sections (*Council Member Muldoon left the dais during Assessment District discussions*); review the budget summary, new funding sources, and proposed budget revisions (*Council Member Muldoon left the dais during SCE 20A credit purchase discussions and Council Member Brenner left the dais during West Coast Highway Landscaping discussions*); report that, if the revisions were approved, the CIP's new total would be \$93.8 million; and discuss the positive impacts the CIP has on the City.

In response to Council questions, staff discussed staffing challenges that might occur due to the increased project list and potential risks; compared the proposed CIP budget and number of projects to previous years; discussed the various funds and funding sources; reviewed the Ocean Boulevard/Carnation Avenue Concrete Pavement Reconstruction, Balboa Peninsula Crosswalks Improvement, Fire Station No. 2, Newport Bay Water Wheel, Arches Storm Drain, Affordable Housing, Junior Lifeguard building, and Oil Well Maintenance and Repair projects; explained the community's request for a traffic study in the Dover Shores area and the criteria that needs to be met to receive traffic calming measures; and discussed the Assessment District process and timing of upcoming projects (*Council Member Muldoon left the dais during Assessment District discussions*).

Mayor Dixon thanked staff, commended the City for being able to invest in its infrastructure, neighborhoods and the Harbor, and reiterated that most of the CIP funding comes from external sources and reserves.

### III. PUBLIC COMMENTS

Jim Mosher discussed Closed Session Items IV.B and IV.C, the Brown Act, and provided suggestions on how to address Ms. Skinner's correspondence.

At Council's request, City Attorney Harp reported on the Brown Act and assured everyone that the City Council is in full compliance with the Brown Act.

City Attorney Harp announced that Item IV.A will not be discussed and will be removed from the Closed Session agenda, reported the City Council would adjourn to Closed Session to discuss Items IV.B and IV.C, and read the titles.

*Council Member Brenner and City Manager Leung recused themselves from Item IV.C since they previously recused themselves on this item.*

### IV. CLOSED SESSION

#### A. CONFERENCE WITH LABOR NEGOTIATORS

(Government Code § 54957.6): 2 matters

**Agency Designated Representatives:** Grace K. Leung, City Manager, Carol Jacobs, Assistant City Manager, Barbara Salvini, Human Resources Director, and Peter Brown; Labor Negotiators.

**Employee Organization:** Part Time Employees Association of Newport Beach (PTEANB) and Lifeguard Management Association (LMA).

#### B. CONFERENCE WITH LEGAL COUNSEL ANTICIPATED LITIGATION – INITIATION OF LITIGATION

(Government Code § 54956.9(d)(4): 1 matter

#### C. CONFERENCE WITH LEGAL COUNSEL ANTICIPATED LITIGATION

(Government Code § 54956.9(d)(2), (e)(3)): 1 matter

On May 11, 2019, Ms. Susan Skinner sent a letter to the City of Newport Beach claiming there was a violation of the Brown Act on February 12, 2019, in that the City failed to appropriately identify a closed session item and did not report out actions of Council Members as required by law. A copy of the correspondence is available for inspection pursuant to Section 54957.5 at the City Clerk's Office located at 100 Civic Center Drive, Newport Beach CA 92660.

### V. RECESSED – 5:32 p.m.

**VI. RECONVENED AT 7:00 P.M. FOR REGULAR MEETING**

**VII. ROLL CALL**

Present: Council Member Brad Avery, Council Member Joy Brenner, Council Member Duffy Duffield, Council Member Jeff Herdman, Council Member Kevin Muldoon, Mayor Pro Tem Will O'Neill, Mayor Diane Dixon

**VIII. CLOSED SESSION REPORT – None**

**IX. INVOCATION – Pastor Peter Little, Christ Pacific Church, Huntington Beach**

**X. PLEDGE OF ALLEGIANCE – Council Member Herdman**

**XI. NOTICE TO THE PUBLIC**

**XII. CITY COUNCIL ANNOUNCEMENTS AND ORAL REPORTS FROM CITY COUNCIL ON COMMITTEE ACTIVITIES**

Council Member Avery:

- Attended the Orange County Sanitation District Board of Directors meeting and the Police Department promotional and swearing-in ceremony with Mayor Dixon and Council Member Brenner
- Introduced his mentee Maria Richter, a Senior from Corona del Mar High School

Council Member Duffield:

- Announced the Third Annual Newport Harbor Underwater Cleanup at the Balboa Bay Resort on June 1, 2019
- Requested a future agenda item to consider making the Harbor Commission a part of the City Charter

Council Member Muldoon:

- Requested a future agenda item to consider creating a Marine Avenue Historical Committee

Council Member Brenner:

- Attended a meeting regarding the future of Grant Howald Park and the surrounding area, the Cameo Shores annual meeting with Life Safety Specialist Brisbois, the General Plan Update Steering Committee meeting, the Corona del Mar Residents Association meeting with Mayor Pro Tem O'Neill and Council Member Herdman, the Finance Committee meeting, Council Member Herdman's fundraiser, a ribbon cutting for Reborn Coffee, the Rendezvous Café grand re-opening (displayed a slide), a luncheon with elected women of Orange County, a Memorial Day ceremony at Newport Harbor High School with Mayor Dixon, Mayor Pro Tem O'Neill and Council Member Herdman, and the Pacific View Memorial Park and Mortuary's Memorial Day celebration
- Displayed slides to announce the Corona del Mar 5k on June 1, 2019, and the grand opening of the Corona del Mar Library and Fire Station on July 20, 2019

Council Member Herdman:

- Attended the Balboa Island Museum and Historical Society Memorial Day barbeque for Balboa Island Veterans
- Conducted Aviation Committee interviews with applicants from District 5
- Announced the Balboa Island Parade on June 2, 2019

Mayor Pro Tem O'Neill

- Attended the Newport Coast Elementary School PTA awards ceremony, iftar at Temple Bat Yahm, Field of Honor opening ceremony, the Police Department open house, and Newport Harbor High School's Memorial Day ceremony

Mayor Dixon:

- Sat on the Leadership Tomorrow Mayor's panel with Mayors from Tustin and Costa Mesa
- Attended Supervisor Steel's Mayors Breakfast with Mayor Pro Tem O'Neill, the Police Department promotional and swearing-in ceremony, the General Plan Update Steering Committee meeting and invited everyone to attend future meetings, and Field of Honor on Memorial Day
- Displayed slides regarding the Town Hall meeting June 3, 2019, at Marina Park and to announce the Newport Harbor Underwater Cleanup on June 1, 2019, Balboa Island Parade on June 2, abandoned vessel auction at Marina Park on June 7, 2019, Movie in the Park (*Ralph Breaks the Internet*) at Mariners Park on June 7, 2019, and the Wooden Boat Festival at the Balboa Yacht Club from June 7 to June 9, 2019

### **XIII. PUBLIC COMMENTS ON CONSENT CALENDAR**

Catherine Martin Wolcott, representing the Martin Family Trust, referenced a handout and discussed how Item 4 (Initiation of Planning and Zoning Code and LCP Amendments Related to Design Standards for Single-Family and Duplex in Multi-Family Residential Zoning Districts) would negatively impact their properties and property rights, and noted that she is aware of the process for this item.

### **XIV. CONSENT CALENDAR**

#### ***READING OF MINUTES AND ORDINANCES***

1. **Minutes for the May 14, 2019 Special Joint Meeting with the Finance Committee and City Council Meeting [100-2019]**

Waive reading of subject minutes, approve as amended, and order filed.

2. **Reading of Ordinances**

Waive reading in full of all ordinances under consideration, and direct the City Clerk to read by title only.

#### ***ORDINANCE FOR INTRODUCTION***

3. **Pulled from the Consent Calendar by Council Member Brenner**

#### ***RESOLUTIONS FOR ADOPTION***

4. **Resolution No. 2019-45: Initiation of Planning and Zoning Code and LCP Amendments Related to Design Standards for Single-Family and Duplex in Multi-Family Residential Zoning Districts (PA2019-070) [100-2019]**

- a) Determine this action exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15262 (Feasibility and Planning Studies) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3; and
- b) Adopt Resolution No. 2019-45, *A Resolution of the City Council of the City of Newport Beach, California, Initiating Amendments to Title 20 Entitled "Planning and Zoning" and Title 21 Entitled "Local Coastal Program Implementation Plan" of the City of Newport Beach Municipal Code Related to Development Standards for Single and Two-Unit Dwellings in Multiple Residential (RM), Multiple Residential Detached (RMD) and Multiple Residential Coastal (RM) Zoning Districts (PA2019-070).*

5. **Pulled from the Consent Calendar by Mayor Pro Tem O'Neill**

6. **Pulled from the Consent Calendar by Mayor Pro Tem O'Neill**

#### ***CONTRACTS AND AGREEMENTS***

7. **Storm Drain Repair / Rehabilitation Project – Notice of Completion for Contract No. 8163-1 (18D02) [38/100-2019]**

- a) On March 13, 2018, City Council found this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15302(c) (replacement of existing facilities involving no expansion of capacity) of the CEQA Guidelines, because this project has no potential to have a significant effect on the environment;
  - b) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project;
  - c) Authorize the City Clerk to release the Labor and Materials Bond 65 days after the Notice of Completion has been recorded in accordance with applicable portions of the Civil Code; and
  - d) Release the Faithful Performance Bond one year after acceptance by the City Council.
- 8. Lido Village and West Newport Water Main Replacement – Notice of Completion for Contract No. 7001-2 (16W14) [38/100-2019]**
- a) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project. On February 28, 2017, the City Council found this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15302(c);
  - b) Authorize the City Clerk to release the Labor and Materials Bond 65 days after the Notice of Completion has been recorded in accordance with applicable portions of Civil Code; and
  - c) Release Faithful Performance Bond one year after acceptance by the City Council.
- Council Member Duffield and City Clerk Brown recused themselves on Item 8 due to real property interests.*
- 9. Water Transmission Main Valve Replacement – Award of Contract No. 7539-1 (18W12) [38/100-2019]**
- a) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Class 2 Section 15302(c) (replacement of existing public facilities involving negligible or no expansion of capacity) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment;
  - b) Approve the project plans and specifications;
  - c) Award Contract No. 7539-1 to T.E. Roberts, Inc. for the bid amount of \$749,933.00 for the Water Transmission Main Valve Replacement project, and authorize the Mayor and City Clerk to execute the contract; and
  - d) Establish a contingency of \$75,000 (approximately 10% of total bid) to cover the cost of unforeseen work not included in the original contract.
- 10. Professional Surveying Services – Approval of On-Call Professional Services Agreements [38/100-2019]**
- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
  - b) Approve and award two separate five-year term on-call Professional Services Agreements with Coast Surveying, Inc. (C-7685-1) and Guida Surveying, Inc. (C-7685-2) at a not-to-exceed amount of \$500,000 for each agreement, and authorize the Mayor and City Clerk to execute the agreements.
- 11. Approval and Award of Agreement for Fee Study and Citywide Cost Allocation Plan Services to MGT of America Consulting, LLC (C-8257-2) [38/100-2019]**
- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
  - b) Approve a three-year agreement with the option to extend for an additional three years, in one year increments, with MGT for fee study and citywide cost allocation plan services for a total not-to-exceed amount of \$244,436.00 over six years, and authorize the Mayor and City Clerk to execute the agreement.

**MISCELLANEOUS**

**12. Planning Commission Agenda for the May 23, 2019 Meeting [100-2019]**

Receive and file.

**13. Set Public Hearing Date to Adopt Fiscal Year 2019-2020 Budget [100-2019]**

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Schedule a public hearing of the City's Proposed Budget for Fiscal Year 2019-2020 on June 11, 2019, and direct the City Clerk to publish a notice of said hearing in accordance with Section 1102 of the Newport Beach Charter.

**14. John Wayne Airport General Aviation Improvement Program (GAIP) Update [100-2019]**

Remove from the calendar until the City receives more specific information regarding the revised GAIP from the Board of Supervisor's June 25, 2019 meeting.

**Motion by Mayor Pro Tem O'Neill, seconded by Council Member Herdman,** to approve the Consent Calendar, except for the items removed (3, 5 and 6); and noting the recusal by Council Member Duffield on Item 8, amendments to Item 1, and removal of Item 14 from the calendar.

The motion carried unanimously.

**XV. ITEMS REMOVED FROM THE CONSENT CALENDAR**

**3. Ordinance No. 2019-9: Introduction of an Ordinance Restricting Construction Related Noise on Saturday and Posting of a Project Information Sign for Construction Projects in High-Density Areas [100-2019]**

Council Member Herdman highlighted possible negative impacts to a construction project if construction were prohibited on Saturdays.

Jim Mosher believed all construction projects should be required to display the proposed signage, noted the original reason for this item, questioned why the prohibition area would be limited and what is being considered as the sign quota.

In response to Council questions, Community Development Director Jurjis, Deputy Community Development Director Ghosin, and City Attorney Harp discussed the meetings held on this issue, noted the support received relative to implementing the ordinance, including support from the construction community, assured that the restriction is strictly related to noise, discussed noise standards, noted the restriction is similar to the current Sunday provision, displayed a map of and reviewed the high density areas in the City, and discussed the enforcement process.

Mayor Pro Tem O'Neill expressed why he believes the ordinance is not necessary in gated areas of the City with strong homeowner associations and Covenants, Conditions and Restrictions (CC&Rs).

**Motion by Council Member Herdman, seconded by Mayor Dixon,** to a) find this action exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly; and b) introduce Ordinance No. 2019-9, *An Ordinance of the City Council of the City of Newport Beach, California, Amending Portions of Chapters 10.28 and 15.16, and Adding Section 15.60.030 to the Newport Beach Municipal Code, Relating to Construction Activities and Signage in Designated High-Density Areas*, and pass to second reading on June 11, 2019.

The motion carried unanimously.

**5. Resolution No. 2019-46: Resolution of Intention to Renew the Corona del Mar Business Improvement District, Levy Assessments in FY 2019-20 and Fix Time and Place of Public Hearing; and Approve Funding Support for FY 2019-20 [100-2019]**

Mayor Pro Tem O'Neill discussed the history of this item and indicated he would be voting no on this item since there has not been any changes over the past year to transition to the Business Improvement Area Law of 1994 (1994 Law).

Bernie Svalstad, Chairman of the Corona del Mar Business Improvement District (BID), indicated the BID Board does not agree with reforming under the 1994 Law and requested to remain a BID under the 1989 Law.

Discussion ensued between Council, staff and Mr. Svalstad relative to the lack of interest by the BID Board to reform the BID, the amount of revenue the BID generates annually, the history of how BIDs were created and how it enhanced various areas in the City, the 1994 Law requiring a majority member support to form, the benefits of the 1994 Law versus the 1989 Law, and what the City's options are if the Board is unwilling to change.

It was the consensus of Council to withhold the \$40,000 funding support at least until a transition plan can be developed, and form a Council Ad Hoc Committee to identify how the BIDs align with City Council priorities and to return to the City Council with its recommendation.

**Motion by Mayor Dixon, seconded by Council Member Brenner,** to a) determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; b) approve the Corona del Mar Business Improvement District's Fiscal Year 2018-19 Annual Report and its Proposed Fiscal Year 2019-20 Budget; c) adopt Resolution No. 2019-46, *A Resolution of the City Council of the City of Newport Beach, California, Declaring its Intention to Renew the Corona del Mar Business Improvement District and Levy Assessments for the Fiscal Year of July 1, 2019 to June 30, 2020, and Fix the Time and Place of a Public Hearing* for June 11, 2019; d) withhold the \$40,000 City funding support; and e) form a Council Ad Hoc Committee made up of two Council Members and City staff to make recommendations on how the BIDs align with City Council priorities.

In response to Council questions, City Attorney Harp and Administrative Analyst Locey indicated that Council did not have to approve the budget at this meeting, Council is allowed to amend the budget, but the budget needs to be approved prior to approving the Resolution of Intention, and confirmed 1994 Law BIDs can be formed as property owners or business owners.

Following discussion, it was the consensus of Council to withhold the \$40,000 funding support at least until the Ad Hoc Committee reviewed the BIDs, continue the item to allow the BID time to amend its budget, and bring back an item to form a Council Ad Hoc Committee to review how the BIDs align with City Council priorities.

**Substitute motion by Mayor Pro Tem O'Neill, seconded by Council Member Brenner,** to continue the item to the June 25, 2019 City Council meeting.

The motion carried unanimously.

**6. Resolution No. 2019-47: Resolution of Intention to Renew the Newport Beach Restaurant Association Business Improvement District, Levy Assessments for the Fiscal Year 2019-2020, and Fix the Time and Place of a Public Hearing on June 11, 2019; and Allocate City Funding Support in the Amount of \$40,000 per Year Through FY 2020 [100-2019]**

Mayor Pro Tem O'Neill believed the same action approved in Item 5 should occur on this item.

Jordan Otterbein, President of the Newport Beach Restaurant Association Business Improvement District, confirmed the BID collected 93% of its assessments and noted the benefits of the BID.

Mayor Dixon expressed her support for BIDs and believed the 1994 Law validates the value BIDs offer to its members and allows the BID to grow.

**Motion by Mayor Pro Tem O'Neill, seconded by Council Member Brenner**, to continue the item to the June 25, 2019 City Council meeting.

The motion carried unanimously.

#### **XVI. PUBLIC COMMENTS ON NON-AGENDA ITEMS**

Dennis Bress expressed his concerns about the lack of correspondence from the City to the Orange County Board of Supervisors regarding reports on the growth of John Wayne Airport (JWA) and discussed the idea of providing shuttles from the Boring Company to transport travelers from North Orange County to Ontario Airport instead of JWA. City Attorney Harp clarified that the City is only able to comment on the current JWA Environmental Impact Report (EIR) at this time.

Sandra Ayres expressed the importance of the Planning Commission appointments and requested Council select individuals that will follow rules and regulations, and remain neutral and fair.

Marsha Kendall believed JWA expansion is one of the most pressing issues for the City and recommended the City hire outside counsel that specializes in airport issues.

Denys Oberman displayed a slide to discuss the ongoing situation she is having with her neighbor taking a piece of her property and how the City has been responding to her concerns.

Susan Dvorack expressed concerns regarding JWA, thanked the Council Members that attended the Orange County Board of Supervisors meeting on May 7, 2019, and provided suggestions for finding a resolution that will best protect the residents of the City.

Pat Vanness spoke about the history of the 1985 JWA agreement and expressed concerns about airport traffic, noise and soot coming from airplanes.

An unidentified speaker discussed the issues she is having with a construction project next to her home, the damage it is causing to her property, and asked what measures are in place to avoid issuing permits to contractors who do not have licenses.

Max Johnson expressed concerns regarding the homeless population gathering at the base of the Balboa Pier and the impact this may have on the Junior Lifeguard program that will be starting soon. Mayor Dixon assured Mr. Johnson that the City has a plan in place to keep everyone safe.

#### **XVII. PUBLIC HEARING**

##### **15. 939 Via Lido Soud Residential Dock Reconfiguration – Appeal of Harbor Commission's Decision [100-2019]**

In response to City Attorney Harp's announcement regarding ex parte communications, Council Member Duffield indicated he met with the appellants; Council Members Muldoon, Brenner and Herdman and Mayor Pro Tem O'Neill reported they received emails from the appellants and their attorney but did not speak with them; and Mayor Dixon confirmed she received an email from and met with the appellants' attorney.

Utilizing a PowerPoint presentation, Administrative Manager Miller discussed the details of the appeal, including the proposed dock project, the difference between a pierhead line and a project line, and the impact this project would have on the public waterway in the Harbor.



Discussion ensued between Council and staff regarding City Council Policy H-1, Newport Beach Municipal Code Chapter 17.50, requesting the Harbor Commission conduct an analysis on how many neighboring docks extend past the pierhead line, the expense of dredging versus extending the dock, providing the Harbor Commission with specific guidelines to assist with these types of projects in the future, safety and navigation issues with extending the dock and large boats that may be docked, the inconsistency of enforcement in the past, and how the City would enforce the policy going forward.

Sherman Stacey, on behalf of the appellants, Mark and Shana Conzelman, utilized a PowerPoint presentation to explain why they believed it was necessary to appeal the Harbor Commission's decision. He discussed City Council Policy H-1, believed the new dock configuration meets the policy's qualifications, and assured Council that the dock would not have a negative impact on navigation, adjacent properties, or any other use in the Harbor.

In response to Council questions, Mr. Stacey indicated the appellants have no intention to dock any large boats and explained the reasons for the dock reconfiguration request.

The City Council commented on their reasons for supporting or not supporting the Harbor Commission's decision and what should happen in the future to avoid more appeals of this nature.

***Mayor Dixon opened the public hearing.***

Sherman Stacey requested that Council reverse the Harbor Commission's decision and approve the appellant's application. He confirmed the dock project line is at the acceptable maximum location and believed it would not interfere with dredging projects.

Jim Mosher requested revisions be made to City Council Policy H-1, believed the public has the right to access the Harbor and private projects should not limit that, and expressed concerns about the size and length of this dock, the precedence it would set if permitted, the possibility of a large boat docking there and the interference it could have on Harbor dredging projects.

Administrative Manager Miller reported that, during dredging, only vessels are asked to move, but permanent floats and docks would impact dredging projects. He also commented on the GIS error regarding the incorrect project line on the map.

Shana Conzelman indicated they purchased the property with the understanding that the dock project would be permitted, expressed concerns regarding inconsistent information she has received over the years from the City on other subjects, and took issue with the lack of notification regarding the changes to City Council Policy H-1.

In response to Mayor Dixon's question, Administrative Manager Miller indicated the City did not send individual notices regarding changes to City Council Policy H-1, but the topic was discussed at several Harbor Commission meetings.

Mark Conzelman asked how the City can prohibit him from docking a large boat when it was permitted when they purchased their property, even though they do not intend to dock a large boat as it impedes their view. He confirmed they are reconfiguring the dock to make it more efficient and requested Council overturn the decision and not send this back to the Harbor Commission for additional review.

***Hearing no further testimony, Mayor Dixon closed the public hearing.***

Council Member Avery concurred that the Conzelman's can currently dock a large boat at their dock, using the current configuration, but believed the proposed configuration would make the distance past the project line unacceptable.

Mr. Stacey confirmed the appellant's wish to extend the dock fingers and indicated the Harbor Commission did not provide any suggestions that would modify the amount of boat impediment into the Harbor.

Following discussion, Council, Mr. Stacey, and Mr. Conzelman agreed that, if the project can be built as requested, a condition can be added that limits the extension of the docked boats from being more than 50% of the beam.

**Motion by Council Member Muldoon, seconded by Council Member Duffield,** to a) reverse the Harbor Commission's denial of the proposed dock reconfiguration at 939 Via Lido Soud, adding a condition that any boat at the dock cannot extend beyond 50% of the beam; and b) authorize staff to issue an Approval in Concept for the project.

City Attorney Harp indicated that Resolution No. 2019-48 will need to be amended to include the added condition and will be brought back to the City Council for approval at the June 11, 2019 City Council meeting.

The motion carried 4-3 with Council Members Avery, Brenner and Herdman voting no.

**XVIII. MOTION FOR RECONSIDERATION – None**

**XIX. ADJOURNMENT – 10:34 p.m.**

The agenda was posted on the City's website and on the City Hall electronic bulletin board located in the entrance of the City Council Chambers at 100 Civic Center Drive on May 23, 2019, at 4:00 p.m.

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**Diane B. Dixon**  
Mayor

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**Leilani I. Brown**  
City Clerk