



**CITY OF**

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# **NEWPORT BEACH**

## **City Council Staff Report**

June 23, 2020  
Agenda Item No. 22

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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**TITLE:** Resolution No. 2020-65: Confirming the Levying of Assessments and Appointment of the Advisory Board of Directors for the Newport Beach Restaurant Association Business Improvement District's Fiscal Year 2020-2021

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### **ABSTRACT:**

Pursuant to the Parking and Business Improvement Area Law of 1989 (1989 Law), codified in Streets and Highways Code Sections 36500 et seq., the annual renewal of a 1989 Law Business Improvement District requires a public hearing to determine if a majority of the members protest the assessments or a specific improvement, activity or benefit proposed by the Newport Beach Restaurant Association Business Improvement District (NBRA BID) for Fiscal Year 2020-21 (FY 2020-21). If a majority protest is not received, the City Council may confirm the levying of assessments for FY 2020-21 and appoint the advisory board of directors to the NBRA BID.

### **RECOMMENDATIONS:**

- a) Hold a public hearing regarding the renewal of the Newport Beach Restaurant Association Business Improvement District for Fiscal Year 2020-21;
- b-1) If the protests received are less than 50 percent of the total assessment amount, adopt Resolution No. 2020-65, *A Resolution of the City Council of the City of Newport Beach Confirming the Levying of Assessment for the Fiscal Year of July 1, 2020 to June 30, 2021 for the Newport Beach Restaurant Association Business Improvement District*;  

or
- b-2) If the protests received are 50 percent or more of the total assessment amount, abandon the proceedings to renew the Newport Beach Restaurant Association Business Improvement District;
- c) 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

- d) Appoint the following Newport Beach Restaurant Association Business Improvement District members to serve as the Newport Beach Restaurant Association Business Improvement District's Advisory Board of Directors for Fiscal Year 2020-21:

<b>BID Member</b>	<b>Representing BID Business</b>
Mark Bunim	Hopdoddy Burger Bar
Philip Crowley	Modo Mio Cucina Rustica
Thaddeus Foret	Pirozzi
Juan Carlos Godinez	Tavern House Kitchen + Bar
Marin Howarth	Arc Butcher & Baker
Jordan Otterbein	A Restaurant and A Market; CDM
Kenyon Paar	Five Crowns
Nicole Paskerian	Buddha's Favorite
Eunjoo Pluenneke	Balboa Lily's; Boardwalk by Balboa Lily's
Christopher Roman	Fork, Knife + Spoon
Talia Samuels	Representing Mutt Lynch's

#### **FUNDING REQUIREMENTS:**

The City of Newport Beach (City) contracts with a vendor (the NBRA BID pays for these services) to collect the member assessments on behalf of the NBRA BID and remits the monies directly to the NBRA BID's bank account. The monies are used for funding the activities described in the annual report, which was originally filed with the City Council on June 9, 2020.

#### **DISCUSSION:**

The Newport Beach Restaurant Association Business Improvement District (NBRA BID) was formed in 1995 (Ordinance 95-55) pursuant to the Parking and Business Improvement Area Law of 1989 (1989 Law), codified in Streets and Highways Code Sections 36500 et seq., for the purpose of financing activities and programs to benefit businesses located and operating in the area. The NBRA BID encompasses any food service business within the City boundaries, such as restaurants, markets with dine-in or take-out service, bars serving food, dessert shops, coffee shops, juice bars, catering companies or similar food-related businesses.

In accordance with the 1989 Law, a public hearing must be held prior to the City Council adopting a resolution to confirm the BID's renewal. Owners of member businesses may submit written or oral protests against the assessment levy and / or against the furnishing of a specific type of improvement, activity or benefit proposed for the BID's upcoming fiscal year.

- If the majority protest is from member business owners that pay 50 percent or more of the total assessment to be levied, the City Council should abandon the renewal. If abandoned, no further proceeding to renew the BID shall be taken for a period of one year from the date of the finding of a majority protest by the City Council.
- If the majority protest is only against the furnishing of a specific type or types of improvements, activity or benefit within the BID, those types of improvements, activities or benefit zones shall be eliminated.
- If protests represent less than 50 percent of the total assessment, the City Council may renew the BID.

During its June 9, 2020 regular meeting, the City Council approved the NBRA BID's FY 2019-20 Annual Report and FY 2020-21 Budget, adopted a Resolution of Intention (Resolution 2020-59) to levy and collect assessments in FY 2020-21, and set a public hearing for June 23, 2020. See Attachment A for the June 9 staff report (without attachments).

A public notice of Resolution No. 2020-59, declaring the City Council's intention to levy and collect assessments for the renewal of the NBRA BID and setting the time and place of the public hearing, was published in the Daily Pilot newspaper (print edition) on Saturday, June 13, 2020. In addition, it was posted on the City's website ([newportbeachca.gov/publicnotices](http://newportbeachca.gov/publicnotices)) and, per the 1989 Law, a copy was mailed to each member of the NBRA BID.

At the time this staff report was published by the City Clerk, no letters of opposition have been received to the NBRA BID's renewal, the levying of assessments, or to a specific improvement, activity, or benefit proposed. Any subsequent correspondence, with a tabulation of protests, will be provided to the City Council at its June 23, 2020 meeting.

### **Advisory Board Appointments**

The City Council has the authority to appoint an advisory board of directors to the NBRA BID. The City may limit membership on the board to persons subject to the BID assessment or a designated representative of a stakeholder business. The advisory board that serves the NBRA BID is different and distinct for other City advisory bodies and is not appointed in the same manner. The City relies upon the Streets and Highways Code for BID advisory board appointments rather than Council Policy A-2. The NBRA BID's bylaws allow for the appointment of up to eleven (11) board members.

The City Clerk posted a vacancy announcement for the eleven (11) available NBRA BID advisory board seats (board members serve a one-year term). To be eligible to serve on the NBRA BID Board, the applicant must be the member business owner or their designated representative. In addition, the business must be in good standing (no debt owed to the City or the NBRA BID). Fourteen (14) eligible applications were received in response to the vacancy announcement published on April 14, 2020.

The NBRA BID Board met on May 24, 2020 to review the applications and recommended the nomination of eleven (11) applicants as recommended above for City Council appointment to the FY 2020-21 NBRA BID Advisory Board of Directors:

**ENVIRONMENTAL REVIEW:**

Staff recommends the City Council find this action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

**NOTICING:**

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

**ATTACHMENTS:**

Attachment A – June 9, 2020 Staff Report (without attachments)  
Attachment B – Resolution No. 2020-65