

December 10, 2019, 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 19, 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.

Page 248, paragraph 3: “*Mayor Pro Tem O’Neill believed people are more likely to call the answering service than Code Enforcement or the Police Department, suggested that a database of contact information be provided ~~to them~~ **instead**, ...*”

[See video at 43:14. As best I can tell the suggestion seemed to be to post a link to a list of enforcement numbers rather than to an answering service.]

Page 248, paragraph 4: “*Council Member Herdman noted that several cities do not allow STLs, the proposed changes tighten the regulations in order to protect the quality of life for those around the STLs, discussed that there ~~has have~~ been requests to allow STL in the mixed-use zone, confirmed the regulations can be amended in the future, and pointed out what the total cost for an STL permit could ~~cost~~ **be**.*”

Page 255, Item 24, paragraph 3: “*~~With~~ **In a straw vote, with** the exception of Council Members Muldoon and Duffield, the majority of Council ~~indicated they~~ **agreed that with staff’s recommendation if it included** Mayor Pro Tem O’Neill’s suggestion about the MOU ~~should be added to the motion~~.*”

[See video at 2:11:20. The vote was about supporting the staff recommendation as a whole (with the amendment), not specifically or solely about adding the amendment to it. The distinction is important.]

Page 255, Item 24, paragraph 4: “*Barbara Glabman, ~~Chair member~~ of the Board of Library Trustees, believed the facility would be more than just a lecture hall,...*”

[Barbara is not the chair. She is, instead, as she said, a “freshman member,” having taken office in July.]

Page 256, paragraph 5: “*Karen Evarts, former Library ~~Board of~~ **Trustee** (1983-91), noted the vote to build the library was unanimous, ...*”

[alternatively, “*Board of Library Trustees ~~member~~*”. Note: In recent times, I have heard Orange County Supervisor Steel, and other supervisors referred to as “Board of Supervisor Steel.” I don’t know where that practice started, but it strikes me as strange, and, at least to me, makes those who say it sound ignorant of English usage. The “Board” is the organization. A person on the Board is a Trustee or Supervisor. To the best of my knowledge, one is not a current, nor does one become a former, “Board of Trustee” or “Board of Supervisor.” Also, in our case it is the Board of Library Trustees, not the Library Board of Trustees, so the people on it are, more specifically, “Library Trustees” (much as those on the County Board were, at least until recently, “County Supervisors.”)]

Page 256, paragraph 7: “*Walter Stahr, author, noted authors love going to libraries, gave the Friends Room a B-/C+ as a venue ~~use~~, ...*”

Page 256, paragraph 8: “*Jim Mosher expressed reasons why he is disappointed with the presentation and staff report, and believed some imagine what is being described is an auditorium, not a lecture hall.*”

[The comment was about a large choral group praising the new facility as suitable for them.]

Page 256, paragraph 2 from end: “*Jill Johnson-Tucker, Chair of LHDC LLHDC and former Library Board of Library Trustees member, reiterated that over 70,000 people attended library programs, ...*”

Page 258, paragraph 1: “*Council Member Muldoon recused himself due to potential business interest conflicts.*”

[“potential business interest conflicts” is not sufficient detail for the public to understand why a recusal was necessary, as is required by the Political Reform Act. In the past, Council Member Muldoon has recused himself from matters involving wireless infrastructure construction. The Superior Avenue bridge and park proposal has nothing I am aware of to do with wireless. Even as a closer observer of City government, I have no idea what the Council member’s potential conflict is.]

Page 258, paragraph 9: “*Doug Tamkin, Villa Balboa resident, utilized a presentation to discuss sound levels, and refraction of sound by wind, and temperature inversion, and believed Villa Balboa residents will hear dogs barking.*”

Page 258, paragraph 4 from end: “*Sandi Sandy Frizzell, Villa Balboa resident, stated ...*”

Page 258, last line: “*... supports adding parking and building building the pedestrian bridge.*”

Page 259, paragraph 5: “*Ed Marthaller Marthaler, Villa Balboa resident, stated ...*”

Page 259, paragraph 2 from end: “*Suresh Parikh, Villa Balboa resident, stated he moved there due to the views, took issue that the earthen mound would be removed if a dog park was constructed, expressed concern for his property value, and suggested that Council approve Alternate Alternative 3.*”

Page 260, paragraph 5: “*Sherry Campagnoni Compagnoni, Villa Balboa resident, expressed concern ...*”

Page 261, last paragraph before Item 22: “*With Council Member Muldoon recusing himself, the motion carried 6:0.*”

[“motion carried” is not enough to indicate if anyone voted “no” or abstained]

Item 3. Resolution No. 2019-104: Setting City Council Regular Meeting Dates for Calendar Year 2020

Although the City Charter has, since 2013, not *required* the Council to meet twice a month in August and December, it also does not *prohibit* it from doing so.

It is unclear why the City Council thinks the City’s business can be done well and effectively without the second meetings in those months. It certainly hasn’t always been that way. And lest the Council feels it would be overworked or and city staff over burdened by meeting twice every

month, it might be noted that the city council in [Santa Barbara](#), a city of very nearly the same size and situation,¹ has, for years, met weekly.²

Item 4. Rescinding Resolution No. 2015-77 and Adopting Resolution No. 2019-105: Amending the Paramedic Subscription Program Pursuant to Chapter 5.60 of the Newport Beach Municipal Code

This proposal needs more work and public discussion, as does probably the entire Paramedic Subscription Program. With essentially no public knowledge of what change is being made, or why, it slips into the Consent Calendar a major rollback in scope of services offered to some 5,000 subscribers, effective January 1. Please reject this.

The precise rules of this program have become progressively less clear over time, but the staff report **Abstract** (top of page 4-1) assures readers this proposal merely amends and clarifies “**membership eligibility**” with no change in “*cost of the membership*.” A reasonable person would take that to mean it only changes who can join. It in fact reduces the benefits available to current and future members in a way wholly inconsistent with what current subscribers thought they had signed up for as described in the brochure reproduced in Attachment A (which will presumably have to be completely rewritten if the Council approves this).

In particular, the brochure cover illustrates two traffic accidents and says “*By joining the Fire Medics program, you will avoid any out-of-pocket expenses related to paramedic and ambulance response services.*” The reverse side affirms this by assuring Newport Beach residents that “*An annual membership fee of \$60 will cover the members of your household while within Newport Beach city limits.*” Even subscribers’ guests, it says, will be covered “*if an emergency occurs at your home.*”

If approved by the City Council, people will indeed continue to pay in at the same rate, but the program, starting January 1, will provide no benefit of any kind to anyone for traffic accidents or any other kind of emergency that occurs anywhere other than on their own property (or in the case of renters, inside the space they specifically rent). It will also newly exclude from eligibility businesses with public ownership (since they have more than 10 owners), even if the location in Newport Beach is small and has only a handful of employees.

It seems telling that while the agenda title says the item amends a previous resolution, the staff report but provides neither the existing language nor a redline comparison of the new to the old.

The only clue to what staff is asking the Council to change is the five bullet points of “Proposed Program Amendments” on page 4-2, which itself fails to explain how any of the proposed provisions differ from the provisions of the current program. Indeed, the first bullet (“*Resident members are any person that is a resident of Newport Beach and a guest or visitor of a resident who is an active program member and for whom the subscription fee has been paid*”) does not seem to be a change from the current resolution. The second (“*Business members are any*

¹ Population [91,350](#) vs [85,326](#) for CNB. Land area 19.49 sq mi vs 23.78 for CNB.

² As required by [Sec. 506](#) of their city charter.

corporation, partnership, company, business, organization or other entity with a workplace located in Newport Beach, which has an active City of Newport Beach (City) business license") differs only in adding the business license requirement. The third ("*Business membership is limited to businesses located within the boundaries of Newport Beach with a maximum of 150 employees*") arguably only clarifies a currently ambiguous provision. But the last ("*For benefits to apply, the emergency precipitating the call for service must have occurred on the resident or business property*") is a sea change, at least for resident subscribers.

Background

The **Discussion** (on page 4-1) is incorrect in saying "*The Newport Beach Fire Department (NBFD) provides paramedic emergency medical services (EMS) to the community and has offered a paramedic subscription program (Program), commonly referred to as Fire Medics, since 1975.*"

The City has indeed provided paramedic services since 1975, and as early as 1976 adopted [Ordinance No. 1692](#) allowing the Council to establish fees for the service.

But **for the first 18 years the service remained free of charge** (that, is, regarded as a basic service paid, like most other emergency services, out of the general fund).

Only with [Resolution No. 93-11](#) (in 1993) did it begin to charge for such calls³, creating at the same time the Paramedic Subscription Program, intended to reduce the potential cost to those living or working in the City. The language in that resolution, which is the origin of much of that in the presently proposed resolution, established a fairly clear program: any resident of a dwelling unit in Newport Beach could subscribe to cover themselves and any other permanent occupants of the same unit for medical responses anywhere in the City. Businesses with a workplace in the City could subscribe for benefits applicable to those spending at least 50% of their workday at that place, provided the incident occurred there. The fee for businesses increased depending on the number of employees covered, topping out at 150 employees. It has never been clear if this meant businesses with more employees were ineligible, or if they simply paid the same as a 150-employee business.

Like many City programs, the rules have become more convoluted and uncertain through a series of amendments, including by Resolutions No. [94-98](#), [95-56](#), [96-42](#), [97-31](#) and, after a period of stability, [2015-77](#).

For example, Resolution No. 97-31 added "*guest or visitor*" to the residents-only subscription. As mentioned above, the brochure informs subscribers that is only "*if an emergency occurs at your home*," but as best I can tell that has never been stated in the resolution. It also added "*customer*" to the business subscriptions.

Resolution No. 2015-77 primary moved the actual schedule of EMS fees to the Master Fee Schedule and raised the subscription fee from \$42 to \$60, but it also removed the right of Fire

³ I have been unable to find in the City's [budget](#) the dedicated fund into which, according to the series of resolutions, all receipts collected for EMS are supposed to be paid, including the insurance reimbursements and the subscription collections. It could well exist, but I don't know where it is.

Medic subscribers to terminate and receive a prorated refund of payments made, while adding the (to me inscrutable) provision that *“In instances where a member also holds status as a payer for an insurance plan, the benefits of the membership shall not extend to an obligation as an insurance payer. The member shall still assign any applicable benefits of the insurance policy to the City for services provided.”*⁴

Resolution No. 2015-77 was coupled with an ordinance that amended NBMC [Section 5.60.020](#) to allow the City Manager (according to the September 22, 2015, [Item 15](#) staff report) to waive the EMS charges (independent of the subscription program), or more precisely *“through a formal administrative policy, to accept applications for financial hardships and apply fee waivers for minor medical aids, such as reactions to marine animals in the surf”*⁵ (although, again, the amended code doesn’t actually say that). It is not clear if those administrative policies have ever been written.

The staff report also promised staff would *“initiate outreach efforts to notify our residents of the available program as a means to protect their household from out-of-pocket expenses for EMS services.”* And the [minutes](#) indicate Mayor Pro Tem Dixon asked that an evaluation of the program be brought back in a year. Again, it is not clear any of that has happened.

Although they may have muddied the waters, none of the amendments, until now, appear to have altered the basic concept that a residential subscription covers the household members throughout the City, while a business subscription applies only to the place of business – both of those are ideas which might be rethought, but only after public discussion, and not hidden in a Consent Calendar item.

Corrections to Proposed Resolution

I strongly urge the Council to not adopt any of this, but should they be inclined to do so, I note these obvious errors –

Page 4-10: *“i. “Normal Charges” shall mean the fee to be paid by any Non-member who receives ALS, ALS Non-Transport, BLS, BLS Non-Transport or emergency ambulance transportation services initiated within the City of Newport Beach ~~and the fees to be paid by Business Members who receive ALS, ALS Non-Transport, BLS, BLS Non-Transport, or emergency ambulance transportation services initiated within the City of Newport Beach at a location other than their workplace.~~”* [This legacy language that distinguished the range of geographic coverage for business from residents is no longer needed. Both are constrained by the last two paragraphs in Section 5.c.]

Page 4-12: e.i *“(2) In the event a Municipal Services Statement is sent to the dwelling unit of the Resident Member, the payment of that portion of the annual Paramedic Subscription Fee*

⁴ I suspect this means that although the City promises not to bill the subscriber, their insurance carrier might (for example, for a co-payment or for a percent of what they pay the City, depending on how the subscriber’s insurance plan works). But I truly don’t know.

⁵ I can’t believe we charge people for calling in a report of an animal in distress, so I’m guessing this refers to the response of lifeguards to injuries to people from stingrays or possibly sharks.

shown on the Municipal Services Statement on or before the due date shown on the statement.”

Page 4-13: “i. The City Council of the City of Newport Beach terminates or modifies the Paramedic Subscription Program through rescission or amendment of this Resolution, or a successor resolution, in which event the City shall refund, on a **prorate prorated** basis, the unused portion of the Member's Paramedic Subscription Fee;”

Page 4-13: “ii. Failure to pay the Paramedic Subscription Fee on or before the due date shown on the Municipal Services Statement. Membership may be reinstated if; at any time the Paramedic Subscription Fee for that Member is paid.”

Fixing those would not, however, fix the multiple remaining systemic ambiguities that have crept into the resolution through the years.

Further Thoughts

This should be rejected because it asks the Council to make substantive changes to an existing program in a thoroughly non-transparent way.

But beyond that, I suspect the entire program needs to be rethought.

The insurance landscape has likely changed considerably since the program was instituted in 1993. Private insurance may cover services rendered by non-doctors more than it did then. People who have full private coverage may be needlessly paying in thinking it provides something they need beyond that. While others believing the City's no “out-of-pocket” expenses claim may be surprised if that means only the City won't bill them, but not necessarily their own private insurance company.

In addition, since the resolution is in effect the City's contract with the 5,000+ subscribers it needs to be written in clear English and spell out with precision the City's understanding of its terms. Who, precisely, is covered? And under what circumstances? None of that is clear anymore.

Even if the present proposal adds clarity as to the geographic extent of coverage, it does so through substantial changes that have never been publicly discussed.

Item 5. Corona del Mar Fire Station No.5/Library Replacement – Notice of Completion for Contract No. 8136-2 (15F12)

Does the \$25,000 in liquidated damages assessed to the contractor (page 5-3) really cover the City's “costs related to maintaining a temporary fire station, extending consultant construction services and staff time required to manage the project” for 38 days beyond the expected completion date?

It seems like a low figure.

Item 7. Approval and Award of Professional Services Agreement with Urban Crossroads for Traffic Modeling Update Services

Although the staff report explains why this vendor was approached, it seems a concern that it does not explain what alternatives are available to the sole source contracting approach, including any evaluation of whether any other cities have significantly better or less costly traffic software.

Additionally, given what we have heard is the new need to evaluate traffic impacts based on "Vehicle Miles Traveled," it is surprising to see everything connected with that relegated to Optional Tasks 9 through 11. The "Optional" branding is particularly confusing since, per the cost breakdown shown in Exhibit B (page 7-19), they are already included in the compensation amount the Council is being asked to approve -- and constitute more than half of it. Why are they listed as "optional"? And who will decide, and how, if those services are provided, or not?

Also regarding traffic, per NBMC [Chapter 15.38](#) (adopted in 1984 and amended in 1994), the City collects a "Fair Share" Traffic Fee to help pay for the new or improved traffic infrastructure needed to support new development. The present item is being requested to aid in determining the extent of the traffic infrastructure needed to support potential new development envisioned in an *upcoming* General Plan update. My understanding is the *previous* General Plan update, in 2006, included a promise⁶ to re-evaluate the Fair Share Traffic Fee needed to accommodate the traffic infrastructure envisioned in *that* General Plan, but 13 years later, other than automatic adjustments for inflation, no re-evaluation has taken place.

Item 9. Budget Amendment to Accept a Check from the California State Library for Literacy Services (CLLS) and Appropriate Funds to the Library's FY 2019-20 Maintenance and Operation Budget

The Council has recently enquired if the acceptance of other state grants triggered obligations on the part of City, including significant staff time required to administer them. It sounds like this involves relatively little overhead or strings, but the report doesn't really say.

⁶ See the [2006 GP](#) Implementation Program, [Imp 7.2: Revise Fair Share Traffic Contribution Ordinance](#)