

## August 25, 2020, City Council Agenda Comments

The following comments on items on the Newport Beach City Council [agenda](#) are submitted by:  
Jim Mosher ( [jimmosher@yahoo.com](mailto:jimmosher@yahoo.com) ), 2210 Private Road, Newport Beach 92660 (949-548-6229)

### ***Item 1. Minutes for the July 28, 2020 City Council Regular 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 479**, Item XI, Dixon comments, bullet 3: “*Reported the Aviation Committee has received recommendations from ~~the Council ad hoc committee its subcommittee of which she is a part.~~*” [See [video](#) at 20:20. The reference was to an ad hoc subcommittee appointed by the [Aviation Committee](#), *not* to the Council’s (unofficial?) ad hoc committee on JWA issues, consisting of Council members Dixon, Herdman and Muldoon, which may or may not still exist.]

**Page 480**, O’Neill comments, bullet 1: “*Announced the housing ~~ad hoc committee subcommittee met.~~*” [As stated in video at 25:13. This was apparently a reference to the [Housing Element Update Advisory Committee](#), which met on July 15 – and may meet again on September 2.]

**Page 483**, paragraph 5 from end: “*Council Member Duffield did not see how one could relate homes and money to health, indicated the City has never helped Hoag Hospital, to his knowledge, believed health is ~~the first~~ priority, and expressed his desire to help Hoag and not stand in their way.*” [from the video the actual words were: “you have to have health first.”]

**Page 484**, Item 14, paragraph 2: “*Jim Mosher noted ~~the~~ Title 21 ~~amendment~~ has some technical problems, ...*”

**Pages 484-5**, Item 15: The many references to “ALUC” should read “~~the~~ ALUC” because “ALUC” is being used as a placeholder to simplify the minutes, not as a name. Unlike “NASA” or “HCD”, to the best of my knowledge the Airport Land Use Commission is not normally referred to as “ALUC”.

**Page 485**, last paragraph before opening hearing: “*Mayor O’Neill remarked that ~~the~~ ALUC had legal obligations ~~in~~ which they used to make their determinations, which differ from those of the Council.*” [The first “which” could also be deleted without loss of meaning.]

**Page 485**, paragraph 2 from end: “*Council Member Herdman discussed the City’s work to address the effects of JWA on the community, stated no aircraft departs JWA between ~~11:00 p.m. and 7:00 a.m., ...~~*” [This is what was said about the 1985 [Settlement Agreement](#) (at 1:25:13 in the video), but the Agreement actually protects County laws that prohibit commercial departures after **10:00** p.m. (not 11:00) and that prohibition does not apply to the non-commercial planes the ALUC is concerned about taking off over the proposed housing project.]

**Page 486**, Item 16: “*Motion by Mayor O’Neill, 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) waive City Council Policy A-1: City Council – Seating Arrangement for City Council and ~~determine the method to rotate Council Member seats, or other adjustment to ensure social distancing, accept staff’s suggestion~~ until such time as the emergency is over.*” [See video at 1:29:40. The agenda gave the Council an

opportunity to suggest a different method, but Mayor O'Neill moved the method recommended in the report.]

**Page 487**, paragraph 5: “Sue Dvorak thanked the ~~aviation ad hoc committee~~ Council members on the Aviation Committee for their efforts, suggested the City delay this process until complete information has been released and the public can provide input to the FBOs modifying their proposals, inquired whether the City is asking for the elimination of the GAF from the plan, ~~noted an attempt~~ whether it attempted to compel the Board of Supervisors to release more information, or ~~consult~~ consulted with their aviation attorneys, and hoped the City was doing everything it legally could to pursue its goals.”

**Page 487**, paragraph 4 from end: “Alan Herman supported ACI Jet's proposal because they are 100-percent focused on aviation, ~~has~~ have a vested interest in JWA, and ~~respects~~ respect the restricted hours for flights. He believed ACI Jet's proposal meets the City's goals for general aviation improvement.”

**Page 487**, paragraph 2 from end: “Julie Johnson, AirFair, clarified that activists and JWA community members expressed concern about the language, indicated community members do not want the GAF or international flights, believed neither the Aviation Committee nor community members had an opportunity to review the language prior to the Council meeting, and related that ACI Jet agreed to remove the GAF and include language in their lease to protect the Southern California pilots.” [See video starting at 2:01:45. The first comment was “we don't want international coming in,” the second referred to lease term requests made by the Southern California Pilots Association. It would probably be clear for the minutes to say “protect the SoCal Pilots Association members.”]

**Page 488**, motion: “Motion by Council Member Herdman, seconded by Council Member Dixon, 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) subject to the Orange County Board of Supervisors including terms and conditions in the lease agreement which: (1) implement Supervisor Steel's direction to restrict certain airport parcels for use only by medium and large general aviation jet aircraft and others by small general aviation aircraft on the John Wayne Airport property, as indicated with the yellow/green areas on the map attached as Attachment A of the staff report, with the “Green Area” built out in a manner that preserves the current ratio of 40, 50, and 60 foot ~~hangers~~ hangars; and (2) eliminates the ability of any lessee to construct and operate a General Aviation Facility or, at a minimum, restricts the hours of the GAF to 8:00 a.m. to 10:00 p.m., the City Council approves the Aviation Committee's General Aviation Improvement Program Ad Hoc's findings that the entities set forth in Attachment B of the staff report meet the City's goals for a lessee, and the City Council hereby authorizes the City Manager to inform the County of Orange of this recommendation.”

Note: Regarding this Item 17 from January 28, it is a bit disturbing that the deal points requested by the full Council as detailed in the motion set forth above do not entirely match those subsequently posted on the City's [GAIP webpage](#) or in the Mayor's [August 14 letter](#) to Supervisors Chair Steel (linked to from it).

As correctly indicated on that page, the Council directed staff to request the two points labeled (1) and (2) above. However, from that page it appears staff and the Mayor have dropped the “build out in certain ratios” request and added at least two that were not in the January 28 motion:

1. Prohibit commercial airlines, such as JetSuiteX, from operating out of an FBO.
2. Restrict the operational hours of the FBOs [not just the GAF] to match the hours of the commercial curfew.

While I agree those are good points (and ones that have been requested by various parties in the past), it’s not clear who authorized this change in official direction, since neither the Council nor the Aviation Committee have met to discuss this since July 28 – especially dropping the “build out” request.

**Page 489**, paragraph 5: *“Council Member Muldoon recused himself due to the potential for a conflict of interest related to a recent business transaction.”* [This is not an adequate disclosure. It does not disclose the nature of the “business transaction” or what part of the Council discussion it conflicted with or how. It is likewise unclear from the minutes if Council Member Muldoon returned to the dais at some point after this announcement, and if so, when. From the video it appears he returned during the public comment period.]

**Page 489**, paragraph 7: *“In response to Council Member Brenner’s question, Community Development Director Jurjis advised that staff is not **currently** considering extending the outdoor permits past the pandemic—~~because the~~ **The** Emergency Ordinance provides a 14-day period following the emergency for restaurants to remove the outdoor facilities.”* [Director Jurjis simply stated two facts. He did not suggest the particular cause and effect relationship between them implied by the draft wording.]

#### ***Item 4. Ordinance No. 2020-19: Adoption of an Ordinance Amending the Planning & Zoning Code (PA2019-055)***

As noted when this ordinance was introduced on August 11, page 4-7 of the staff report spends many words repeating those on page 4-6.

Shouldn’t we strive for well-written, efficient, and non-redundant code?

#### ***Item 5. Resolution No. 2020-74: Resolution in Support of the Newport Beach Police Department***

I may be the only one with this reaction, but no matter how fine a Police Department we may have, isn’t it a little strange for them (as indicated by the origin of the staff report) to be preparing a resolution praising themselves?

#### ***Item 6. Resolution No. 2020-75: Approval of Release of Certain Assets Securing the City’s 2010 Certificates of Participation***

This item is very similar to Item 3 on the Newport Beach Public Finance Corporation’s [agenda](#).

The same error in date noted in Recital 1 on page NBPFC 3-8 of that agenda packet applies to the same document as presented on page 6-7 of this packet (which has been posted in a non-machine-readable PDF image format): “2020” was presumably meant to read “2010.”

And the same question arises: if it is in the public's interest to release these assets now, why was it not in the public's interest to do it sooner?

***Item 12. Superior Avenue and West Coast Highway Intersection Improvements – Approval of Amendment No. 2 with Chambers Group, Inc. and Amendment No. 1 with Dokken Engineering and Updated Pedestrian Bridge Conceptual Design (15T09)***

I have lost track of whether the City has issued itself a Coastal Development Permit for the Superior Avenue Bridge, and if so, whether the new design will require an amendment to the permit.

The staff report from November 19, 2019, (Item 21, [page 7](#)) said the design would be going to the Zoning Administrator for that approval, but I don't believe that's happened yet?

***Item 13. Back Bay Landing Development – Reimbursement Agreement with Bayside Village Marina LLC for Environmental Review, Permitting and Design Services***

Was the need for this relocation disclosed in the EIR for the Back Bay Landing Development project?

Why is the City agreeing to the route shown on page 13-12, which involves what appears to be an unnecessarily large amount of underwater and difficult to maintain construction?

Why does the City not insist on following a landside route paralleling the waterfront to the present point of connection and continue using the much shorter underwater piping?

***Item 14. Planning Commission Agenda for the August 20, 2020 Meeting***

The Planning Commission was expected to discuss a new role assigned to it to oversee revision of the General Plan's Circulation Element in concert with the Housing Element Update Advisory Committee's efforts on Housing and Land Use. Yet the meeting was canceled and the PC is not expected to meet again until September 17.

First, who made this assignment, since the task was clearly assigned by the Council to the HEUAC and neither the Council nor the HEUAC met to discuss any change of plan?

Second, haven't we been told these updates are urgent and the time-frame is impossibly short? If so, why was the meeting canceled? And for that matter, why has the HEUAC not been meeting?

Nothing provided explains. Indeed, the fact the meeting was canceled does not seem to be disclosed.

### ***Item 15. Ordinance No. 2020-20: Non-Exclusive Commercial Solid Waste Franchises***

The staff report (page 15-3) that “some edits” have been made to the very lengthy attached Agreement compared to the version previously reviewed and adopted by the Council. What those changes may have been seems to be left as an exercise for the reader.

That does not, to me, seem to promote efficient oversight on the part of the Council members who may have diligently reviewed the previous version.

### ***Item 16. Ordinance No. 2020-21: Zoning Code Amendment to Allow Wine Tasting Room Uses within the Industrial Zoning District (PA2020-042)***

In theory, this is just the introduction of an ordinance, and the real debate as to its merits would come two weeks (or more) from now, after its text has been published and the public and Council have had time to evaluate it.

But of course, that’s not how things are done in Newport Beach, so it appears the time to present arguments is now or never.

The principal argument *against* adopting this measure is that, despite City staff’s protestations to the contrary, **amending the Zoning Code as proposed is, quite simply, incompatible with the IG land use designation approved by voters in 2006** (see Resolution No. 2006-77, [page 5](#)), and assigned by them to this (and to the best of my knowledge, only this) as the one small exclusively industrial area of the city.

As the staff report correctly observes, the voter approved [General Plan](#) definition is “*The IG designation is intended to provide for a wide range of moderate to low intensity industrial uses, such as light manufacturing and research and development, and limited ancillary commercial and office uses.*”

Our General Plan does not define “*ancillary uses,*” but the common understanding would be uses subordinate to and serving the primary uses.

The non-voter-approved text and policies of the General Plan support that interpretation. They express a wish to improve the appearance of the area (Goal LU 5.5), but not to change its use. Indeed, Goal LU 6.7 identifies the IG area of West Newport Mesa as “***providing opportunities for needed uses that cannot be accommodated elsewhere in Newport Beach***”).

Yet staff report says the amendment is intended to accommodate a particular and quite unexpected use: a wine tasting room. That use is not light manufacturing and research and development nor is it ancillary to them. It is, instead, a sales showroom for products manufactured elsewhere (apparently outside the city). And the audience for the products it is promoting is not primarily the true IG tenants, but rather an audience drawn from outside the IG district by advertising. Indeed, to avoid parking and traffic conflicts, we are told the wine tasting customers will be present primarily when the IG uses are closed and their tenants not there.

**A wine tasting room is most definitely not among the “needed uses that cannot be accommodated elsewhere in Newport Beach.”**

**Moreover**, as I tried without much success to inform the Planning Commission,<sup>1</sup> the way our Zoning Code is written, doing staff's bidding of **defining "wine tasting rooms" as a new category of land use and designating them as an allowed use in the IG zoning district prevents their approval in any other zoning district – that is, anywhere else in the city.**<sup>2</sup> Indeed, the planner presenting this indicated there were other tasting rooms operating under the Type 2 ABC license elsewhere in the city. If they fit the new definition of "Wine Tasting Room" they will presumably become non-conforming and have to relocate to the IG area.

The Council may legitimately question if the IG area of West Newport Mesa has panned out as hoped in 2006 (it was specifically expected to attract marine-serving industries that did not need to be located on the water). But before approving a new use that is neither light manufacturing nor research and development nor directly serving those uses, it needs to amend the definition of IG in the General Plan and through that, the people's vision for this area. Staff has not asked it to do that, and in view of the omission of that larger question I believe this ordinance has to be denied.

### ***Item 17. Resolution No. 2020-76: Appeal of Planning Commission's Decision of an AT&T Small Cell Installation (PA2019-111)***

The grounds for this appeal seem quite tenuous to me.

However, appeals in Newport Beach are heard "de novo," so issues not raised by the appellant can be brought up and considered.

An issue I tried to raise before the Planning Commission was why higher priority locations on commercial rooftops were not considered?

My understanding is the City granted the master license for use of City street light poles to address situations in which higher priority locations were not available.

But here, there is a commercial shopping center nearby.

The response from AT&T's experts has been their small cell antennas work *only* on poles away from buildings.

But as a physicist (as well as a licensed radio amateur), that seems a lame excuse to me.

I hope the Council will ask why AT&T does not have small cell transmitters that work from rooftops – obviating the need to put them in very visible 6-foot tall cans on top of street lights in places where commercial rooftops are available.

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<sup>1</sup> The [correspondence](#) received by the Planning Commission on July 23, including [mine](#), does not seem to have been shared with the Council.

<sup>2</sup> This is because the Zoning Code allows the Community Development Director to add unlisted uses to a district if he or she deems them similar to the uses listed, but *only* if they are *not listed* as an allowed use in any other district.