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June 23, 2020, Council Agenda 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 June 1, 2020 Special Meeting and June 9, 2020 City Council Meeting

Suggested corrections: 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 416, Item 1, paragraph 3: "*Council Member Muldoon clarified that the $500 million for Orange County was* ~~***dispersed from***~~ ***disbursed by*** *the White House through the U.S. Treasury Department*, …"

Page 416, Item 1, last paragraph, sentence 2: "*He stated his* ~~***discord***~~ ***disagreement*** *with using population on a Countywide basis;* …"

Page 417, paragraph 3 from end: "*In response to Council Member Muldoon's questions, City Manager Leung indicated that staff has generally seen the tiers separated by the number of employees, but noted there is flexibility to define the number of employees and staff can work with the administrator to make the* ~~***determinant***~~ ***determination***. *Mayor O'Neill suggested increasing the* ***top tier*** *to a maximum of 30 employees*." [See video at 35:10. None of the indicated words were spoken, put seem to describe the intent. For example, the Mayor actually referred to increasing "11 to 20" to "11 to 30" – which seemed to be a reference to the top tier.]

Page 418, paragraph 4: "*Mayor O'Neill believed a business should have a business license for six months prior to applying for a grant and have 30 employees* ***or less****, and added that the definition of "good standing" should include "business license fees and business improvement district assessments.'"*" [see video at 44:10]

Page 419, last paragraph: "*City Manager Leung reported that staff does not have a breakdown of business licenses by* ~~***employee***~~ ***employees****, but there are approximately 500 businesses in the restaurant/hotel category and about 2,500 in general consumer/retailers*." [note: in the fourth paragraph on the same page, the Assistant City Manager reported the number of business licenses in various employee size categories. Apparently, what was meant here (at 1:19:30 in the video) was that same detail was not immediately available within the business type categories mentioned.]

Page 422, Council Member Brenner, last bullet: "*Requested a future agenda item to discuss the Ensign Intermediate School parking project at a future council meeting*" [note: this request would normally appear under "MATTERS WHICH COUNCIL MEMBERS HAVE ASKED TO BE PLACED ON A FUTURE AGENDA" on the current agenda. But it does not.]

Page 422, Item XII: This consists of three bullet points.

Per the video at 17:00, each should state:

"It was the **unanimous** consensus of the City Council to bring this item back at a future meeting."

In addition, the third bullet should read:

"*Resolution supporting and commending Hoag Hospital for their leadership and effort during the coronavirus pandemic and supporting their **ownership** independence [O'Neill]*"

[the Mayor twice emphasized he wanted the indicated phrasing]

Page 422, Item XIII, paragraph 2: "*Regarding Item 8 (Professional Services Agreement with Erickson-Hall Construction for Lido Fire Station No. 2 Construction Management), Jim Mosher inquired whether funding has been budgeted for the **construction as well as the** construction management contract and whether construction will be financed*."

Page 425, Item 11, paragraph 4: "*Council Member Muldoon recused himself from CIP discussions relative to the Balboa Island and Corona del Mar Microtransit Feasibility Study (Items 5, 11 and 12 **of the Proposed Budget Revisions**) due to business interest conflicts*." [without the indicated addition it is difficult to guess what "items" the Council members are referring to in this and subsequent parts of the draft minutes for this agenda item]

Page 426, paragraph 3 from end: "*Finance Director Matusiewicz reported that, **quite often, revenues exceed expenditures** when the budget is reviewed in its totality; however, that is not the case in the operating budget, but frequently the case in the capital and special revenue budgets, explained that the City spends in arrears because revenue not spent in prior years is added to the current year revenue for capital projects, and noted that Mr. Mosher appeared to point to current year revenues only rather than the beginning balance plus current year revenues*." [this is indeed what was said, but I believe Director Matusiewicz meant to explain why, "*quite often, **expenditures exceed revenues***" in a "balanced" budget proposal]

Page 427, Item 12, paragraph 2: "*Jim Mosher noted the ordinance sets some fees, such as appeal fees, as flat fees when ~~**they should be**~~ **the fee schedule shows them being** adjusted for cost-of-living*."

Page 428, paragraph 3: "*City Traffic Engineer Brine continued the presentation, discussing ~~**significant**~~ **significance** thresholds, the step-by-step process, the General Plan Update, mitigation measures, and an amendment to City Council Policy K-3*." [CEQA thresholds are called "thresholds of significance"]

Page 428, paragraph 3 from end: "David Tanner indicated he wrote another letter late this afternoon that expressed his concerns, stated he believed this is a tax to reduce greenhouse gas, noted that **Exhibit 1** is different than what is shown in Attachment **3** and is new information, believed projects that are in these areas and that meet the screening criteria will not pay the tax based on the assumption that the projects will not generate significant VMT, …"

> [I believe Mr. Tanner misspoke, and meant to say "Attachment **C**" to the staff report (the "City SB 743 Implementation Guide," which he referred to as "the implementation plan") and that by "Exhibit 1" he means Slide 9 from City Traffic Engineer Tony Brine's PowerPoint presentation, showing the green areas the Council was told would be exempted from CEQA traffic analysis. This remains a problem because staff did not request the Council to make any changes to the Guide, and the Policy K-3 adopted on June 9 actually calls for use of the version of the Guide dated "April 6, 2020" – which contains an older Figure 1 incorrectly showing the exempted areas. In the last paragraph on page 428, Mayor O'Neill asked staff to

correct the inconsistencies pointed out by Mr. Tanner, but ultimately the resolution was adopted without those corrections.]

Page 431, paragraph 3: "*Mayor O'Neill reported that the opening of the Balboa Library Branch in 1929 was the start of the public library system*."

[For those interested, a detailed account of the early days of the Newport Beach Public Library can be read online starting on page 70 of H. L. Sherman's 1931 *A History of Newport Beach*, a book published by the City in commemoration of the City's 25th anniversary. As explained there, the library facility that opened in 1929 (designed by Mr. Sherman) was the third NBPL location, and the second NBPL facility to be completely owned by the City.]

Item 3. Ordinance No. 2020-10: Amending Exhibit A to Newport Beach Municipal Code Section 3.36.030 Related to Cost Recovery

As previously pointed out, the fee schedule adopted by the companion Resolution No. 2020-29 is inconsistent with the proposed ordinance. For example, the ordinance sets a flat fee of $1,715 for an unsuccessful appeal to the Building and Fire Board of Appeal, with no mention of future adjustments. Yet line 3 of the fee schedule revisions effective August 22, 2020, says that fee will be subject to an annual cost of living adjustment. The two statements cannot be reconciled.

One might guess the ordinance prevails over the resolution, so the fee schedule is incorrect. However, both are, or soon will be, what has been adopted.

Item 5. Resolution No. 2020-61: Supporting the Orange County Board of Supervisors' Determination that Houses of Worship are Essential Services and Supporting In-Person Religious Assemblies

As previously noted, this resolution seems an improper use of taxpayer resources.

Not only are the U.S. and California Constitutions supposed to protect the public from its government taking action of religious matters, but on May 29, the United States Supreme Court effectively endorsed the validity of California Governor's coronavirus orders as applied to houses of worship by denying a challenge to them in *South Bay United Pentecostal Church v. Newsom*.

That denial of relief from the Governor's orders would presumably be even stronger under the California Constitution, which the Council is specifically sworn to uphold, because Article I, Section 4 ensures with regard to the guaranteed "*free exercise and enjoyment of religion without discrimination or preference*" that "***this liberty of conscience does not excuse acts*** *that are licentious or* ***inconsistent with the*** *peace or* ***safety of the State***." The present resolution attempts to do exactly that by using liberty of conscience to excuse behaviors which would be deemed to endanger public health in an exactly comparable setting if that setting were deemed non-essential because non-religious (for example, a choral society meeting to rehearse music in a community room, or persons gathering en masse to attend a lecture series at the City Library – things which the Council is *not* petitioning to resume).

Item 12. Approval of COVID-19 Economic Relief Funding Support for the Balboa Island Merchants Association, Inc.

I do not support this item, but it might be noted that at according to the minutes of the May 26, 2020, regular meeting of the City Council (page 414), there was "*a 5-2 straw vote to budget $20,000 to Balboa Island Merchants Association Inc.*" and *"a 6-1 straw vote to budget $20,000 to the Balboa Island Merchants Association*."

Admittedly, there was considerable confusion as to which organization was which, but the current staff report provides no explanation of why no comparable grant is being proposed for the group that got the larger vote.

Did something happen non-publicly between the May 26 meeting and the present one?

Item 15. Planning Commission Agenda for the June 18, 2020 Meeting

The Council may notice that Item 4 on the Planning Commission's agenda was consideration of a site development review and coastal development permit for the proposed building of the new Fire Station No. 2 at 2807 Newport Boulevard (PA2019-098).

Both of these actions required consideration, for the first time in public (at least to my knowledge), of whether the fire station proposal was consistent with the property's current zoning, which is Visitor Serving **Commercial** (CV).

That designation is described on page 3-12 of the Land Use Element of our General Plan as "*intended to provide for accommodations, goods, and services intended to **primarily** serve visitors to the City of Newport Beach*." Nearly identical language is found on page 2-2 of our Coastal Land Use Plan, in Subsection 20.20.010.I of our Zoning Code and in Subsection 21.20.010.E of our Local Coastal Program Implementation Plan.

A fire station is very clearly not **commercial**. Nor, do I think, is even this one being built to **primarily** serve visitors[1]. Nor (despite what the Council was told in 2017 – see below) are government facilities listed as an allowed use in the CV district in Table 2-4 in Subsection 20.20.020 of the Zoning Code or in Table 21.20-1 in Subsection 21.20.020 of the LCP Implementation Plan.

Fire stations, by contrast, *do* fit in the PF (Public Facilities) land use designation, which is *"intended to provide public facilities, including public schools, cultural institutions, government facilities, libraries, community centers, public hospitals, and public utilities*." They are allowed on PF-designated land with approval of a Minor Use Permit and CDP.

The City's handling of this is disturbing, because rather than going through the public process of rezoning the future fire station site from CV to PF, the Planning Commission was told that they could rely on an unsigned "Director's Determination" apparently posted (with no public notice) in an obscure location on the City's website on October 13, 2017, a month after the City Council

[1] If the City of Newport Beach had a true interest in providing for the health and safety of visitors, as opposed to residents, it would long ago have built visitor restrooms at "the Wedge."

had, as Item 26 at its September 12, 2017, meeting, publicly agreed to purchase the 2807 Newport Boulevard property for fire station purposes.

At that September 12, 2017, meeting, under "Entitlements, Design, and Construction" on page 5, the staff report erroneously assured the Council that "*Fire stations are a permitted use within*" the Visitor-Serving Commercial (CV) Zoning District, which they are not. It was also told that "*To comply with the California Environmental Quality Act (CEQA), staff anticipates a Mitigated Negative Declaration will be required*." No need for a Director's Determination was mentioned.

The October 13, 2017, Director's Determination purports, without any need for rezoning, to use the authority granted to the Community Development Director by Subsection 20.12.020.E[2] of the Zoning Code and Subsection 21.12.020.E of the IP (Rules of Interpretation - Unlisted Uses of Land) to add fire stations as an allowable use in the CV district. But the determination was clearly erroneous since to add an unlisted use, the Director has to make two findings that could clearly not be made:

1. That a fire station is functionally equivalent to one of the listed uses (no equivalent approved use was identified, nor could it be, since a fire station is unlike any of the visitor-serving commercial uses listed under CV)
2. That a fire station is not a listed use in some other land use district (but fire stations *are* a species of "government facility" which *is* a listed use in the PF district)

Equally disturbingly, at the June 18 Planning Commission meeting, our Deputy Director assured the Commissioners that the Council had reviewed and approved the 2017 Director's Determination (see PC video at 1:26:00). I am unable to find any evidence that happened, at least not publicly.[3]

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[2] "***If a proposed use of land is not specifically listed*** *in Part 2 of this title (Zoning Districts, Allowable Land Uses, and Zoning District Standards),* ***the use shall not be allowed****, except as provided below*: …"

[3] In addition to the September 12, 2017, meeting at which the purchase of the parcel was publicly approved, the Council has heard about the Fire Station 2 relocation proposal at the following meetings:

- 2/14/2017 - Item IV.C - Closed Session (Real Property Negotiations)
- 7/25/2017 - Item IV.C - Closed Session (Real Property Negotiations)
- 8/14/2018 - Item 9 – Temporary use for off -street parking (which *is* a listed use in the CV district)
- 09/24/2019 - Item 21 - continued to 10/22/2019
- 10/22/2019 - Item 15 - Approval of conceptual design and project budget
- 06/09/2020 - Item 8 - Approval of construction management agreement

At none of these was there any public mention of zoning or the need for a Directors Determination, let alone the review and approval of one.

More recently, on April 1, 2020, after seeking encouragement from the Planning Commission, the Director added certain kinds of medical offices as an allowed use in the Professional and Administrative (PA) District of the Santa Ana Heights Specific Plan (SP-7) that could subsequently be approved by the Zoning Administrator rather than the Planning Commission. That determination was made without citing at all its authority for adding unlisted uses to those listed in the code, or the findings necessary to do so, while acknowledging that medical offices are a listed use in a different district (BP) of the Specific Plan – and directly contradicting the express requirement in Section 20.90.130.B.2 that such unlisted uses continue to require approval by the Commission.

Staff's avoidance of the required public process for rezoning the property from CV to PF avoided such important General Plan and Coastal Act questions as how the loss of visitor-serving commercial land would be mitigated. At a minimum, this would have triggered recognition that adding a fire station entitlement at this location needed to be offset by removing it from the current fire station site. But even then, this would result in a net loss of CV acreage, since the new site is larger than the old, and the merits of doing that would need to be debated.

In addition, it is not clear how the anticipated Mitigated Negative Declaration turned into the claim of a Class 32 (Infill) exemption from CEQA, with no mitigation, which the Planning Commission was asked to approve at its June 18 meeting -- with no mention of staff's former expectation that an MND would be needed.

As I tried to tell the Planning Commissioners, this a textbook example of the City ignoring its own adopted rules, and instead trying to force a square peg into a round hole. Much as Newport Beach is not a commercial seaport, a government-operated fire station is not a visitor serving commercial establishment.

This property needs to be rezoned to PF. Doing less makes a mockery of our claim to have land use planning.

Item 19. Ordinance No. 2020-15: Amending the Newport Beach Municipal Code Restrictions for Short Term Lodging; and Emergency Ordinance No. 2020-006: Restricting the Short Term Rentals on Newport Island to a Minimum of Four Consecutive Nights

Attachment A – Ordinance No. 2020-15

Page 19-9, end of paragraph 2: "… *to maintain harmony with surrounding uses and all transient occupancy taxes and visitor* ~~***serving***~~ ***service*** *fees are properly collected and remitted to the City.*"

Page 19-9, Section 1: I am unable to find any explanation in the staff report of the reason for modifying NBMC Section 3.16.060 (Registration of Hotel).

What is an example of an "*operator of a hotel required to obtain a short term lodging permit pursuant to Section 5.95.020*"? Section 5.95.020 (both currently and as proposed) applies only to lodgings in residential districts, and I thought hotels were not an allowed use in a residential district (even though many may see STL's as akin to hotels). If hotels do qualify for STL permits, are they issued on a room-by-room basis? And does the existence of a single STL permit exempt the entire hotel from the normal hotel permitting requirements?

Page 19-10, Section 5.95.005: "*B.* ***Over a thousand dwelling*** *units within residential zones near the City's beaches and harbor are rented for* ~~***less than***~~ *thirty (30) consecutive calendar*

*days **or less** with the vast majority of those rentals occurring during the summer when the demand for parking and City services is the greatest*."[4]

[It might be noted that the original NBMC Subsection 5.95.05.B enacted by Ordinance No. 92-13 said "***Several thousand** dwelling units within residential zones near the City' s beaches and harbor are rented for less than thirty 30) days*." Either it was exaggerating, or there was a substantial decline in activity before the recent surge.]

Page 19-11:

- The first line of Subsection E ends with an extraneous apostrophe. It should be deleted.
- In Subsection I, "*are*" has been incorrectly changed to "*is*". It should be restored.
- Subsection L should read: "*The restrictions of this chapter are necessary to preserve the City's housing stock~~,~~ **and** the quality and character of the City's residential neighborhoods as well as to …*"

Page 19-12, Section 5.95.010:

- "*C. "Booking transaction" shall mean any reservation or payment service provided by a person who facilitates a short term lodging rental transaction between a transient user and owner for the use of a unit for a period of ~~**less than**~~ thirty (30) consecutive calendar days **or less**.*"
- "*G. "Home-sharing" shall mean an activity whereby the owner hosts a transient user in the owner's lodging unit, for compensation, for periods of ~~**less than**~~ thirty (30) consecutive calendar days **or less**, during which time the owner of the unit lives onsite, in the unit, throughout the transient user's stay and the owner, the transient user and any other occupants live together in the same unit as a single housekeeping unit*."

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[4] The rule regarding the duration of a short term rental is stated in this way, and I believe "correctly," in the Rules to Remember (about STL's) on the City's website. The rule is presumably derived from the authorization for cities to collect transient occupancy tax on rentals in California Revenue and Taxation Code Section 7280(a) ("*unless the occupancy is for a period of more than 30 days*"), as well as the reference to that in Civil Code Section 1940. That specifies 1 through 30 day rentals, inclusive, are eligible for TOT, while 31, 32 day and more rentals are not. "Transient" is defined as "***thirty (30) consecutive calendar days or less***" in NBMC Section 3.16.020, but our municipal code continues to misstate the rule as "*less than 30 days*" (that is 1 through 29 days, only) in the definition of Visitor Accommodations (Land Use) -- "Bed and breakfast inn" in Subsection 20.70.020.V as well as in the recently adopted Subsection 20.38.060.A.3.f (prohibiting short-term rentals on properties taking advantage of the cottage preservation exemption for floor area expansion) and in the corresponding parts of Title 21 (when, and if, enacted).

- "*I. "Lodging unit" or "unit" shall mean a "dwelling unit" as that term is defined in Chapter 20.70, of Title 20 of this Code.* ***An accessory dwelling unit shall not be considered a lodging unit or unit for purposes of this chapter.***" [The proposed addition of the highlighted words seems unnecessary and confusing to me. It gives the impression ADU's can be rented independent of the restrictions in this chapter. In fact, short-term rental of ADU's is separately prohibited by Section 20.48.200.G, as is short-term rental of units on properties that have enjoyed the cottage preservation exemption. If those further restrictions need to be repeated in this chapter, it would seem they should go in the proposed Section 5.95.015 (Residential Properties Eligible for Short Term Lodging Permits) and not in the definition of "Lodging unit."

Page 19-13:

"*M. "Short term" shall mean a lodging unit that is rented or leased as a single housekeeping unit for a period of* ~~***less than***~~ *thirty (30) consecutive calendar days* ***or less****. This also includes home-sharing*."

"*P. "Transient" or "Transient user" shall mean any person or persons who, for any period* ~~***less than***~~ ***of*** *thirty (30) consecutive calendar days* ***or less,*** *either at his or her own expense, or at the expense of another, obtains lodging in a lodging unit or the use of any lodging space in any unit, for which lodging or use of lodging space a charge is made*."

Section 5.95.015, paragraph 2: "~~***Subsequent to June 1, 2004, no***~~ ***No*** *annual permit shall be issued to or renewed for any dwelling unit on any parcel zoned for "Single-family Residential (R-1)" or that is designated for a single-family residential use as part of a Planned Community Development Plan, Specific Area Plan or Planned Residential District, unless a permit* ~~***has previously***~~ ***had*** *been issued for that lodging unit* ***prior to June 1, 2004*** *and* ~~***the permit was not subsequently revoked***~~ ***remained in continuous good standing***."

[The first suggested corrections to this paragraph are matters of style. But the final one is what I believe is a more accurate statement of what I have heard is the intended policy: namely, the grandfathered permits are to be lost not *just* because of revocation, but for *any* lapse of continuity – for example, failure to renew.

However, as this section appears in the staff report, any property that *ever* had a STL permit prior to June 1, 2004, and had not been the subject of a successful revocation proceeding, would be eligible to obtain a new permit – even if the prior permit was many years in the past.

As was previous noted when similar revisions were before the Council as Item 4 on the February 25 consent calendar, this entire passage disallowing short-term rental of single-family homes contradicts the narrative in Section 2.3.3 (Lower Cost Visitor and Recreational Facilities) of our Coastal Land Use Plan, which notes with approval that in Newport Beach "*a significant number of* ***single-family homes****, condominiums, and apartments serve as overnight visitor accommodations*," often "*within walking distance to the water*." "*Because they typically provide additional sleeping accommodations and fully equipped kitchens, they provide an accommodation option comparable to or less expensive than staying in hotels and going out to restaurants for meals. Particularly for large families, these dwelling units provide an affordable alternative to hotels and motels*."]

Section 5.95.020 (Permit Required). "*No ~~owner of a lodging unit~~ **person** shall advertise for rent or rent a lodging unit located within a residential district for a short term without a valid short term lodging permit for that unit issued pursuant to this chapter*."

> [Saying "*owner*" makes it confusingly appear possible a non-owner lessee of lodging unit can rent it in contradiction to the intended new prohibition of that practice in Subsection 5.95.040.A.1 on page 19-15.]

Page 19-15, Section 5.95.035: *"**If permits are available for issuance,** no application filed by an owner for an annual permit or renewal of a permit for a unit eligible to be used as a short term lodging unit, as provided for in Section 5.95.015 and this Code, shall be denied unless: …*"

> [The highlighted words make little since unless there is a limit on the number of permits issued, which there does not appear to be. It might also be noted this section is oddly titled "Denial of Permit" but it is worded in such a way as to require *approval* in most cases, and in no case to *require* denial. I would suggest if be retitled to "Approval of Permit" and reworded to say: "*An application … will be **approved** unless*: …" followed by a statement that "*Under any of those conditions it **may** be denied*" OR "*Under any of those conditions it **must** be denied,*" depending on which of those policies is desired. The policy as provided in the staff report is the former, but I suspect the latter was intended.]

Page 19-18:

"*19. The owner shall allow the City to inspect the short term lodging unit to confirm the number of bedrooms, gross floor area, and number/availability of parking spaces, seven (7) calendar days after the City serves the owner with a request for inspection in accordance with Section ~~1.08.090~~ **1.08.080***. …"

"*20. The owner shall provide the City with a copy of any written rental agreement(s) and the good neighbor policy, within seven (7) calendar days after the City serves the owner with a notice of request for written rental agreements and the good neighbor policy in accordance with Section ~~1.08.090~~ **1.08.080***."

Page 19-19:

Paragraph 2: "*B. Use street parking prior to utilizing all available onsite parking space(s) for the lodging unit*." [Is it really possible to prohibit people from using public parking?]

Paragraph 2 from end: "… *Nothing ~~on~~ **in** this subsection shall be deemed to relieve an operator, as that term is defined in Sections 3.16.020 and ~~3.28.020~~ **3.28.010***, …"

Page 19-20:

"*E. The provisions of ~~the~~ **this** section shall be interpreted in accordance with otherwise applicable state and federal law(s) and will not apply if determined by the City to be in violation of, or preempted by, such law(s)*."

Page 19-21:

Proposed Subsection 5.95.065.A.1 is ambiguous as to whether it means a suspension is prompted by the violation of the *same* permit condition (or code provision) more than once in 12 months, or by the violation of any combination of two or more permit conditions (and code

provisions) in 12 months. It appears to be the former, but I suspect the latter may be intended. If so, it should be revised to say what it means.

End of Subsection 5.95.065.A.3: "*A loud or unruly gathering that occurred* ~~***prior to the passage of***~~ ***within the*** *fourteen (14) calendar* ~~***days from***~~ ***day period beginning with*** *the mailing of notice to the owner in compliance with Section 10.66.030(0) shall not be included within the calculation of the two or more loud or unruly gatherings required to revoke a short term lodging permit*." ["*prior to the passage of*" means ***any*** date (going back to biblical times) before the date of mailing + 14 days, which is clearly not what was intended]

Page 19-22:

Subsection 5.95.065.A.6 has the same problem as just stated with respect to 5.95.065.A.1. Is it intended to mean three or more violations of the same provision? Or any combination of three or more violations?

Subsection 5.95.065.B.1 does not make clear who a request for hearing is to filed with. The Finance Director? Or the City Clerk?

Page 19-23:

Section 5.95.080: "*B. The Finance Director shall close any permit that has no short term lodging activity for a period of two consecutive years* ***as evidenced*** *by remitting zero dollars on the required transient occupancy tax and visitor service fee forms* ~~***and***~~ *or has failed to return the transient occupancy and visitor service forms*."

Attachment C: Emergency Ordinance No. 2020-006

It seems to me this is being introduced under false pretenses as an "emergency" ordinance.

In presenting it that way, City staff seems to be operating under the illusion that any modification to an emergency ordinance is itself an emergency ordinance. But that is not what the City Charter says.

Restricting short-term rentals may have plausibly been seen as "*necessary as an emergency measure for preserving the public peace, health or safety*" per City Charter Section 412.

I see nothing about *relaxing* restrictions that is similarly urgent or necessary to preserve peace, health or safety. If anything, some will believe resuming rentals on Newport Island will jeopardize the health of nearby residents. **As a result of its non-urgent nature, I believe that no matter how many Council members may vote for this, it needs to follow the normal path of an ordinance under Section 412, with a first reading and publication, and adoption no sooner than five days later**.[5]

In that regard, the proposed **Section 1** on staff report page 19-46 makes no sense: relaxing restrictions on rentals on Newport Island is clearly **not** "*necessary to help limit the spread of*

[5] By contrast, Emergency Ordinances No. 2020-02 and 2020-03, adopted on May 12, *could* be said to be emergency measures, because without them, the original Emergency Ordinance No. 2020-01 would have expired on May 20, reputedly endangering lives.

COVID- 19" and it is *especially* unnecessary because of the conditions cited on the Island "*which increases contacts between persons and could **lead** to the spread of COVID-19*."

As to its substance as a non-urgency ordinance, in **Section 2** (page 19-47) I continue to fail to be unsure how the City can be sure of (and therefore enforce) compliance with a requirement that visitors be physically present in the short-term rentals for at least four consecutive nights. It seems clear they could rent for four nights, but choose to stay for only one (or none), which would actually result in less exposure of residents to the visitors than a full four-night stay. It seems to me we should, instead, require an *interval* of at least four days between successive rentals, without consideration of their duration – something easily monitored and enforced. Is the idea that we expect to get a better class of renters if they are forced to pay for four-nights?

Section 3 (page 19-47) should say "*Emergency Ordinance No. 2020-003 is hereby repealed; provided, however, that the repeal of **Emergency** Ordinance No. 2020-003 shall not affect …*" to prevent confusion with *regular* Ordinance No. 2020-003 (which has to do with lobbyist registration).[6]

Item 21. Resolution No. 2020-64: Confirming the Levying of Assessments and Appointing the Advisory Board of Directors for the Corona del Mar Business Improvement District's Fiscal Year 2020-21

There was a question at a recent Council meeting about how many BID "members" (other than the self-nominated, Council-appointed Board) attended the annual meeting.

I happen to have been at that annual meeting, which was held by conference call, with non-Board members able to participate only through a phone in the Community Room (see May 28, 2020, agenda packet). The draft minutes of that meeting have been posted, and they confirm that the only person present in the Community Room in addition to me was Amy Senk, a sometimes reporter for Stu News. Neither of us are BID members. So, the answer to the Council question is: **zero** non-board members paying assessments to the BID bothered to attend or listen in to the annual meeting.

This is not to take away from the service and dedication of the Board members, but it does indicate interest in what they do with the involuntary assessments is slight to non-existent.

Not to be too snarky, but the Council might also note that one of the most dedicated of those Board members pays dues on behalf of Upland Stor King, which is apparently some 50 miles from Corona del Mar. And while our business license database may list an address for it in the CdM business district, that is not one currently on file with the California Secretary of State. In fact, it seems to be the address of Scott Palmer's Business Info Data Systems Inc, former administrator of the City's BID's and incorporator the Balboa Island and Balboa Village merchants associations (which also use the same address: 2865 East PCH, Suite 360).

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[6] This whole business of numbering emergency ordinances separately from regularly-adopted ordinances seems ill-conceived, and likely to lead only to confusion. I believe ordinances should be numbered in sequence. If adopted using the emergency feature of Charter Section 412, be so identified in the title and body.

Item 22. 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

This year's annual NBRA BID meeting was held by WebEx on April 22 and live-streamed on the City website. I don't know how many people viewed the stream, but as indicated in the draft minutes, the only person to call in was Chris Trela of the *Newport Beach Independent*. None of the non-Board members assessed by the BID did so.

The Council may wish to recall that in 2018, the Board chartered a Hornblower Cruise ship for the BID's March 26 annual meeting. This attracted a slightly larger assemblage guests, about ten of whom appear to have been non-Board members subject to the assessment. The Brown Act requirement for public access forced the business portion of that meeting to be held while the ship was in dock. But that concluded, the Board and guests departed for a harbor cruise on which BID business was presumably not discussed. It was claimed that the cost of this was within the budget pre-approved as part of Item 5 on May 23, 2017, Council consent calendar. The Council may wish to enquire if it approved a similar expenditure of assessments in the budget approved on June 9 this year. There seems something questionable about using government authority to collect funds from some 400 for the entertainment of less than 20.

Item 23. Ordinance No. 2020-16: Introduction of a Nonconforming Sign Code Amendment

I spoke in favor of eliminating the abatement requirement for existing non-conforming signs when this proposal was before the Planning Commission. I continue to hold that position.

To me, it may have made sense in 2005 (see Item 11 from September 13, 2005, and references therein) to require new signs on new buildings to adopt a more modern style, but I can see no reason why it would have been thought desirable to actively require the owners of existing signs to upgrade to a style that may not fit the style of their buildings.

Why should we want to suppress our heritage?

The old signs go with the old buildings and old businesses, and their variety is what contributes to the somewhat funky charm of a California beach town. None of them offend me.

Should this sentiment prevail at Council, as it did unanimously before the Planning Commission, in addition to the code sections cited as needing amendment on page 23-3 of the staff report, some rewriting would also be required of existing NBMC Section 20.42.180 (Heritage Signs). In effect, all the older non-conforming signs would become heritage signs.