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Consent Calendar Comments

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The following comments on items on the Newport Beach City Council agenda are submitted by:
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Item 1. Minutes for the March 10, 2020 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 331:

Herdman, bullet 1: *"…; a Water Quality**/ Coastal** Tidelands Committee walking field trip at the Muth Center; …*" [The Committee met at the Muth Center. The walking tour was *from* the Center to view the OC Public Works Santa Ana-Delhi Channel trash diversion project.]

Bullet 3: "*Announced the quarterly Balboa Island **Improvement** Association meeting on March 14*" [?]

Dixon, bullet 1: "*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*" [This is what was said, but I think the reference was to SCAG's **Connect SoCal** plan – see the March 5 Transportation Committee agenda.]

Brenner, bullet 1: "*Attended the first class of the ~~Citizen~~ **Citizens'** Police Academy, the Corona del Mar Residents Association Historical ~~Resource~~ **Resources** Committee meeting about Newport Beach sites designated as historical sites*, …" [?]

Page 336, paragraph 1:

"*Arlene Greer, Chair of the City Arts Commission, indicated the Sculpture Exhibition is nationally recognized as a "museum without walls," the ~~installation~~ **inauguration** of Phase ~~5~~ **V** is planned for June 6, 2020 from 1:00 p.m. to 4:00 p.m., …*"

[Or, better, "**opening day ceremony for**". I didn't attempt to verify precisely what was said, but the "installation" of Phase V will take place over a period of days or weeks. What was being announced as the "opening day" festivities. As an added comment, I cringe whenever I hear the Civic Center Park described as a "museum without walls." While I appreciate its present use, it was designed by Peter Walker Partners (at considerable expense) as a nature park with incidental sculptural accents, in harmony with and subordinate to the natural setting. Peter Walker himself said that if it were intended as an outdoor art gallery he would have designed it quite differently. Some of the sculptural accents were, incidentally, expected to be placed around the Civic Green and City Hall – something that has never been implemented.]

Item 3. Ordinance No. 2020-9: Accessory and Junior Accessory Dwelling Units (PA2019-248)

General Comments

Writing clear laws is always extremely difficult. It is doubly difficult to achieve clear compliance with unclear laws. And through no fault of City staff, the amended state ADU codes – Government Code Sections 65852.2 and 65852.22 – which they are trying to guide the City into a new law in compliance with are not models of clarity.

In this connection, the Council may wish to be aware that in dealing with the same issue, the staff at our neighboring city of Costa Mesa urged the adoption of a December 17, 2019, emergency ordinance[1] (most likely without planning commission review) in anticipation of the January 1, 2020, effective date of the new state ADU laws (see their Council Item NB-2). Their staff report concisely describes what they saw as the key requirements of those new laws, and I believe the resulting ordinance, although not perfect, is easier to read and aligns much more cleanly with the state requirements than the one proposed by our own staff.

In particular, shortly prior to the introduction of this ordinance, the City received a letter from Californians for Homeownership, an organization monitoring the City's text and likely to send comments regarding areas of suspected non-compliance with state law to the State Department of Housing and Community Development.[2] Although the attorney for Californians for Homeownership says "*The City's ordinance is generally good*," he especially questions our compliance with the amended Gov. Code Subdivision 65852.2(e).

By way of background, former Gov. Code Subdivisions 65852.2(a)-(d), as they continue to do now, set the limited scope within which cities could adopt local ordinances regulating ADU's differently from statewide standards. But whether or not a city adopted a local ordinance, former Subdivision 65852.2(e) required ministerial approval of an application to create one ADU on each single family zoned lot through *conversion* of existing space *within* the existing single-family residence or an accessory structure to it. It allowed cities to "*require owner occupancy for either the primary or the accessory dwelling unit*," but the implication was no other local standards – such as parking – could be applied beyond those specifically mentioned in

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[1] Given the lack of clarity as to what the state default standards allow, a number of other California cities adopted "urgency ordinances" in advance of their January 1 effective date, but Costa Mesa's seems particularly easy to understand. Urgency ordinances receive a single reading and go into effect immediately. They are normally accompanied by a promise to follow-up with a more normally-adopted ordinance at a future date.

[2] Gov. Code Sec. 65852.2(g) formerly required submission of adopted city ADU ordinances to HCD, but merely empowered HCD to comment on them. As amended effective January 1, HCD can now, at any time, notify the city of non-compliance, in which case the city has 30 days to amend the ordinance as directed or to adopt a resolution addressing HCD's concerns and explaining how the questioned ordinance complies.

Subdivision 65852.2(e): namely, that the ADU have "*independent exterior access*" and "*side and rear setbacks are sufficient for fire safety*."[3]

As amended, Subdivision 65852.2(e) contains an expanded list of ADU applications that must be approved *independent* of the local ordinance that Subdivisions 65852.2(a)-(d) allow cities to adopt. It now includes units within proposed new single family homes,[4] detached units on single family lots[5] and both conversions and detached units on multi-family lots.[6]

Costa Mesa staff dealt with the approval of applications conforming to these special criteria with Subsection E of its ordinance.

By contrast, Subsection D of the proposed NBMC Sec. 20.48.200 uses Gov. Code Subdivision 65852.2(e) as a basis for specifying the "Maximum Number of Units Allowed" in four categories – leaving it quite unclear that all applications in the four similar Subdivision 65852.2(e) categories qualify for expedited approval, free from the other standards stated in the local ordinance.

It takes a close analysis of all the other subsections of the proposed NBMC Sec. 20.48.200 to decide if City staff would have to, without imposing anything other than the Gov. Code Subdivision 65852.2(e) standards,[7] approve every application that meets *just* those standards and nothing more. But by my reading, like that of the Californians for Homeownership attorney, other requirements – such as parking or style standards – would likely come into play in evaluating such an application according to the proposed code. And hence, a letter of non-compliance from HCD seems likely.

Specific Concerns

I have previously expressed concern about the City being forced to adopt an ADU ordinance before deciding how it may want ADU's to factor into meeting its state-mandated Housing Element quotas.

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[3] Hence, the former understanding that there could be no parking requirement for conversions. The existing NBMC Section 20.48.200 ("Accessory Dwelling Units") generally complied with this through Subsection C.6 ("Conversion of Space within Existing Structure"), although Newport Beach added an additional condition which may have not been noticed by HCD: namely, requiring that the existing structure had been legally permitted and existed for a minimum of three years prior to the conversion.

[4] And up to 150 sf of expansion to existing homes if necessary to provide ingress or egress.

[5] Provided it is no more than 800 sf in total floor area and 16 feet tall, and is set back at least 4 feet from side and rear property lines (curiously, it does not seem to be possible to require a setback from a *front* property line).

[6] Further provided that none of these Subsection 65852.2(e) ADU's are offered for rental for a term of 30 days or less.

[7] As the Costa Mesa staff report notes, the only conditions Gov. Code Subsection 65852.2(e) places on the two allowed detached ADU's on a lot with an existing multi-family structure is that they be at least 4 feet from the side and rear property lines, and less than 16 feet tall. There does not appear to be any restriction on their size or anything else about them. Costa Mesa staff proposes a 800 sf floor area limit on them, but the permissibility of this is not obvious from the state code.

Comparison with the Costa Mesa ordinance, and further reflection, suggests a number of other concerns which may need to be addressed in future revisions:

1. **Coastal Act Issues**: Since the newly amended Gov. Code Section 65852.2 continues, in Subdivision (l), to say it doesn't "*supersede or in any way alter or lessen the effect or application of the California Coastal Act*," it is unclear to me to what extent its nulling and voiding of local ordinances alters the standards in the existing Coastal Commission certified Local Coastal Program. If those are now out the window and we defaulted to the state standards as of January 1, as staff suggests in its discussion of "Status in the Coastal Zone" on staff report page 3-2, this is worrisome.[8] For example, the new Gov. Code Subdivision 65852.2(e) requirement to approve any detached ADU of 800 square feet or less that is 16 feet or less in height and stays 4 feet or more back from the rear property line runs counter to the sound policies that have required greater setbacks in many parts of the City, mostly in the coastal zone. The state standards would appear to *require* approval of an 800 sf ADU placed on the very edge of a bluff, or even on the bluff face or over the state's navigable waters – all areas in which development would not currently be allowed.
2. **Uncertainty of state standards**: The other subdivisions of Gov. Code Section 65852.2 are fraught with similar uncertainties as to what it was meant to say. In several places it *requires* local jurisdictions to place various restrictions on ADU's, but after requiring those restrictions (such as preventing separate sale or setting a maximum floor area of 1,200 sf for detached ADU's), Subdivision (g) appears to contravene these mandatory limitations by saying: "*This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit*." Conversely, Subdivision (a), in clause (1)(D)(viii), appears to give cities latitude to require compliance with "*Local building code requirements that apply to detached dwellings, as appropriate*" (whatever "as appropriate" means), but then in (6)(A) ominously warns "*No additional standards, other than those provided in this subdivision, shall be used or imposed*." Go figure…

   The state standards complete silence on certain matters is equally unsettling. For example, Subdivision 65852.2(e) specifies *side* and *rear* setbacks that must be ministerially approved, but it says nothing about *front* setbacks. Does this mean a city *can* require all ADU's to comply with its normal front setbacks (as Costa Mesa seems to believe), or does it mean an ADU application in the Subdivision 65852.2(e) categories *cannot* be denied for non-compliance with local front setback requirements?

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[8] I do not agree with staff's interpretation that until the Coastal Commission certifies (and the City adopts) a new LCP, only the new state standards, whatever they are, apply in the Coastal Zone. It would seem to me applications *everywhere* in the City need to comply with the Zoning Code which is being modified by this ordinance. I don't see how the absence of a valid LCP compels the citywide Zoning Code to be ignored – after all, Newport Beach went many years without any complete LCP at all, and that did not suspend enforcement of the Zoning Code in the Coastal Zone. In my view, once a revised LCP goes into effect, applications in the Coastal Zone will have to comply with that, *in addition* to the Zoning Code, as they did prior to January 1. Difficulties will arise if one says an application must be approved while the other says it must be denied.

3. **Other new state laws**: The preamble to the ordinance fails to mention AB 587 and AB 670 (see pages 10-58 and 10-59) of the March 10 council agenda packet. While AB 670 (voiding private CC&R's that prohibit ADU's) does not directly impact the proposed City code, AB 587 (creating new rules to encourage non-profits to participate in the development and ownership of ADU's for persons of low and moderate income) could, depending on its intentions. Should the Council be so inclined, AB 587 allows it to modify the proposed "No Separate Conveyance" clause of Subsection G.1 (staff report page 3-12) to allow sale of ADU's built by qualified non-profits to qualified buyers.
4. **Short term lodgings**: Gov. Code Subdivision 65852.2(e) *requires* that ADU's approved pursuant to it (which includes JADU's), if rented, be rented for more than 30 days. Subdivision 65852.2(a) *allows* cities to impose a similar condition on the additional ADU's[9] that can be approved pursuant to it.[10] The City has chosen to exercise the short term rental prohibition option on all ADU's, but it could potentially be difficult to enforce non-rental of the ADU if the primary residence is eligible as a short term lodging (particularly if the ADU or JADU is internal to it). A typical solution is to disqualify from STL eligibility the entire property on which the ADU is located.
5. **Awkward drafting**: In addition to typos (some of which have been previously pointed out) and a logical structure that does not clearly map the state requirements, the ordinance the Council is being asked to adopt contains some ineptly phrased provisions:
    a. **Page 3-10**: "*c. Newly constructed accessory dwelling units **may provide a minimum setback of four (4) feet** from all side property lines and rear property lines not abutting an alley*."
        i. Since the approval is required to be ministerial, the significance of "may" is uncertain: does applicant have to do this? Or not?
        ii. If "may" means this is optional, is a proposal with no setback OK?
        iii. At least to me, it would be clearer to say: "*c. Newly constructed accessory dwelling units **must be set back four feet or more** from all side property lines and rear property lines not abutting an alley*."
    b. **Page 3-11**: "*b. A **maximum** of one (1) parking space **shall** be required for each accessory dwelling unit*."
        i. Like "may" in the previous example, this use of "maximum" leaves the reader uncertain whether the staff person *will* require one space, or not.

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[9] ADU's that are not required to be approved under Subdivision 65852.2(e), but which may be required or allowed under Subdivision 65852.2(a) seem to include: (1) attached ADU's; (2) detached ADU's over 800 sf or more than 16 feet tall; (3) ADU's in excess of the numbers required to be approved by Subdivision 65852.2(e).

[10] Or at least, according to Clause 65852.2(a)(6), properties with a single family dwelling. Oddly, it is silent about lots with multi-family structures (a possible typo in the statute?).

ii. At least to me, it would be clearer to say: "*8. b. **Except as provided otherwise below, one new** parking space shall be required for each accessory dwelling unit*."

iii. Those "provisions below" should include an exception for ADU's with no bedrooms, but don't seem to at present.

c. **Page 3-11**: "*c. When additional parking is required, the parking may be provided as tandem parking and/or located on an existing driveway; however, in no case shall parking be allowed in a rear setback abutting an alley **or within the front setback, unless the driveway in the front setback has a minimum depth of twenty (20) feet**.*"

i. The highlighted phrase is extremely confusing since it appears to qualify a rule about parking in front setbacks when none has been stated. It seems to be saying it *is* OK to park anywhere in a front setback (such as on a lawn) if there's enough driveway in the front setback; and that it's *not* OK to park in a driveway, however long it might be, unless at least 20 feet of it are in the front setback. I doubt either of those readings was intended. I would guess it is trying to say parking in driveways is not allowed beyond the front property line (that is, protruding into the public right of way).

d. **Pages 3-6 to 3-7**: As previously pointed out, the effort to amend various land use and development standard tables elsewhere in the Municipal Code or Planned Community texts or Specific Plans to point out the many deviations now allowed for ADU's seems foolhardy, since all the tables and references are unlikely to be found.[11] I think the statements in proposed Subsection 20.48.200.B (to the effect that Section 20.48.200 overrides all contrary code provisions) are sufficient.

Typos

I previously suggested some typographic errors in the ordinance as introduced, which staff, in its wisdom, has chosen not to correct:

Page 3-5, paragraph 4: "*WHEREAS, at the hearing, the Planning Commission adopted Resolution No. PC2020-006 by a majority vote (5 ayes, 1 no) recommending ~~**to**~~ the City Council review Zoning Code Amendment No. CA 2019-009 and approve **it** if the terms of **the** code amendment retained greater local control over accessory dwelling units and junior accessory dwelling units than what is provided by Government Code Sections 65852.2 and 65852.22*;"

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[11] For example, on page 3-6, Section 2 makes a correction to the "Density/Intensity" row for R-A and R-1 zones in Table 2-2 of Title 20. While that may be helpful for readers, no comparable correction has been proposed to the "Site Area per Dwelling Unit" row for duplex-zoned lots in Table 2-3, which says "No more than 2 units per lot" - something that is no longer true since ADU's and JADU's are now allowed on them. Similarly, nothing notes an exception for ADU's to the "Site Area per Dwelling Unit" row for RM zones in Table 2-3. Nor that ADU's and JADU's don't count toward the "Density Range" limits in Tables 2-10 and 2-11 for mixed use zones. Nor whether the floor area and setback regulations in all these tables apply to ADU's.

Page 3-3, paragraph 2: "*WHEREAS, the California Legislature adopted and Governor Newsom signed Senate Bill 13 and Assembly Bills 68 and 881 in 2019 amending California Government Code Sections 65852.2 and 65852.22, which took effect January 1, 2020, imposing new limitations on local agencies', including charter cities', ability to regulate accessory dwelling units and junior accessory dwelling units*;"

Page 3-3, paragraph 3: "*WHEREAS, Section 20.48.200 (Accessory Dwelling Units) of the Newport Beach Municipal Code ("NBMC") regulating accessory dwelling units, most recently amended in ~~2018~~ 2019 pursuant to Ordinance No. 2018-14, is partially inconsistent with Government Code Sections 65852.2 and 65852.22*;"

> [Ordinance No. 2018-14, as its number indicates, was presented to the Council in 2018, but it was not adopted, and, therefore, the NBMC was not amended until 2019. It seems important to state the correct date]

Page 3-4, paragraph 1:: "*WHEREAS, Government Code Section 65852.2(a)(1)(D)(xi) provides that offstreet parking shall not be required to be replaced when a garage, carport, or other covered parking is converted to an accessory dwelling unit ~~and~~ or junior accessory dwelling*[12] *unit, however, the California Coastal Act of 1976 is neither superseded nor in any way altered or lessened as provided in Government Code Section 65852.2(1) by this recent legislation*;"

Page 3-10, under clause 3.: "*a. The accessory dwelling unit meets the minimum setbacks required by the underlying zoning district; and …*"

Page 3-11: "*8. Parking. Parking shall comply with the requirements of Chapter 20.40 (Off-Street Parking) except as modified below:"*

Item 5. Resolution of Intent to Conduct a Public Hearing to Grant New Non-Exclusive Solid Waste Franchises

This item is quite confusing to me.

With the exception of one study session (or has it been two?), I have the impression staff has been sharing its thoughts about the City's solid waste programs, and improvements needed to them, with a shadowy Council committee not mentioned in the staff report.

As the staff report indicates, of the actions that have been revealed in public, on October 22, 2019, the Council was asked to approve (on the consent calendar) a new model franchise agreement with an end date of November 8, 2026,[13] that haulers were encouraged to sign. It is provided as Attachment B.

But the resolution the Council is being asked to adopt (Attachment A) announces the Council's intent to enter into some other, vaguely defined agreement with eight existing and four new

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[12] It is not obvious the City has to allow conversion of garages, or certainly carports, into JADU's. According to the state's definition of JADU on page 10-56 of the March 10 City Council agenda packet, a JADU must be "*contained **entirely within** a single-family residence*" (Gov. Code Sec. 65852.22(h)(1)).

[13] The next to last Whereas of the proposed resolution (on page 5-4 of the staff report) refers to this as the "2020 Franchise" and says it "expires in the year **2027**." But this is incorrect. Both page 5-2 and 5-22 give the termination date as November 8, **2026**.

haulers. It will, purportedly, have an end date of June 11, 2027. Since there is no explanation of why the end date has changed, I am unable to tell if it will be the attached (and previously approved) agreement with simply a new end date substituted, or something completely new.

Item 7. Newport Bay Trash Wheel - Approval of Professional Services Agreement with Burns & McDonnell Engineering Company, Inc.

Understanding it is wiser economically and environmentally to reduce the amount of trash generated and entering the environment than to try to retrieve it after it has been dispersed, this seems a reasonable approach to a part of the unfortunately still necessary task of retrieval.

The staff report underscores the reality that governmental decisions are frequently made without full understanding of the problem being attacked or the likelihood of the proposed solution's success.

The estimate (on staff report page 7-5) that the wheel will retrieve 50 tons per year seems optimistic in view of what page 7-2 says is the 20 to 80 tons per year collected by the trash boom at North Star Beach, of which 80% is not trash but "debris," some unknown amount of which may be generated within the estuary itself rather than emanating from San Diego Creek. That said, the estimate of $50,000 to $60,000 per ton ($25 to $30 per pound) to retrieve trash before it enters through the Santa Ana-Delhi Channel is stunning – and although the present proposal is guessed to cost only one-tenth of that, the high cost of both should stimulate efforts to refocus on source reduction!

One slightly unexpected aspect of the proposal is the 20 year expected useful lifetime of the trash wheel mentioned at the bottom of page 7-4, and on which the relatively low dollar per ton cost estimate seems to be based (apparently assuming 1,000 tons of trash collected at 50 tons per year over 20 years). From the Water Quality/Coastal Tidelands Committee meetings, I had the impression the trash wheel was viewed as a kind of temporary stop-gap measure, expected to operate for about 10 years as solutions farther upstream were developed.

As a trivial comment, the "Environmental Review" at the bottom of page 7-5 refers to the Council's Resolution No. 2018-67, which it implies is included in the agenda packet as Attachment D. As indicated at the end of the "Funding Requirements" discussion on page 7-2, Attachment D is actually a highlighted copy of California Senate Bill 573 from 1997, which it says established the Upper Bay Reserve Fund[14] to which some of the expenses will be charged.

As a slightly less trivial comment, in the Scope of Services on page 7-23, one hopes the contractor is conversant enough with marine engineering to know that MHHW and MLLW stand for **Mean** Higher High Water and **Mean** Lower Low Water, *not* **Median** Higher High Water and **Median** Lower Low Water.

[14] See Subdivision (c) on staff report page 7-38.

Item 10. Award of On-Call Fencing Maintenance and Repair Services Agreements with Quality Fence Co., Inc. & Red Hawk Services, Inc.

This is an example of a situation in which the Council is being asked to approve contracts with more than one vendor providing the same service.

As I have pointed out to the Finance Committee, it is not clear the City has a consistent policy guiding staff as to which of the possible on-call vendors to call on for a particular job.

From the table on page 10-2 of the staff report, it appears staff expects Quality Fence to offer to do at least some work at around 3/4ths the cost of Red Hawk. But it would be very difficult to guess this from the totally different looking Schedules of Billing Rates provided by the two companies, on pages 10-21 through 10-24 compared to page 10-53.

One hopes that, when time permits, staff will ask for a proposal from each and go with the lower bid.

Item 11. Final Tract Map No. 18135 for a Residential Condominium Development Located at 1244 Irvine Avenue

The staff report (top of page 11-2) refers to the Planning Commission's June 21, 2018, approval of this development, which was known at that time[15] as "Mariner Square." Oddly, the name is not mentioned in the staff report, and the current report also fails to mention that the 2018 approval allowed the replacement of an existing 114-unit apartment complex abutting the Westcliff Shopping Center with 92 condominiums – a loss of 22 units and likely a decrease in affordability, as well.

The Environmental Information Form on handwritten page 73 of the Planning Commission staff report says "*The current City of Newport Beach General Plan Housing Element states that the City has sufficient sites to accommodate its Regional Needs Housing Assessment allocation. The project will not be required to provide affordable or replacement housing*."

That assessment seems a bit naïve, now, in view of the City's currently large anticipated 6th Cycle RHNA allocation and the affordability quotas that go with it. In addition, the reduction in density this approval permits would not be allowed for the duration of the Housing Crisis Act (SB 330).

As to the task at hand, the Municipal Code requires the Council to review and approve three highly technical documents, including Final Tract Map No. 18315, the latter requiring a finding "*that the map conforms to all requirements of the Subdivision Map Act and the City subdivision regulations applicable at the time of approval or conditional approval of the tentative map*."

As always, I would submit that the Council, like me, lacks the technical expertise needed to make such a finding, and relies entirely on staff. In that respect, the staff report is rather terse is in explaining how staff arrived at its own findings of consistency.

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[15] When presented to the Planning Commission in 2018, the owner was listed as "Mariner Square Apartments, LLC" and the developer as Melia Homes. It is not clear from anything presented here how Shea Homes Limited Partnership, the entity seeking approval of the tract map, came into the act.

One aspect of the Council's task not touched on at all is the NBMC Sec. 19.60.020 requirement that "*At the time of approval of a final map, the City Council shall accept, accept subject to improvement or reject any offers of dedication at the time of final map approval*."

Are there any dedications being offered in association with this project? (the map on page 11-6 shows portions of Irvine Avenue and Mariners Drive as being within Tract No. 18135 but "dedicated hereon" – the significance of which is unclear to me)

Item 14. 2019 General Plan Progress Report and Housing Element Progress Report (PA2007-195)

Considering the supposed importance of the City's now-stalled promise to revisit and update its General Plan, and the state's ongoing mandates to pack ever more units into our Housing Element, one might think staff's annual report on the status of our current plans would be of enough interest to not pass unnoticed on the consent calendar, as it usually does.

As I commented to the Planning Commission, the public once understood general plans to represent a community's vision of its state at "ultimate buildout." But in recent years the state government seems to have rejected the concept of ultimate buildout, and embraced instead a "growth is good" (and necessary) philosophy, in which the cure for the problems created by past development is to develop more, in which there is always room to add more density and in which to actively encourage new residents, housing surpluses should be created and all areas made equally affordable.

In light of that, it is curious that the annual reports, which until two years ago provided a straightforward report of the number of new housing units created, demolished (which is a big factor in "built out" cities like Newport Beach) and the resulting number of net new units, now report a bewildering array of information about applications, permits and certificates of occupancy, but nowhere (that I can find) show that bottom line about the net change.

Indeed, under the new reporting protocols, it looks like the project whose subdivision the Council is being asked to approve in agenda Item 11 might be reported as "92 new units" when it is actually a net loss of 22. That may be good for fulfilling unrealistic RHNA quotas, but it seems bad for transparency.

As to the part of the report (Appendix A starting on page 14-26) that is *not* about the Housing Element, but rather about the status of our efforts to implement the 2016 General Plan as a whole through its various Implementation Programs, I could start with my perennial comment that it is not possible to understand the status without looking at the *full* Implementation Program adopted in 2016, which is Chapter 13 of the existing General Plan. The very opening paragraphs of that say the City "*should review the continuing applicability of the programs and update this list as necessary*." It seems telling that in the past 13-1/2 years no updates to the list have been proposed or made, so we are reporting the status of likely outdated goals.

Even then, it is important to read beyond the little policy blurbs quoted in the "Programs" column of the report, and study the paragraphs following the blurbs that explain what they were intended to accomplish.

For example, regarding Implementation Program 1.1, the staff report (page 14-26) correctly notes that in November 2012, with Measure EE, Newport Beach voters were told that if they wanted to be sure they wouldn't have redlight traffic cameras in their city they would need to amend the City Charter to prevent future City Councils from introducing them. And that to do that, they would have to approve, in a single yes-no vote, a charter update package including 37 other, unrelated changes. Among those, was one to remove the Planning Commission's duty to review public works projects – something a former city manager had found cumbersomely pointless.

However, as I pointed out at the Council's March 10 study session on the City's Capital Improvement Program, this did not remove the Implementation Program 1.1 requirement for the Planning Commission to review the City's CIP. So, although the report may say we are implementing the program as prescribed, we are not.

Moreover, the report does not mention the expectation in the explanation of the Program 1.1 policy blurb that implementing it will require the Planning Commission to review not just the City's yearly list of public works and five-year CIP, but those of other agencies doing work in Newport Beach, as well (citing Government Code Sec. 65401).

Implementation Program 2.1 ("Amend the Zoning Code for Consistency with the General Plan"), as another example, is listed as "Complete," but the report fails to mention that the words under the policy blurb included a promise to amend not just the Zoning Code, but also existing special plans and planned community texts. The specific plans were, in fact, repealed rather than amended (with the exception of that for Santa Ana Heights), and it seems unlikely most of the City's many planned community texts were reviewed for consistency with the General Plan.

Many of the other implementation programs, if read in full, contain similar promises that, instead of being fulfilled or revised, have simply been ignored.

Program 24.1, for example, promises the City's Strategic Plan for Economic Sustainability will be reviewed and updated annually as part of the budget approval process. One would not guess this from the report on page 14-51. Nor might one agree this effort is truly "ongoing."

The second part of the annual progress report dealing with the Housing Element (Appendix B starting on page 14-57) should obviously be of interest to the new Housing Element Update Advisory Committee when they meet.

The Dyett & Bhatia memorandum starting on page 14-77 contains some minor errors which I pointed out to the Planning Commission.

Item S19. Amendment No. Three to Professional Services Agreement with Harris Miller Miller & Hanson, Inc. for Aircraft Noise Consulting Services

It is probably best to hope for the best, but not all the previous services provided to the City by HMMH have been of great value.

Although I don't know how much was paid for them, one example is the report[16] dated December 13, 2017, on the calibration of the JWA noise monitors, which as best I can tell made no independent effort toward calibration but simply confirmed the JWA contractors were following an accepted protocols. Another example is the June 2, 2018, report in which HMMH was tasked with making independent measurements, with their own microphones, close to the JWA noise monitors, and then at various remote locations not monitored by JWA. The results were never publicly discussed, but as I recall for the measurements made close to the JWA noise monitors, HMMH concluded the results were acceptably close on average. However, HMMH's measurements for individual flights differed wildly from those of JWA (up to 9 or 10 dB higher or lower) with no explanation of what could account for these astounding inconsistencies.

It is also not encouraging that, according to the reports presented in public at the City's Aviation Committee meetings, none of the variant flight procedures recommended and studied by HMMH to date have, when tested, resulted in a change in noise on the ground perceptible to a human observer.

One hopes the subconsultant being recommended here will, for his $95,000, be able to provide a more tangible and lasting result.

Since it does not seem to be mentioned in the staff report, it may be useful to know the contract in question is numbered C-7297-2 in the Clerk's archive. It was originally entered into without Council involvement since the initial dollar amount ($110,000) was under the City Manager's (rather generous) signing limit.

It was also not at that time an on-call contract, but rather one for a quite specific job ("Aircraft Noise Abatement Departure Procedure (NADP) Analysis") expected to result in a deliverable report, expected by June 30, 2019, at the latest. The first amendment, approved by the Council, added $30,000 to the analysis task (which was the first of four tasks culminating in the report). The second amendment, as indicated in the present staff report, extended the term to June 30, 2020.

To date only one report – dated September 26, 2018, and dealing only with Task 1 -- has been made public. And at some point the former agreement seems to have devolved into a sort of on-call contract rather than a commitment to a set of pre-determined tasks leading to a definite result.

This is reflected in the Scope of Services shown on page S19-8, which is entirely new.

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[16] Review of the Annual Preventative Maintenance and Calibration Report Conducted by BridgeNet International for John Wayne Airport (SNA) - HMMH Project Number 309550