

City Council Minutes  
Study Session and Regular Meeting  
March 10, 2020

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**I. ROLL CALL – 4:00 p.m.**

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

**II. CURRENT BUSINESS**

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

Regarding Item 4 (Resolution No. 2020-23: Reestablishing the Ad Hoc Committee on Short-Term Lodging), Council Member Dixon believed it is very important for the Ad Hoc Committee to consider all public comments received and return with a well-reasoned proposal because many people are being seriously impacted by short-term rentals and stated her goal for the committee, if Council reinstates it, should be to return with a well thought-out recommendation as expeditiously as possible.

Addressing Item 4, Council Member Herdman reported he has closed out his short-term lodging permit because the issues around short-term lodging are so important that he does not want any questions raised that his decision is based on personal benefit.

With respect to Item 4, Council Member Brenner believed treating non-coastal zones differently is probably not the way to continue, and the Ad Hoc Committee should not consider a proposal that imposes different regulations on non-coastal zones than on coastal zones.

Mayor Pro Tem Avery, addressing Item 4, reported he has closed his short-term lodging permit because he is selling the property.

**SS2. Recognition to Jim Digrado and the Many Volunteers of the Corona del Mar Chamber of Commerce**

Council Member Brenner indicated she nominated Mr. Digrado as the representative for the many volunteers who have served the Corona del Mar Chamber of Commerce. She noted more volunteers are needed to place flags along the highway during holidays.

Council Member Brenner read the proclamation and, along with Mayor O'Neill, presented it to Jim Digrado who thanked the City Council and expressed his love for Corona del Mar and volunteering.

**SS3. Capital Improvement Program (CIP) Early Look**

*Council Member Herdman announced he would be recusing himself during discussions relative to Balboa Island Drainage Master Plan/Pump Stations Project due to real property interest conflicts.*

*Council Member Dixon announced she would be recusing herself during discussions relative to Slurry Seal Projects on the Peninsula due to real property interest conflicts.*

*Council Member Muldoon announced he would be recusing himself during discussions relative to Fire Station No. 2 Replacement, the Balboa Island/Corona del Mar Microtransit Feasibility Study, Traffic Signal Rehabilitation Program, Grant Howald Park Rehabilitation, and the Underground Utility Assessment District due to potential business interest conflicts.*

***Council Member Brenner announced she would be recusing herself during discussions relative to the Grant Howald Park Rehabilitation project due to real property interest conflicts.***

Public Works Director Webb and Deputy Public Works Director Houlihan utilized a presentation to discuss City Council goals for allocation of the CIP, how new projects are selected, the approved FY 2019/20 CIP plan which assists in building the FY 2020/21 CIP plan and projects, and a proposed Facility Finance Plan (FFP) update; review facilities projects (***Council Member Muldoon left the dais during Fire Station No. 2 Replacement discussions***), streets and drainage projects, transportation projects (***Council Member Muldoon left the dais during Balboa Island/Corona del Mar Microtransit Feasibility Study and Traffic Signal Rehabilitation Program discussions***), water quality and environmental projects, parks, harbors and beaches projects; water projects, wastewater projects, and miscellaneous projects (***Council Member Muldoon left the dais during Underground Utility Assessment District discussions***); provide the FY 2020/21 tentative summary of the CIP budget; and announce the budget will include a five-year plan.

Mayor O'Neill advised that Council anticipates funding all projects shown in the main portion of the FFP spreadsheet, potential projects are shown, the Finance Committee recommended moving the Balboa Yacht Basin into potential projects, and if the Council wants to fund potential projects, the City will need to find additional funding.

In reply to Mayor O'Neill's question, City Manager Leung and Public Works Director Webb explained that \$500,000 was reallocated from the Ocean Boulevard Concrete Pavement Reconstruction Project to the West Newport Landscape Project, and that staff is working to return funding to the Ocean Boulevard project to make it whole. Deputy Public Works Director Houlihan added that the water main replacement is scheduled for September to November and January to May to avoid the holidays and reduce disruption.

In response to Council Member Dixon's questions, Public Works Director Webb stated the Avon/Santa Ana area project is included in the budget but no additional funding has been proposed for it, a project for landscape enhancements on Placentia Avenue is still in the budget, the budget detail will show the prior year's expenses and new program money, the prior year expense amount is not always the original cost estimate, the advanced meter system uses radio waves to read the meters, tide valves are different from water valves, many projects in the CIP have been re-budgeted from the prior fiscal year, and discussed staff that will manage many of the projects.

In response to Council Member Duffield's question, Public Works Director Webb indicated the pumping station will have a new backup generator.

Mayor O'Neill suggested funding for the Balboa Peninsula Summer Trolley should reflect the funding sources from the Balboa Village Parking Management District (BVP) and Contributions and Grants (CF).

Council Member Dixon urged staff to ensure contractors understand where all the buried lines are so they do not inadvertently cut the wrong lines, noted \$5 million has been budgeted from the General Fund to the CIP, commended staff for aggressively going after external funds, and believed the City is fortunate to be able to put money aside, have good staff, and continue public investment into the community for property values and safety.

In reply to Mayor Pro Tem Avery's question, Public Works Director Webb suggested placing Phase 4 of the Newport Shores entryway beautification project in the budget after next fiscal year in order to direct use of the Neighborhood Enhancement funds toward other needs if necessary, and discussed larger projects throughout the City and the complexity of CIP projects.

Mayor Pro Tem Avery believed staff does an incredible job and thanked Council Member Brenner for assisting with the funding of the beautification project last year.

Council Member Herdman expressed support for the Newport Shores entryway project.

Jim Mosher discussed Planning Commission review of the Master Plans and Public Works projects, and asked when Council reviewed the fiscal year 2019/20 CIP budget for consistency with the General Plan and when the Planning Commission reviews a plan from any external agency that performs Public Works projects.

Laura Curran believed a review of the operational plan and costs, revenue projections, staffing, and breakeven point in relation to the size of the Library Lecture Hall is needed.

**III. PUBLIC COMMENTS**

Randy Beck expressed concerns about the effects of SB 330 on buildings, especially coastal properties, and on the Ad Hoc Committee on Short-Term Lodging's ability to make decisions. He believed not allowing short-term rentals is a problem and unfair because 35% of rental income is made from two and three-day rentals. He added that he sold a house to purchase an R-2 rental property, which is his livelihood.

Jim Mosher discussed his understanding of the lawsuit that is the topic of the Closed Session, criticized the City's handling of the matter, and believed the City's policies need to be clearly written so everyone can understand them.

**IV. CLOSED SESSION – Council Chambers Conference Room**

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

*Susan Bidart Riddle v. City of Newport Beach & John Vallely*  
Orange County Superior Court Case No. 30-2015-00808124-CU-WM-CJC; Court of Appeal, 4th Appellate District, Division 3, Case No. G057397

**V. RECESSED – 5:35 p.m.**

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

**VII. ROLL CALL**

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

**VIII. CLOSED SESSION REPORT – None**

**IX. INVOCATION – Pastor John Henry, Calvary Chapel of Costa Mesa**

**X. PLEDGE OF ALLEGIANCE – Mayor Pro Tem Avery**

**XI. NOTICE TO THE PUBLIC**

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

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Council Member Herdman:

- Attended a noise and emission conference in San Diego the prior week with City Manager Leung, Assistant City Manager Jacobs, City Attorney Harp, and an Aviation Committee member; a Water Quality Tidelands Committee walking field trip at the Muth Center; and a Technical Departure Subcommittee meeting, which will meet again on Friday
- Participated in a costume judging contest during the Spirit Run
- Announced the quarterly Balboa Island Association meeting on March 14

Council Member Dixon:

- Attended the Spirit Run and started the 5K run; and the Southern California Association of Governments (SCAG) Transportation Committee meeting, which focused on OC Connect
- Displayed a slide to provide an update regarding Working Wardrobes

Council Member Brenner:

- Attended the first class of the Citizen Police Academy, the Corona del Mar Residents Association Historical Resource Committee meeting about Newport Beach sites designated as historical sites, and the Friends of OASIS' general membership luncheon to discuss an oral history program in the City
- Announced the Corona del Mar Chamber of Commerce governmental affairs breakfast will be held on March 12, 2020, to talk about the 405 Freeway widening project; and the Homeless Task Force will meet with Dr. Clayton Chau of MindOC next week

Council Member Duffield:

- Announced Public Works Director Webb will address Speak Up Newport on March 11, 2020

Mayor Pro Tem Avery:

- Attended the Orange County Sanitation District Board and Operations Committee meetings last week.

Mayor O'Neill:

- Presented State of the City speeches to Harbor View Hills Community Association, Balboa Yacht Club, Wake Up Newport, and Distinguished Citizens Program
- Attended the Spirit Run and started the 10k run; and the Newport Harbor High School Blood Drive and encouraged people to donate now
- Displayed slides regarding a utility undergrounding project on Balboa Boulevard (***Council Member Muldoon recused himself due to business interest conflicts***)

**XIII. MATTERS WHICH COUNCIL MEMBERS HAVE ASKED TO BE PLACED ON A FUTURE AGENDA**

- **Direct staff to initiate a code change to allow food and alcohol service as a permitted use in the Industrial Zone (IG) with hours of operation restricted to the late afternoon to evening hours [Muldoon]**

In reply to Mayor O'Neill's question, Council Member Muldoon indicated different options will be presented in the staff report.

With Mayor Pro Tem Avery, Council Member Dixon, and Council Member Herdman dissenting, the City Council concurred to bring the item back at a future meeting.

**XIV. PUBLIC COMMENTS ON CONSENT CALENDAR**

Regarding Item 4 (Resolution No. 2020-23: Reestablishing the Ad Hoc Committee on Short-Term Lodging), Council Member Dixon reiterated her comments from the Study Session regarding the importance of public comments and a well-reasoned proposal and her goal for the Ad Hoc Committee.

Council Member Herdman, with respect to Item 4, reiterated his reason for closing his short-term lodging permit.

Council Member Brenner, addressing Item 4, suggested amending the resolution such that the Ad Hoc Committee will not consider a proposal that considers the coastal zone and non-coastal zone areas differently.

Mayor Pro Tem Avery, addressing Item 4, indicated he closed out his short-term lodging permit.

Jim Mosher appreciated the resolution of potential conflict of interest issues for Item 4 and reiterated his written comments regarding Item 5 (Traffic Signal Rehabilitation Project – FY 2018-19: Notice of Completion for Contract No. 7576-1).

**XV. CONSENT CALENDAR**

***READING OF MINUTES AND ORDINANCES***

- 1. Minutes for the February 25, 2020 Special Meeting City Council Meeting [100-2020]**  
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.

***RESOLUTIONS FOR ADOPTION***

- 3. Resolution No. 2020-18: Proposed City Council Policy – “Establishment of Maximum Vessel Length Overall (LOA) Pursuant to Newport Beach Municipal Code Subsection 17.60.040(M) (Request to Extend Mooring Length)” [100-2020]**  
Continue to a future City Council meeting.
- 4. Resolution No. 2020-23: Reestablishing the Ad Hoc Committee on Short Term Lodging [24/100-2020]**
  - 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) Adopt amended Resolution No. 2020-23, *A Resolution of the City Council of the City of Newport Beach, California, Reestablishing the Ad Hoc Committee on Short Term Lodging.*

***CONTRACTS AND AGREEMENTS***

- 5. Traffic Signal Rehabilitation Project – FY 2018-19: Notice of Completion for Contract No. 7576-1 (19T01) [38/100-2020]**
  - a) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project;
  - 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 the Civil Code; and
  - c) Release Faithful Performance Bond one (1) year after acceptance by the City Council.

***Council Member Muldoon recused himself from Item 5 due to business interest conflicts.***

- 6. 2019-2020 Tidegate Improvement Project – Award of Contract No. 7464-1 (19D03) [38/100-2020]**
  - a) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15302 (c) Class 2 (Replacement or Reconstruction) of the CEQA Guidelines, because this project results in negligible or no expansion of existing capacity;

- b) Approve the project drawings and specifications;
- c) Award Contract No. 7464-1 to T.E. Roberts Inc. for the total base bid amount of \$197,601.00, and authorize the Mayor and City Clerk to execute the associated construction contract; and
- d) Establish a \$19,399.00 (approximately 10 percent) contingency to cover unforeseen conditions, extra work and/or material quantities.

**MISCELLANEOUS**

**7. Planning Commission Agenda for the March 5, 2020 Meeting [100-2020]**

Receive and file.

**8. Update on Homeless Issues [100-2020]**

- 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.

**9. Budget Amendment to Accept Grant Funding from Hoag Memorial Hospital Presbyterian Community Benefit Program for the OASIS Transportation Program [100-2020]**

- a) Determine this action is not a project under the California Environmental Quality Act (CEQA) pursuant to Section 15378(b)(4) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, which provides “the creation of government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment” is not considered a project under CEQA, and pursuant to Section 15060(c)(3), actions that are not projects are not subject to CEQA; and
- b) Accept grant funding in the amount of \$75,000 from Hoag Memorial Hospital Presbyterian Community Benefit Program and approve Budget Amendment No. 20-032 to increase revenues by the same amount in 0107033-711001 (OASIS Transportation).

**Motion by Mayor Pro Tem Avery, seconded by Council Member Herdman,** to approve the Consent Calendar; and noting the continuance of Item 3, the recusal by Council Member Muldoon on Item 5, and the amendments to Items 1 and 4.

**The motion carried unanimously.**

**XVI. ITEMS REMOVED FROM THE CONSENT CALENDAR – None**

**XVII. PUBLIC COMMENTS ON NON-AGENDA ITEMS**

David Tanner encouraged people to attend the earthquake safety presentation on March 25, 2020, at Marina Park 6:00 p.m. to 7:00 p.m., asked that it be videotaped, and thanked the City for having the event.

Jim Mosher noted the Housing Element Update Advisory Committee (HEUAC) will also be meeting on March 25, 2020, asked that HEUAC meetings be videotaped, and discussed the effective date of the lobbyist ordinance, registration with the City Clerk, and establishment of a fee.

City Attorney Harp advised that lobbyist registration will be available on the City’s website prior to the effective date and that no fee will be charged during the first year, but may be established in the following year.

In response to Council Member Brenner's questions, City Attorney Harp and Community Development Director Jurjis indicated staff will work with the City Clerk to announce lobbyist registration on the website and stated that the HEUAC meetings will be videotaped but not the earthquake safety presentation.

**XVIII. PUBLIC HEARING**

**10. Ordinance No. 2020-9: Introduction of an Accessory and Junior Accessory Dwelling Unit Ordinance (PA2019-248) [100-2020]**

In response to correspondence received on the issue, Community Development Director Jurjis, Principal Planner Murillo, and City Attorney Harp reported theoretically 20,000 Accessory Dwelling Units (ADU) and/or Junior Accessory Dwelling Units (JADU) could be constructed in the City, State law stated ADUs and JADUs are not subject to General Plan limits, infrastructure capacity will be increased as needed to accommodate construction of ADUs, State law applies if the City does not adopt the ordinance, the ordinance is statutorily exempt from CEQA, impacts will occur whether or not Council adopts the ordinance, and following adoption and State Department of Housing and Community Development (HCD) review of the ordinance, staff will address HCD's comments with them.

***Mayor O'Neill opened the public hearing.***

David Tanner believed staff mischaracterized his comments, noted his comments talked about population increase and additional households, believed the ordinance allows a doubling of the population in the coastal zone, took issue with the lack of environmental review, and believed this should wait until the Local Coastal Plan, land use component, and the General Plan have been updated.

Jim Mosher referenced his correspondence and discussed amendments that were presented tonight, believed staff is misinterpreting the State's parking requirements for ADUs, and pointed out for the Ad Hoc Committee on Short-Term Lodging the interplay between rental of homes and ADUs.

Charles Klobe supported the comments from Mr. Tanner and Mr. Mosher, suggested continuing the item in order to get it right, and wanted Council to understand the legal ramifications of adopting the ordinance prior to updating the General Plan.

***Hearing no further testimony, Mayor O'Neill closed the public hearing.***

In response to Mayor O'Neill's questions, City Attorney Harp advised that applications will fall under the State law if Council does not adopt the ordinance, any part of the Municipal Code that is inconsistent with the State Code is invalid, and staff believed what is being proposed is stricter than State law.

In response to Council Member Muldoon's questions, Principal Planner Murillo used a slide to compare State law and the proposed ordinance, and discussed the benefits of the ordinance restricting the size, occupancy, and height, increasing the alley setback, requiring replacement parking, prohibiting short-term lodging, and requiring design elements.

In response to Council Member Dixon's questions, Community Development Director Jurjis explained that, once Council amends the Housing Element, staff will include an environmental study. He indicated staff believed the ordinance is exempt from CEQA review, and an environmental study is not needed at this time if Council adopts the ordinance. Principal Planner Murillo advised that setbacks vary by zoning districts, the State-required setback changes the zoning and land use application in the City, staff has discussed the parking requirement for garage conversions with California Coastal Commission staff, but they have not provided a formal guide yet, and the California Coastal Commission will review the draft regulations and comment.

In response to Council Member Brenner's questions, Principal Planner Murillo reported that State law suspended the City's ability to require owner occupancy until 2025 to hopefully spur development of ADUs, the City can reinstate the restriction after 2025, and the intent of State law is to increase housing opportunities, not increase short-term lodgings.

**Motion by Council Member Muldoon, seconded by Council Member Herdman,** to a) find this project statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to Public Resource Code Section 21080.17 and Section 15282(h) of the CEQA Guidelines, which exempts adoption of an ordinance regarding second units to implement provisions of Sections 65852.2 and 65852.22 of the Government Code. Additionally, the ordinance is categorically exempt pursuant to Sections 15303 (New Construction or Conversion of Small Structures) and 15305 (Minor Alterations in Land Use/Limitations); b) waive full reading, direct the City Clerk to read by title only, introduce amended Ordinance No. 2020-9, *An Ordinance of the City Council of the City of Newport Beach, California, Adopting Zoning Code Amendment No. CA2019-009 to Repeal and Replace Section 20.48.200 (Accessory Dwelling Units) of Title 20 (Planning and Zoning) and Amend Related Provisions of the Newport Beach Municipal Code Applicable to Accessory Dwelling Units and Junior Accessory Dwelling Units Pursuant to State Law (PA2019-248)*, and pass to second reading on March 24, 2020; and c) adopt amended Resolution No. 2020-24, *A Resolution of the City Council of the City of Newport Beach, California, Authorizing Submittal of Local Coastal Program Amendment No. LC2019-008 to the California Coastal Commission to Repeal and Replace Section 21.48.200 (Accessory Dwelling Units) of Title 21 (Local Coastal Program Implementation Plan) and Amend Related Provisions of the Newport Beach Municipal Code Applicable to Accessory Dwelling Units and Junior Accessory Dwelling Units Pursuant to State Law (PA2019-248)*.

**The motion carried unanimously.**

## **XIX. CURRENT BUSINESS**

### **11. Sculpture Exhibition in Civic Center Park – Phase V (C-8629) [38/100-2019]**

Library Services Director Hetherton introduced Richard Stein of Arts Orange County and Joe Lewis of the UCI Claire Trevor School of the Arts.

Richard Stein, Arts Orange County, talked about his team and utilized a presentation to review the process, the opening date of June 6, 2020, the selection criteria, judges, and highlight the ten recommended selections, three alternate sculptures, and proposed site locations.

Council Member Dixon noted that all but one or two of the pieces are from California artists, but she wanted to see all sculptures come from California artists. In response to Council Member Dixon's questions, Mr. Stein discussed the popularity of the exhibition with Newport Beach residents, the increased submissions from artists of quality located around the world, challenges with shipping from other countries, the preference for works already in the country, the popularity of works from abroad with the public, and the extensive variety of Phase V sculptures. Mr. Stein thanked the City Arts Commission, the Newport Beach Arts Foundation, and staff for the privilege of facilitating the process.

Council Member Herdman commended and thanked the City Arts Commission for the breadth of the art and art selection process, and believed the Sculpture Exhibition is a jewel of the City.

Council Member Brenner expressed her pleasure that more local artists are being represented, especially the Corona del Mar artist. In response to her question, Mr. Stein advised that the public poll received 50% more votes than in the past.

In response to Council Member Muldoon's questions, Library Services Director Hetherton reported that the total cost of \$141,000 is supplanted by a grant from the California Department of Parks and Recreation.

Mayor Pro Tem Avery believed art is a reflection of the people of the City and commended the City Arts Commission and everyone involved for providing the Sculpture Exhibition at no cost. He expressed the opinion that this is a great partnership and a wonderful use of the Civic Center.



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Arlene Greer, Chair of the City Arts Commission, indicated the Sculpture Exhibition is nationally recognized as a “museum without walls,” the installation of Phase 5 is planned for June 6, 2020 from 1:00 p.m. to 4:00 p.m., and the program is a reflection of Newport Beach's love of family and community, quest for recreational and educational outreach, and goal of providing social and cultural activities. She thanked the City Arts Commission, City Council, and staff for their support and introduced Marie Little, City Arts Commission Vice Chair.

Jim Mosher clarified that 1,084 people cast 2,343 votes, and stated the number of residents who voted is not clear.

**Motion by Council Member Dixon, seconded by Council Member Herdman,** 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 the ten sculptures, three alternates and the proposed locations within Civic Center Park as recommended by the City Arts Commission for the temporary sculpture exhibit.

**The motion carried unanimously.**

**XX. MOTION FOR RECONSIDERATION – None**

**XXI. ADJOURNMENT – 8:18 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 March 5, 2020, at 4:00 p.m.**

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**Will O'Neill  
Mayor**

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**Leilani I. Brown  
City Clerk**