

City Council Minutes
Study Session and Regular Meeting
July 23, 2019

I. **ROLL CALL – 4:00 p.m.**

II. **CURRENT BUSINESS**

SS1. Clarification of Items on the Consent Calendar

In response to Council questions regarding allowing Homeowner Associations (HOAs) to opt-out of the Saturday construction noise restrictions and signage regulations (Item 3), Community Development Director Jurjis clarified that the City does not have an opt-in process but if, there is an interest for that after taking additional surveys, the City can come back to Council with another ordinance and confirmed staff would look into determining if Newport Shores would be considered an HOA.

SS2. Recognition of the USRowing Youth National Championship Gold Medalists – Newport Aquatic Center’s Men’s Lightweight 8+

Mayor Dixon read the proclamation and presented it to the team. Coach D’Antoni commended the team for their hard work and record.

Council Member Muldoon congratulated the team for winning the national title.

SS3. Overview of the State-mandated Organic Waste Recycling Requirements

Public Works Director Webb, Deputy Public Works Director Martin and Trevor Blythe of EcoNomics utilized a PowerPoint presentation to provide an overview of CalRecycle and State recycling mandates, the City’s CalRecycle compliance requirements, the status of the revised ordinance and franchise amendment, and future legislation.

Discussion ensued between the City Council and staff regarding upcoming State regulations pertaining to organic waste, creating an ordinance that would require commercial businesses to recycle organics, Assembly Bills administered by CalRecycle, outreach methods the City is utilizing to ensure compliance, challenges commercial businesses are facing to be compliant, how the City will need to assist in enforcing the regulations, the hauler’s responsibility to monitor and report violations, who will encumber the additional costs from the new process, the number of trash pick-ups in the City, the number of organic food recycling franchises in California and Arizona, Material Recovery Facilities (MRF), the timeline for putting the process into place, and items that the Council working group should discuss.

Carmen Rawson provided examples on why she believes the organic waste recycling regulations will be difficult to implement.

Jim Mosher believed the working group should have been discussed and formed during a Council meeting, questioned what regulations the 25 businesses are out of compliance with, and asked if the City is complying with the regulation to reduce landfill waste.

Deputy Public Works Director Martin indicated that 90% of the businesses in the City are compliant and staff is working to meet the goal of 100% compliance. Mr. Blythe added that the State wants 100% compliance and at this time 250 businesses in the City are following the regulations.

Hoiyin Ip thanked the City for reviewing the new regulations and provided ideas to reduce trash and increase education and outreach, and urged the City to ban plastic straws.

Mayor Dixon indicated recycling violations in New York are very strict.

III. PUBLIC COMMENTS

Sharon Courson discussed building permit violations on her home and requested Council assistance on stopping the citations she continues to receive. Mayor Dixon referred Ms. Courson to Community Development Director Jurjis for further assistance.

Hoiyin Ip discussed the Heal the Bay beach report card and her concerns about the beaches in Orange County. She thanked City staff for keeping the beaches clean and asked the public to help clean up the beaches and treat them like they were their own backyards.

Jim Mosher clarified a question he asked during a previous item, reminded Council of his concerns regarding Closed Session items not being available for public comment, and requested that copies of tentative future agendas be available to the public.

IV. CLOSED SESSION – Council Chambers Conference Room

**A. CONFERENCE WITH LEGAL COUNSEL
ANTICIPATED LITIGATION – INITIATION OF LITIGATION
(Government Code § 54956.9(d)(4): 1 matter**

**B. CONFERENCE WITH LEGAL COUNSEL
EXISTING LITIGATION
(Government Code § 54956.9(d)(1)): 1 matter**

Kathryn McCaughey v. City of Newport Beach, et al.
OCSC Case No. 30-2018-01016354-CU-PO-CJC

V. RECESSED – 5:29 p.m.

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

VII. ROLL CALL

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

VIII. CLOSED SESSION REPORT

City Attorney Harp announced that there were no reportable actions taken.

IX. INVOCATION – Council Member Muldoon

X. PLEDGE OF ALLEGIANCE – Newport Beach DeMolay Chapter

XI. NOTICE TO THE PUBLIC

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

Council Member Avery:

- Attended the Homeless Task Force meeting along with Council Member Brenner and Mayor Pro Tem O'Neill, and the Orange County Sanitation District (OCSD) Operations Committee meeting
- Commended staff on the grand opening of the Corona del Mar Branch Library and Fire Station
- Introduced his mentee from Newport Harbor High School

Council Member Duffield:

- Attended the Water Quality/Coastal Tidelands meeting with Council Member Herdman
- Commented on current weather conditions

Council Member Muldoon:

- Attended the Corona del Mar Branch Library and Fire Station grand opening

Council Member Brenner:

- Met with City Manager Leung, Public Works Director Webb, Recreation and Senior Services Director Detweiler and Deputy Recreation and Senior Services Director Levin regarding the Organic Chemical Pilot Project, and Jodi Patrich regarding the Balboa Island Preservation Association and other preservation issues in the City
- Attended the Corona del Mar Branch Library and Fire Station grand opening (slide), the Homeless Task Force meeting, and a farewell luncheon for Carol Hoffman McDermott

Council Member Herdman:

- Attended the Speak Up Newport meeting to provide updates on John Wayne Airport (JWA), Water Quality/Coastal Tidelands meeting, Junior Lifeguard Hot Dog Dinner, Corona del Mar Chamber of Commerce Government Affairs meeting, Corona del Mar Residents Association meeting, Orange County Mosquito and Vector Control meeting, Fire Chief Duncan's retirement party, Corona del Mar Branch Library and Fire Station grand opening, and the Aviation Committee meeting

Mayor Pro Tem O'Neill

- Attended the Homeless Task Force meeting and provided an update
- Displayed a slide to discuss and recognize the City's AAA rating from Moody's Investors Services and the Certificate of Achievement from the Government Finance Officers Association
- Announced the upcoming Ben Carlson Foundation fundraiser on July 27, 2019, and his office hours on August 7, 2019
- Wished his wife a Happy 10th Wedding Anniversary

Mayor Dixon:

- Attended the Central Library's 25th Anniversary Celebration, Junior Lifeguard Hot Dog Dinner, Friends of OASIS Board of Directors Ceremony and swore in the new officers, retirement celebration for former Fire Chief Duncan, and the Corona del Mar Branch Library and Fire Station
- Displayed slides to recognize Karen Carlson for her contribution to the new branch library and fire station, and to remind the public of the free Trolley parking at the City's Avon Street lot

XIII. PUBLIC COMMENTS ON CONSENT CALENDAR

Regarding Item 10, Council Member Brenner reported that the \$6,000 contribution to the Corona del Mar Chamber of Commerce was done prior to her taking office.

Debbie Stevens, President of the Corona del Mar Residents Association (CdMRA), discussed a survey they conducted regarding opting out of Saturday construction noise restrictions and signage requirements (Item 3). Council Member Brenner thanked CdMRA for their efforts with the survey.

Jim Mosher discussed his beliefs regarding the ordinance for Item 3, believed more time should be given to allow other homeowner associations time to poll their residents, and questioned if the signage and construction noise restriction requirements could be separated.

In response to Council questions, City Attorney Harp and Community Development Director Jurjis explained that the current ordinance does not allow for the opting out of one restriction and not the other, discussed the challenges that the City would encounter if the two were separated, and confirmed the ordinance does not prohibit Saturday construction, but imposes noise limits.

XIV. CONSENT CALENDAR

READING OF MINUTES AND ORDINANCES

1. Minutes for the July 9, 2019 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.

ORDINANCES FOR ADOPTION

3. Ordinance No. 2019-11: Adoption of an Ordinance to Allow Homeowners' Associations to Opt Out of Saturday Construction Noise Restrictions and Temporary Construction Signage Requirements [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) Conduct second reading and adopt Ordinance No. 2019-11, *An Ordinance of the City Council of the City of Newport Beach, California, Amending Sections 10.28.040 and 15.16.010 of the Newport Beach Municipal Code, to Provide a Process for Homeowners' Associations to Opt Out of Saturday Construction-Related Noise Regulations and Temporary Construction Project Signage Requirements.*

4. Ordinance No. 2019-12: Adoption of an Ordinance Amending a Development Agreement for Hoag Memorial Hospital Presbyterian (PA2018-024) (C-2912) [100-2019]

- a) Find all significant environmental concerns for the proposed project have been addressed in a previously certified Final Environmental Impact Report (EIR) and Supplemental EIR, and that the City of Newport Beach intends to use said document for the above noted project, and further that there are no additional reasonable alternative or mitigation measures that should be considered in conjunction with said project; and
- b) Conduct second reading and adopt Ordinance No. 2019-12, *An Ordinance of the City Council of the City of Newport Beach, California, Amending a Development Agreement between the City of Newport Beach and Hoag Memorial Hospital Presbyterian (Development Agreement Amendment No. DA2018-004).*

RESOLUTION FOR ADOPTION

5. Resolution No. 2019-71: Amending the Scope of the Business Improvement District Ad Hoc Committee and Changing the Name to the Ad Hoc Committee on Local Business Advancement [24/100-2019]

- 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) Adopt Resolution No. 2019-71, *A Resolution of the City Council of the City of Newport Beach, California, Amending the Scope of the Ad Hoc Committee on Business Improvement Districts and Changing the Name of the Committee to the Ad Hoc Committee on Local Business Advancement.*

CONTRACTS AND AGREEMENTS

6. Sewer and Storm Drain Systems Rehabilitation Project – Award of Contract No. 7538-1 (18S03 and 19D02) [38/100-2019]

- a) Find 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 it has no potential to have a significant effect on the environment;

- b) Approve the project drawings and specifications;
- c) Award Contract No. 7538-1 to Sancon Technologies, Inc. for the base bid price of \$2,344,589.50 plus additive bid item 50 for \$45,000.00 (to add a clarifier and sewer line at the City Corporation Yard), for a total contract price of \$2,389,589.50, and authorize the Mayor and City Clerk to execute the contract; and
- d) Establish \$170,000.00 (approximately 7 percent), contingency amount to cover the cost of unforeseen work not included in the original contract.

7. Acquisition of Rule 20A Credits from the Cities of Laguna Woods, Lynwood and Mission Viejo [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;
- b) Approve Memorandums of Understanding (MOU) with the cities of Laguna Woods (C-8183-1), Lynwood (C-8591-2) and Mission Viejo (C-8504-2), documenting details of the transaction for the Rule 20A credit acquisitions, and authorize the City Manager and City Clerk to execute each Memorandum of Understanding; and
- c) Authorize staff to process Rule 20A credit transfers between the City of Newport Beach and Laguna Woods, Lynwood, and Mission Viejo with SCE.

Council Member Muldoon recused himself on Item 7 due to potential business interest conflicts.

8. Pulled from the Consent Calendar

MISCELLANEOUS

9. Planning Commission Agenda for the July 18, 2019 Meeting [100-2019]

Receive and file.

10. Required Council Reporting: Fiscal Year 2018-19 Annual Discretionary Grant Report and the Grants and Donations Report for the Quarter Ending June 30, 2019 [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) Receive and file.

Motion by Mayor Pro Tem O'Neill, seconded by Council Member Duffield, to approve the Consent Calendar, except for the item removed (Item 8); and noting the recusal by Council Member Muldoon on Item 7, and amendments to Item 1.

The motion carried unanimously.

XV. ITEM REMOVED FROM THE CONSENT CALENDAR

8. Amendment No. 3 to Professional Services Agreement for Airport Consulting Services (C-7071-2) [38/100-2019]

In response to Council Member Muldoon's questions, City Manager Leung indicated the present contract began on May 23, 2017, but Mr. Edwards has been consulting for the City since 2008, confirmed that Mr. Edwards was a former City Council Member and Mayor, and discussed the contract amount.

Motion by Council Member Muldoon to table the item indefinitely.

The motion died for lack of a second.

Motion by Council Member Herdman, 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; and b) approve Amendment No. Three to the Professional Services Agreement with Thomas Cole Edwards, Inc. to increase the not-to-exceed amount by \$85,000 for a total not-to-exceed amount of \$272,500, and authorize the Mayor and City Clerk to execute the amendment.

Discussion ensued between Council and City Manager Leung regarding the average hours per month the consultant works and how they are tracked, the scope of duties performed on the City's behalf, and the detailed billing report.

Jim Mosher believed this contract was not awarded properly in 2008 since there was no Request for Qualifications (RFQ), questioned the specifics of the current contract and scope of services, and whether some of the work being done by the consultant could be done by staff, and suggested that all aviation related contracts go to the Aviation Committee for review prior to going before Council.

Laurie Petrie discussed the Aviation Committee meeting she attended on July 22, 2019, and voiced her concerns regarding the contract with Mr. Edwards.

In response to Council Member Muldoon's question, City Manager Leung confirmed that, since this contract is an extension, no other contractors were considered and she believed Mr. Edwards is an expert in this field. She indicated a Request for Proposal (RFP) was done in January or February of 2019 to find additional aviation expertise and David Wilson was selected from that RFP.

The motion carried 4-3, with Council Members Avery, Duffield and Muldoon voting no.

XVI. PUBLIC COMMENTS ON NON-AGENDA ITEMS

Alexander Gonzalez, Field Representative/Caseworker for Congressman Harley Rouda's Office, introduced himself, discussed his background in Newport Beach, and highlighted the six-month report on the Congressman's website.

Rachel Curry, Field Representative for Assemblywoman Cottie Petrie-Norris' Office, congratulated the City on the grand opening of the Corona del Mar Branch Library and Fire Station, discussed Assembly Bill 608, announced the upcoming seminar regarding senior scam stopping, and notified the public regarding various councils and boards the Assemblywoman is developing. She indicated applications can be found on the Assemblywoman's website.

Michael Voorhees voiced his concerns regarding vacation rentals in his neighborhood and requested that Council monitor the area for compliance. Mayor Dixon referred Mr. Voorhees to Community Development Director Jurjis for assistance.

Max Johnson discussed a recent pedestrian accident near the 7-Eleven on Balboa Boulevard, and requested the City reconsider installing lights at the crosswalk for better visibility.

In response to Council comments, Public Works Director Webb provided an update on Phase II of the crosswalk project and confirmed he would have staff take a look at lighting in the area.

XVII. PUBLIC HEARING

11. 2019 Drinking Water Quality Report on Public Health Goals [100-2019]

Utilities Director Vukojevic and Water Quality Coordinator Van utilized a PowerPoint presentation to discuss State and Federal drinking water standards, the State requirement for an annual report

and public hearing every three years, public health goals, the City's 2019 drinking water quality report, and staff recommendations.

Mayor Dixon opened the public hearing.

Jim Mosher commented on the annual water quality report and suggested the City compare the contamination amounts between City tap water and store bought bottled water to avoid residents being concerned about the City's drinking water.

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

In response to Council comments, Utilities Director Vukojevic assured the public that the City's drinking water is very safe, safeguards are in place, and testing is done frequently with results being submitted to the State.

Motion by Council Member Herdman, seconded by Mayor Pro Tem O'Neill, to a) determine that the 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 it will not result in a physical change to the environment, directly or indirectly; and c) receive and file City of Newport Beach 2019 Drinking Water Quality Report on Public Health Goals.

The motion carried unanimously.

XVIII. CURRENT BUSINESS

12. Employment Agreement with Jeff Boyles for Fire Chief Services (C-8182-1) [38/100-2019]

City Manager Leung described the recruitment process for the Fire Chief position and the details of the current agreement with Jeff Boyles. She added that she believes Fire Chief Boyles will do a good job for the City.

Motion by Council Member Avery, seconded by Council Member Brenner, to a) determine that the 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 it will not result in a physical change to the environment, directly or indirectly; and b) authorize the City Manager to Execute an Employment Agreement Between the City of Newport Beach and Jeff Boyles for Fire Chief Services.

In response to Jim Mosher's questions, City Manager Leung reported that 30 to 40 applications were received and 6 to 8 applicants were selected to participate in the extensive interview process.

Mayor Pro Tem O'Neill expressed his gratitude to Fire Chief Boyles for staying on with the City over the years, even though he has had opportunities to go to other cities.

Mayor Dixon congratulated Fire Chief Boyles, recognized his long standing career with the City, and wished him well in his new position.

The motion carried unanimously.

13. Newport Beach & Company Destination Business Plan Supplement, Visit Newport Beach Fiscal Year 2019-20 Budget Update and the Tourism Business Improvement District Fiscal Year 2019-20 Annual Report and Fiscal Year 2019-20 Budget Update (C-4436) [38/100-2019]

Debbie Snavelly, General Manager of Marriott Newport Beach Hotel & Spa and Chair of Newport Beach & Company and Visit Newport Beach, utilized a PowerPoint presentation to introduce

herself, discuss the duties of the Executive Committee and Board of Directors, and current branding partners.

Gary Sherwin, President and CEO of Newport Beach & Company (NB&Co), utilized a PowerPoint presentation to discuss California tourism and travel patterns, international travel, Newport Beach hotel rates compared to Orange County, Newport Beach's hotel occupancy rate, Transient Occupancy Tax (TOT) and Tourism Business Improvement District (TBID), tourism's impact on the City, group sales, FY 2018-19 production summary, leisure marketing, FY 2019-20 TOT budget, the use of Artificial Intelligence (AI), The Telly Awards, community marketing, Newport Beach TV's (NBTV) new video programming, and the 5th Annual U.K. Honours results.

Discussion ensued between Council and Mr. Sherwin relative to how TOT is calculated, the difference between Newport Beach & Co. (NB&Co) and Visit Newport Beach (NBV), receiving financial reports from both companies, integrating NB&Co videos on the City's website, whether documents submitted to the boards of these organizations are considered a public record, the state of the local economy and if NB&Co and NBV services are still needed, the impact of the City's homeless issue on tourism, and Newport Beach's biggest challenge of not having any hotels directly on the beach.

Motion by Council Member Muldoon, seconded by Council Member Avery, 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) authorize a waiver of the timeline provided in Section 3.5 of the Tourism Business Improvement District Management Agreement; c) receive and file VNB's Business Plan Supplement; d) approve VNB's FY 2019-20 Budget Update; e) approve the NBTBID'S FY 2019-20 Annual Report; and f) approve the NBTBID's FY 2019-20 Budget.

Jim Mosher discussed the history of the visitors bureaus in Newport Beach, TBID and TOT collections, questioned why the two organizations need support from the City when the presentation indicated they are doing very well, and how Mr. Sherwin came up with his calculations on the budget presentation.

The motion carried unanimously.

XIX. MOTION FOR RECONSIDERATION – None

XX. ADJOURNMENT – 9:26 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 July 18, 2019, at 4:00 p.m.

Diane B. Dixon
Mayor

Leilani I. Brown
City Clerk