

CITY OF NEWPORT BEACH

June 8, 2021
Agenda Item No. 1

City Council Minutes Study Session and Regular Meeting May 25, 2021

I. ROLL CALL – 6:49 p.m.

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

City Attorney Harp announced that Clarification of Items on the Consent Calendar and Closed Session were not needed. Further and without City Council objection, Study Session Item SS2 would be heard at the end of the meeting and Public Comments on Non-Agenda Items would be heard at this time.

II. CURRENT BUSINESS

SS1. Clarification of Items on the Consent Calendar - None

SS2. Review of the Proposed Fiscal Year 2021-22 Capital Improvement Program Budget [100-2021] – heard at the end of the Regular Meeting

III. PUBLIC COMMENTS – None

IV. CLOSED SESSION – City Attorney Harp announced that Closed Session was not needed

A. CONFERENCE WITH LABOR NEGOTIATORS (Government Code § 54957.6)

Agency Designated Representatives: Grace K. Leung, City Manager, Carol Jacobs, Assistant City Manager, Barbara Salvini, Human Resources Director, and Charles Sakai, Esq., Negotiators.

Employee Organizations: Association of Newport Beach Ocean Lifeguards (ANBOL) and Newport Beach Police Association (NBPA).

V. RECESSED

VI. RECONVENED AFTER THE SPECIAL JOINT MEETING OF THE CITY COUNCIL AND THE FINANCE COMMITTEE AT 6:49 P.M. FOR REGULAR MEETING

VII. ROLL CALL

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

VIII. CLOSED SESSION REPORT

IX. INVOCATION – Pastor Drew Smithson, Orange County First Assembly of God, Santa Ana

X. PLEDGE OF ALLEGIANCE – Mayor Pro Tem Muldoon

XVI. PUBLIC COMMENTS ON NON-AGENDA ITEMS

David Tanner requested that Council hold a series of General Plan Update workshops during Council meetings and provide direction to staff regarding new housing and environmental laws. He proposed the first workshop pertain to Mariners' Mile and the Orange County Master Plan of Arterial Highways.

George relayed the recommended and actual numbers of liquor licenses in the tract map containing 103 Palm Street, stated emergency responders have had problems entering the parking lot, and expressed the opinion that the proposed business at 103 Palm Street will contribute to trash on the beach. He hoped Council would not allow the proposed liquor license transfer to 103 Palm Street.

Cathy expressed the opinion that alcohol service at 103 Palm Street would increase the number of over-served patrons which would cause problems for neighbors, police have difficulty closing fire pits at 10:00 p.m., and the Fun Zone used to be family-friendly. She asked Council Members to visit the area and see the problems for themselves.

Harpreet Grewal, Newport Bay liquor store owner, indicated his business has been doing well for 23 years, but adding another business will put him out of business.

Carlos Godinez, President of the Newport Beach Restaurant Association (NBRA) Business Improvement District (BID), asked Council to consider reinstating the BID for one more year, indicated restaurants provide almost \$3.9 million in economic impacts for the City, and noted the NBRA is pro-business.

Thad Foret, NBRA BID Board Member, advised that he relies on the BID to market his restaurant, the small annual assessment makes him feel as though he is participating in big incentives and provides a good return on money he does not have to spend.

Peggy Fort, CMC Inc., indicated her firm represented the NBRA BID for 13 years in numerous marketing initiatives, the NBRA BID grew to be a respected industry leader, and now is the time for Council to support the NBRA BID's cooperative marketing efforts.

Philip Crowley, NBRA BID member, stated the BID has been financially worthwhile for both the City and restaurants, requested Council reconsider its vote on the BID and renew it for at least a year so that its success can be utilized to develop another direction.

David Salisbury, Newport Landing/Harborside Restaurant, expressed the opinion that abolishing the BID would be a mistake, and another year would allow the BID to reconsider its direction.

David Guerrero, Bungalow Restaurant General Manager, requested Council give the BID another year to resolve issues.

Jim Walker, Bungalow Restaurant Owner, related that many restaurateurs have contributed hours of time to the NBRA because it has been good for the restaurant community, Newport Beach, and businesses at large, the current membership totals about 470, the BID revised its structure in response to concerns, full-service restaurants voluntarily paid the majority of BID fees, and BID membership is not compulsory. He asked Council Members to attend meetings and discuss keeping the BID.

Steve Rosansky, President of the Newport Beach Chamber of Commerce, supported the NBRA and its effective efforts to market restaurants and Newport Beach, noted the BID is an ideal public-private partnership, and hoped Council would support renewing the BID for at least one more year.

Gary Sherwin, President and CEO of Newport Beach and Company, concurred with comments regarding the challenges facing restaurants, agreed that the 1994 law was preferable, and advised that the BID Board agreed to begin a strategic planning process which includes a conversion to the 1994 law. He added that, if given another year, the BID Board can decide whether to convert to a structure under the 1994 law and noted that the BID was the only means for some restaurants to promote their business.

Hoiyin Ip remarked that restaurant owners work hard and restaurants are part of the City fabric, but stated that the NBRA never officially supported efforts to reduce single-use plastics, and hoped the NBRA is willing to discuss the problem the City is having with trash.

XI. NOTICE TO THE PUBLIC

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

Council Member Brenner:

- Submitted an Orange County Mosquito and Vector Control District report for the record regarding Newport Beach
- Utilized slides to announce the CEO of Mother's Market spoke to the Corona del Mar Residents Association (CdMRA), the Modified Vehicle Street Racing and Take Over Task Force and statistics, a SWAT training in Corona del Mar, and requested residents planning to demolish their homes contact the Police Department about using the homes for training
- Requested a future agenda item regarding direction to the Park, Beaches and Recreation Commission to agendaize an Ocean Boulevard Bluff Walk presentation

Council Member O'Neill:

- Thanked Recreation and Senior Services staff for opening fields
- Attended the Corona del Mar High School theater performance
- Hosted a first-grade boy scout troop in the City Council Chambers
- Announced a Finance Committee meeting on May 27, 2021 at 3:00 p.m.

Council Member Dixon:

- Utilized slides to share the sound wall replacement project in West Newport and announced a District 1 Virtual Town Hall on June 17, 2021 at 5:00 p.m.
- Attended a Zoom meeting with 2nd District Supervisor Katrina Foley regarding airport matters and an Aviation Committee meeting on May 17, 2021
- Thanked the Recreation and Senior Services Department, Public Works Departments, and staff for the Grant Howald Park grand opening

Mayor Avery:

- Utilized slides to show dredging at the Harbor entrance and the Grant Howald Park grand opening held earlier in the day
- Attended meetings of the Finance Committee, Homeless Task Force, Orange County Sanitation District (OCSB) Board, and administration committee

XIII. PUBLIC COMMENTS ON CONSENT CALENDAR

In response to Council Member Dixon's question regarding Item 7 (Resolution No. 2021-44: Approval of Revised City Council Travel Policy F-8), City Manager Leung clarified that the revision extended the travel policy to commissions.

XIV. CONSENT CALENDAR

READING OF MINUTES AND ORDINANCES

1. **Minutes for the May 11, 2021 City Council Regular Meeting [100-2021]**
Waive reading of subject minutes, approve as amended, and order filed.
2. **Reading of Ordinances**
Waive reading in full of all ordinances under consideration, and direct the City Clerk to read by title only.

ORDINANCES FOR ADOPTION

3. **Ordinance No. 2021-10: Amending Portions of Chapter 1.05 of the Newport Beach Municipal Code Relating to Citation Fees and Citation Appeal Period (PA2021-079) [100-2021]**

- 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) Conduct second reading and adopt Ordinance No. 2021-10, *An Ordinance of the City Council of the City of Newport Beach, California, Amending Section 1.05.020, Section 1.05.060, and Section 1.12.020 of the Newport Beach Municipal Code to Increase Fines for Violations of the Municipal Code and Shorten the Administrative Citation Appeal Period.*

Council Member Blom and Council Member O'Neill voted "no" on Item 3.

4. **Ordinance No. 2021-11: Zoning Code Amendment to Allow Eating and Drinking Establishments and Health/Fitness Facilities Within the Mixed-Use Dover/Westcliff Zoning District (PA2020-316) [100-2021]**
 - a) Find this action proposed herein is not a project subject to the California Environmental Quality Act ("CEQA") in accordance with Section 21065 of the California Public Resources Code and Sections 15060 (c)(2), 15060 (c)(3), and 15378 of the California Code of Regulations Title 14, Division 6, Chapter 3 ("CEQA Guidelines"). The proposed action is also exempt pursuant to CEQA Guidelines Section 15061(b)(3), the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment; and
 - b) Conduct second reading and adopt Ordinance No. 2021-11, *An Ordinance of the City Council of the City of Newport Beach, California, Adopting Zoning Code Amendment No. CA2020-009 Amending Table 2-8 (Allowed Uses and Permit Requirements) of Section 20.22.020 (Mixed-Use Zoning Districts Land Uses and Permit Requirements) of Title 20 (Planning and Zoning) of the Newport Beach Municipal Code to Allow Eating and Drinking Establishments and Large Health/Fitness Facilities in the MU-DW (Mixed-Use Dover/Westcliff) Zoning District (PA2020-316).*

RESOLUTIONS FOR ADOPTION

5. **Resolution No. 2021-42: Initiation of Zoning Code and LCP Amendments Related to Wireless Communication Facilities in the Public Right of Way (PA2021-103) [100-2021]**
 - a) Determine this action exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15262 (Feasibility and Planning Studies) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3; and
 - b) Adopt Resolution No. 2021-42, *A Resolution of the City Council of the City of Newport Beach, California, Initiating Amendments to Titles 20 (Planning and Zoning) and 21 (Local Coastal Program Implementation Plan) of the City of Newport Beach Municipal Code Related to Wireless Communication Facilities in the Public Right of Way (PA2021-103).*

Mayor Pro Tem Muldoon recused himself on Item 5 due to business interest conflicts.

6. **Resolution No. 2021-43: Initiation of Zoning Code and LCP Amendments Related to Accessory Dwelling Units (PA2021-113) [100-2021]**
 - a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15262 (Feasibility and Planning Studies) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3; and
 - b) Adopt Resolution No. 2021-43, *A Resolution of the City Council of the City of Newport Beach, California, Initiating Amendments to Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) of the City of Newport Beach Municipal Code Related to Accessory Dwelling Units (PA2021-113).*
7. **Resolution No. 2021-44: Approval of Revised City Council Travel Policy F-8 [100-2021]**
 - 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) Adopt Resolution No. 2021-44, *A Resolution of the City Council of the City of Newport Beach, California, Adopting Revised City Council Policy F-8.*
- 8. **Resolution No. 2021-45: Emergency Declaration – *Caulerpa prolifera* in Newport Harbor [100-2021]**
 - a) The proposed action is exempt from the California Environmental Quality Act (“CEQA”) pursuant to Section 15269(c) (the activity is necessary to prevent or mitigate an emergency) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it does not have the potential for causing a significant effect on the environment, and none of the exceptions listed in Guidelines Section 15300.2 apply. Section 15269 allows specific actions necessary to prevent or mitigate an emergency; and
 - b) Adopt Resolution No. 2021-45, *A Resolution of the City Council of the City of Newport Beach, California, Proclaiming the Existence of a Local Emergency Related to the Infestation of Caulerpa Prolifera in Newport Harbor.*

CONTRACTS AND AGREEMENTS

- 9. **Corporation Yard Fence Replacement Project – Notice of Completion for Contract No. 7810-1 (20F02) [38/100-2021]**
 - a) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project;
 - b) Authorize the City Clerk to release the Labor and Materials Bond 65 days after the Notice of Completion has been recorded in accordance with applicable portions of Civil Code; and
 - c) Release Faithful Performance Bond one year after acceptance by the City Council.
- 10. **Fiscal Year 2020-21 Traffic Signal Rehabilitation Project – Award of Contract No. 7791-1A (21T01) [38/100-2021]**
 - 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;
 - b) Approve the project plans and specifications;
 - c) Award Contract No. 7791-1A to KDC, Inc., dba Dynalectric for the total bid price of \$741,544, and authorize the Mayor and City Clerk to execute the contract; and
 - d) Establish \$75,000 (approximately 10 percent) contingency amount to cover the cost of unforeseen work not included in the original contract.

Mayor Pro Tem Muldoon recused himself on Item 10 due to business interest conflicts.

- 11. **Temporary Employment Agreement for a Principal Building Inspector (C-8696-1) [38/100-2021]**
 - 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) Authorize the Mayor and Community Development Director to execute the Post Retirement Temporary Employment Agreement with John Burckle for Principal Building Inspector Services.

Mayor Pro Tem Muldoon voted “no” on Item 11.

- 12. **Award of On-Call Vessel Removal, Storage and Disposal Services Agreements with Newport Dredging Company, Inc. (C-7496-2), Pacific Towing, LLC (C-8697-1), and Perry’s Truck & Equipment Repair, LLC (C-7703-2) [38/100-2021]**
 - 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) Authorize the Mayor and City Clerk to execute a three-year contract, with two optional one-year extensions with Davis Farr LLP in a not to exceed amount of \$270,000 to perform the City's annual financial statement audit.

MISCELLANEOUS

13. Third Quarter Budget Update [100-2021]

- 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;
- b) Approve Budget Amendment No. 21-043, which will:
 - 1. Transfer unused Homeless Shelter CIP project funds of \$265,285.80 to the City Manager Outreach Services account (0102041-811008) for ongoing homeless shelter operating costs;
 - 2. Transfer unappropriated fund balance from the 800 MHz Radio Fund to the General Fund in the amount of \$446,656; and
 - 3. Transfer unappropriated fund balance from the Special Improvement District No. 95-1 Fund to the General Fund in the amount of \$281,611;
- c) Receive and file the report of budget amendments for the third quarter; and
- d) Receive and file the summary of pandemic-related costs and revenue.

Mayor Pro Tem Muldoon recused himself on Item 13 due to business interest conflicts.

14. Set Public Hearing Date for the 2020 Urban Water Management Plan and Water Shortage Contingency Plan [100-2021]

- 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;
- b) Receive the draft Urban Water Management Plan, the Water Supply Contingency Plan, and the Addendum to the 2015 Urban Water Management Plan for review; and
- c) Set the date of June 8, 2021 for a public hearing.

15. Set Public Hearing Date to Adopt Fiscal Year 2021-2022 Budget [100-2021]

- 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) Schedule a public hearing of the City's Proposed Budget for Fiscal Year 2021-2022 for June 8, 2021, and direct the City Clerk to publish a notice of said hearing in accordance with Section 1102 of the Newport Beach Charter.

Motion by Mayor Pro Tem Muldoon, seconded by Council Member O'Neill, to approve the Consent Calendar; and noting the recusal by Mayor Pro Tem Muldoon to Items 5, 10, and 13, the "no" votes by Council Members Blom and O'Neill to Item 3, the "no" vote by Mayor Pro Tem Muldoon to Item 11, and the amendments to Item 1.

The motion carried unanimously.

XV. ITEMS REMOVED FROM THE CONSENT CALENDAR – None

XVI. PUBLIC COMMENTS ON NON-AGENDA ITEMS – Was taken after Pledge of Allegiance

XVII. PUBLIC HEARING

16. Resolution No. 2021-46: Lower Newport Bay Confined Aquatic Disposal (CAD) Construction Project – Environmental Impact Report [100-2021]

Public Works Director Webb and Administrative Manager Miller utilized slides to review the recommendations, map of the Federal channels that need dredging, the sediment characterization study, open ocean disposal limit (mercury parts per million), anchorage area material, and Newport Channel material. Public Works Director Webb reported the material is not toxic, staff advocated diligently to obtain a level of 1.5 parts per million (PPM), and staff is looking to dispose of the material in some way.

In response to Council Member Dixon's questions, staff indicated the Environmental Protection Agency (EPA) sets the limit based on data, the limit has to be safe, the City tests for toxicity, staff had concerns about mercury but the level is extremely low, approximately 100,000 cubic yards of material cannot be disposed of in the ocean, PCBs also contaminate the material, and the EPA did not find the level significant enough to prohibit offshore disposal.

Administrative Manager Miller continued the presentation with the Sediment Management Plan and RGP-54 shoreline sediment material requiring alternative disposal. Public Works Director Webb noted material around some residential docks in the Harbor cannot be dredged and disposed of in the ocean, the cost of dredging and moving a small amount of suitable material is high, staff is looking at areas outside the Federal channels and the characterization of sediment is valid for only five years.

Administrative Manager Miller continued the presentation with a discussion about the disposal site project objectives, disposal in prior years at the Port of Long Beach, and Project Alternative No. 1. Public Works Director Webb clarified that leaving unsuitable material in place creates locations where vessels cannot travel, and two locations of unsuitable material will create problems for large vessels traveling to the Newport Shipyard if they are not dredged.

In response to Council Member Dixon's questions, Public Works Director Webb related that capital projects have reduced the amount of sediment flowing into the Harbor, the level of sediment will rise but not at a fast rate, the number of large vessels that cannot navigate the Harbor is unknown, and many vessels can navigate during high tide only.

Administrative Manager Miller continued the presentation with an explanation of Project Alternative No. 2 (no CAD construction). Public Works Director Webb emphasized the number of truck trips and the cost impacts of handling material in this alternative.

Administrative Manager Miller continued the presentation with Project Alternative Nos. 3 and 4 (reduce CAD size).

In response to Council Member Dixon's questions, Public Works Director Webb related that a whole area has to be dredged because the small area that exceeds the limit cannot be identified, and noted the blue areas on the map can be dredged and disposed of in the ocean.

Administrative Manager Miller continued the presentation with Project Alternative No. 5 (In-Harbor disposal). Public Works Director Webb clarified that this alternative involves digging a hole inside the Harbor to dispose of dredged material.

In response to Council Member Dixon's question, staff indicated the depth of the proposed green location is about 12 feet, material from the site will be dredged and disposed of in the ocean, other dredged material will refill the hole, and the proposed location in the Turning Basin is not a good location because the top layer of material is not suitable for ocean disposal.

Administrative Manager Miller continued the presentation with the recommended CAD location.

In response to Mayor Avery's questions, Administrative Manager Miller stated the yellow dashed line represents the footprint of the CAD, and the barge releases the material into the CAD.

Administrative Manager Miller continued the presentation with the CAD construction process. Public Works Director Webb noted the Stage 13 Project involved digging sand from the ocean floor, moving it to the beach, and not refilling the hole. For the dredging project, the hole will be refilled.

In response to Council Member Dixon's question, Public Works Director Webb advised that the hole in the ocean floor may be referred to as a vault. Steve Cappellino, Anchor QEA, reviewed current CAD locations, CADs have been constructed within 200 yards of residences in the northeastern United States, such as New Bedford Harbor, but not on the West Coast, and other facilities are receiving materials with higher-concentration material than proposed for Newport Harbor.

Administrative Manager Miller continued the presentation with the Basis of Design Report (BODR) and the CAD construction process. Public Works Director Webb noted staff worked with the community and the Harbor Commission regarding using the CAD for ten years, the community raised concerns, the compromise was two years to obtain permits for residential dredging and use of the CAD for six months, the current RGP-54 permit does not allow CAD disposal, staff will work on that in the next permit, and two years is not a long time for residents to obtain permits and line up a dredging service.

Administrative Manager Miller continued the presentation with a 2012 dredging photo and discussion about community and public outreach. Public Works Director Webb emphasized that outreach was extensive.

Administrative Manager Miller concluded the presentation with the CEQA review, details of identified CEQA mitigation measures, public comment periods for CEQA, next steps, and staff recommendation.

In response to Council Member Duffield's question, Mr. Cappellino reported computer modeling using field data is used to predict the plume action under different circumstances, and limitations are placed on disposal events to minimize the potential movement of material from the site. A disadvantage of placing the CAD in the Turning Basin is the depth of the water.

In response to Mayor Pro Tem Muldoon's question, staff related that the concentration of dredged material will be the same when it is dredged and when it is placed in the CAD, the material placed in the CAD will not harm a swimmer because of the depth of the dredged material, the CAD site will be blocked to vessels during construction, a catastrophic event would be needed to pick up and disperse material, the EPA was not concerned about the in-place material for swimmers unless there was some type of long-term ingestion of the material, and all biological tests found no toxicity of the material. Mr. Cappellino discussed the EPA's reasons for setting limits for material, and the fact that concentrations in existing sites are not causing biological responses. He added that a person traveling in the Harbor is safe even if sediment is disturbed.

In response to Mayor Avery's questions, Mr. Cappellino agreed that large vessels disturb the sediment, which drifts with the current and settles again in some radius around the area, the City does not perform targeted sampling for resuspension events from ships, a very controlled water quality monitoring program is in effect during construction projects, and if results do not match predictions, the City is required to stop or alter the project. He added that testing is phased and currently underway, and results are submitted to the Water Quality Board.

In response to Council Member Dixon's questions, Public Works Director Webb stated the CAD will be returned to essentially its original state, and he has no concerns about living within 25 yards of the CAD.

In response to Council Member Duffield's question, Mr. Cappellino reviewed the testing for toxic materials and indicated testing materials in the Harbor did not produce a toxic response, when the EPA revised the limit from 1.0 ppm to 1.5 ppm, the amount of material to be dredged decreased from 270,000 cubic yards of material to 100,000 cubic yards.

In response to Council Member Blom's questions, Mr. Cappellino advised that the EPA and most regulatory agencies want the City to manage sediment. Council Member Blom noted the toxic material already exists in the Harbor, the City is in compliance with EPA regulations, the City found a way to dispose of dredged material, the project seems like a win-win situation, and an excessive amount of due diligence has been performed. Public Works Director Webb reported the City looked at various options that are not viable, stated that trucking is probably the most viable option, but it is very expensive at \$21 million, noted that bringing the dredge to Newport Beach costs \$1 million, and confirmed that the EPA said the CAD is probably the best and safest method. Mr. Cappellino described a Combined Disposal Facility (CDF) and eliminated it as an option because there is not a lot of unbuilt space to create new land. He further stated that obtaining a permit from the Coastal Commission would be difficult, a CAD is probably safer than a CDF, and trucking the material to a construction site raises liability issues for the City.

In response to Mayor Avery's questions, Mr. Cappellino indicated locating a CAD in an area where the groundwater upwells into the CAD is not safe because the groundwater could push the material out of the CAD. Newport Harbor does not have that problem, stated that the cap for the CAD will be 3 feet thick to prevent animals from digging through it and wind and wave action from scouring it, and noted that if the City wants to develop an anchorage over the CAD site, it will need to determine the largest size anchor allowed and design the cap for that size anchor.

Council Member Duffield related that he has talked with staff and the consultants, they have considered a wide range of options, and the City's options are limited because of regulations and restrictions. He expressed his support for the proposal.

In response to Council Member Dixon's questions, Mr. Cappellino indicated Long Beach is attempting to permit a CAD, staff has approached Long Beach about dumping material in their proposed CAD but the CAD is limited to Long Beach's use, and the project is likely years away from completion.

Mayor Avery opened the public hearing.

Harbor Commission Chair Kenney reported the Harbor Commission held a public hearing on the project's Environmental Impact Report (EIR) and voted 6-0 with one abstention to recommend that Council adopt and certify the EIR, the EIR determined trucking material to a land-based fill site was not feasible, indicated the Harbor Commission formed an ad hoc committee to consider a land-based fill site but determined the dredging project could not be delayed, listed benefits of the dredging project, noted the project has been reviewed by all required Federal, State, and regional jurisdictions, and significant Federal funding has been secured.

Brent Mardian expressed the opinion that a CAD is not a bad idea but it is also not the best or most creative idea and advised that Palmer Luckey is funding a private alternatives investigation, and reasonable alternatives have not been presented, stakeholders in Newport Beach have been surprised by Mr. Luckey's progress and new alternatives, Newport Beach deserves an option that provides benefits, and he intends to provide an alternative in the next 60 days that will avoid locating a landfill in front of Newport Beach homes.

Dave Rhodes expressed concern about the location of the CAD, related that the existing plume can be dispersed, mercury levels are sufficient to prevent the disposal of material at LA-3, and urged Council not to locate a CAD close to residences.

Shana Conzelman supported dredging and commented that every option needs to be explored in its entirety, a CAD is the only option staff has presented, and a representative from the Water Quality Board spoke to the Harbor Commission and stated the City is attempting to downplay the severity of contaminated material. She disagreed with disposing of contaminated material in the Newport Harbor anchorage.

Carson Hill supported the use of a CAD, stated staff has conducted a lot of research and studies for the proposed project to be successful, and encouraged Council to move forward with the proposal.

Jess Salem, Newport Harbor Shipyard and Lido Yacht Anchorage, supported the CAD, noted vessels already have difficulty navigating the Rhine Channel with less than a 4-foot tide, a 30 to 40-foot vessel can cause turbidity in the bay, plants and fish have returned to the Rhine Channel since the 2012 dredging, and dredging is good for the bay.

Palmer Luckey expressed the opinion that many people do not know how to operate boats, advances in technology have made dredging possible in better and cheaper ways, long-term monitoring is worthwhile, the ping pong ball analogy is probably off by orders of magnitude, and dredged material will contain 3,000 to 9,000 pounds of mercury.

Harbor Commissioner Beer indicated he has met with Mr. Luckey and his team, the work on alternatives is encouraging, discussions would continue in parallel to Mr. Luckey's work, the Harbor Commission or Council could review and evaluate any compelling work from Mr. Luckey and his team, not approving the project tonight will only delay the project, Council action today allows the City to take advantage of the best alternative if a compelling alternative is not developed, vessels navigating the channel currently disperse unsuitable material across the Harbor, and only a catastrophic event will cause material to escape a CAD.

Lauren Chase, Orange County Coastkeeper, stated dredging is important to the Harbor and needs to be done correctly, the EIR does not provide adequate information for Council to make the best decision, Coastkeeper has been disappointed with the engagement process, options are not a CAD or nothing, and the EIR needs to be revised. She requested Council provide more time for public engagement.

Mary Buckingham inquired whether the six-month period would occur every two years for ten years or in perpetuity, about the flow of traffic during the six-month period, and about a source for additional information regarding the project.

Hearing no further testimony, Mayor Avery closed the public hearing.

In response to Mayor Pro Tem Muldoon's questions, staff anticipated learning about Federal funding by early 2022 and construction beginning in the summer or fall of 2022. Public Works Director Webb indicated the usual challenges apply to the EIR, reported that funding for Phase 1 of the project is contained in the budget, an additional appropriation of about \$6.2 million is in the approval process, regulatory agencies may require new data for the sediment plan if the project is delayed, there is no certainty that Mr. Palmer will provide an alternative, and it would have its own permitting process. City Attorney Harp advised that the EIR is subject to a CEQA challenge, and litigating a challenge could require a year.

Mayor Pro Tem Muldoon expressed the opinion Council has a duty to explore alternatives and walking away from Federal funding and ignoring the EPA are not prudent actions. In response to his question about moving the project forward and requiring the City to seriously consider a private option such that no vendor or staff can take away another option, City Attorney Harp advised that Council needs to approve the environmental document and supplement the motion with direction to staff about alternatives, an alternative will be subject to the environmental process, and approving the EIR does not prevent Council from considering other alternatives. Public Works Director Webb suggested the Harbor Commission's ad hoc committee continue its investigation and report to Council.

Council Member Dixon would support the proposed motion if there was some urgency to finding an alternative.

Harbor Commissioner Beer related that Mr. Luckey's team anticipates providing him with information to share with the Harbor Commission at its June 2021 meeting, and assured Council that the process will continue diligently.

Following discussion, **motion by Mayor Pro Tem Muldoon, seconded by Council Member Dixon**, to a) adopt Resolution No. 2021-46, *A Resolution of the City Council of the City of Newport Beach, California, Certifying Environmental Impact Report No. ER2021-001; Adopting the Mitigation, Monitoring and Reporting Program; Making Facts and Findings; and Approving the Construction of a Confined Aquatic Disposal Facility and Dredging Outside the Federal Channels in Lower Newport Harbor*; and b) direct the Harbor Commission to continue to explore the privately-funded option or other alternatives within 90 days, and make a recommendation to the City Council regarding the alternative(s).

The motion carried unanimously.

XVIII. CURRENT BUSINESS

17. Ordinance No. 2021-12: Eliminating the Balboa Village Area Benefit District [100-2021]

Finance Director Catlett utilized a presentation to provide the background, history of the Balboa Village Area Benefit District (District) and the Balboa Village Advisory Committee (BVAC), past and future uses of District funding, and next steps.

Council Member Dixon shared slides of existing conditions while discussing the importance of public information for businesses to operate, use of Community Development Block Grant (CDBG) funding, the importance of maintenance, the language of the resolution regarding maintenance, renaming the District and reserve to the "Beach Area District and Reserve" and expanding the area to Balboa Village, Corona del Mar, Ocean Avenue, Marine Avenue and the boardwalk on Balboa Island, a special fund for parking revenue, and the direct nexus between use of parking revenue from visitors and reinvestment in immediate areas affected by negative visitor impacts.

Council Member O'Neill shared the government's view of the economy and noted a restricted fund has been dedicated for one area only, the anchor tenant recently left the area, the area just wants better maintenance, power washing costs \$260,000 per year, this is bad fiscal policy, the parking revenues do not go to the GF, funding is needed for aging infrastructure, and removing this restricted fund forces competition and does not stop enhanced maintenance.

Motion by Council Member O'Neill, seconded by Council Member Duffield, 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 full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2021-12, *An Ordinance of the City Council of the City of Newport Beach, California, Amending Section 12.44.029 (Area Benefit District Reserve) of Chapter 12.44 (Stopping, Standing and Parking Restrictions) of Title 12 (Vehicles and Traffic) of the Newport Beach Municipal Code to Eliminate the Balboa Village Area Benefit District*, and pass to second reading on June 8, 2021.

Council Member Blom suggested the photos indicate that money has not been spent in the right way, Council's job is not to prop up businesses, funding is intended to make the City better for everyone, residents use parking lots just as visitors do, government cannot help business, business supports the City, people need to desire investing in Balboa Village, and separating funds only separated the ability to spend the funds.

Council Member Brenner related that she is conflicted about the issue, monies were being collected from a specific area, the City was not doing a good job of maintaining the area, perhaps Council should have noticed a long time ago that the funds were not being well spent to enhance the District, and beachfront communities are suffering.

Council Member Dixon agreed that Council's job is not to prop up any business but noted the City is responsible for maintaining public space, the City encourages and benefits from visitors, the projects were identified in the Balboa Village Master Plan and executed by the BVAC, the focus is getting Balboa Village, Corona del Mar, and Balboa Island back to Disneyland standards in the next three years, Council needs to identify targeted areas that need improvements, and the sole purpose is to clean up the City.

Mayor Avery concurred with all comments and indicated the City's job is providing and maintaining public infrastructure, running a business in Balboa Village is difficult for many reasons, and segregating funds is not the answer to Balboa Village's issues.

Gary Sherwin, President and CEO of Newport Beach and Company, understood that the new Fun Zone owners have pledged to preserve and enhance the Fun Zone and stated the City's culture has always been about building a cooperative public-private relationship, the City needs to do its part to keep Balboa Village clean, safe, and attractive to visitors and merchants, and the proposal to expand the area is a good one.

In response to Council Member O'Neill's questions, Mr. Sherwin reported that Newport Beach and Company is going to set aside a special marketing fund for Balboa Village, it is their job to get visitors into the City, and noted that there is a representative present to support the idea of building a better experience.

Kelly Carlson, President of the Balboa Village Merchants Association and resident, commented that her business is a success but everyone seems to agree that the level of service and appearance of Balboa Village needs to be better, Balboa Village is always going to be a commercial district, and without a solution the problem will continue.

Jim Mosher concurred with Council Member O'Neill's premise, noted other parking benefit districts were repealed when this District was created, suggested Balboa Village is not the oldest part of Newport Beach, and the City does not own the boardwalk in front of the Fun Zone.

In response to Council Member Brenner's questions, Council Member O'Neill indicated a strategic plan for maintenance is needed, the end result is based on Council budget decisions for the GF, a broad policy discussion of GF money is not before Council, and every budget decision determines Council's priority.

Council Member Dixon stated she was not aware of any part of the City that was not being addressed, maintenance is the City's responsibility, the BVAC was diligent in fulfilling prior Councils' mandate to implement a master plan for Balboa Village, reserve funds are part of the budget, Council has to bring the area forward as a targeted area for a limited time to invest funds that enhance the City, and Council does not recognize that exceptional maintenance is required.

Mike Robb indicated great progress has been made in Balboa Village over the last six years with this funding, the concern today is that neglect will return, the area will not get the attention it needs if the funds return to the GF, the City needs to take care of its property, and BVAC members were promised quarterly meetings to discuss maintenance issues, but the meetings have not occurred. He proposed finding a better way to report progress.

With Council Members Brenner and Dixon voting “no,” the motion carried 5-2.

14. Coronavirus (COVID-19) Update [100-2021]

City Manager Leung reported that Orange County continues to be in the yellow tier, and the June 15th deadline is approaching.

SS2.Review of the Proposed Fiscal Year 2021-22 Capital Improvement Program Budget [100-2021]

The following Capital Improvement Program (CIP) project conflicts were announced:

- *Mayor Pro Tem Muldoon recused himself from Fire Station No. 2 Replacement (Lido), Alleys Reconstruction – Undergrounding, Streetlight Rehabilitation Program, Marine Avenue Reconstruction – Undergrounding, Culver Drive / Bonita Canyon Drive Traffic Signal Synchronization, MacArthur Boulevard RTSSP, Traffic Signal Rehabilitation Program, Advanced Metering Infrastructure, SCE Rule 20A Credit Purchase, and Undergrounding Districts AD 111, 113, 116, 116B, and 117 due to business interest conflicts; and Eastbluff Drive Pavement Rehabilitation due to real property interest conflicts and left the dais.*
- *Council Member Blom recused himself from Balboa Island Drainage Master Plan / Pump Stations, Landscape Enhancement Program, Marine Avenue Reconstruction, Balboa Island / Corona del Mar Microtransit Feasibility Study, and Undergrounding District AD111 due to real property interest conflicts.*
- *Council Member Brenner recused herself from Grant Howald Park Rehabilitation due to real property interest conflicts.*
- *Council Member Dixon recused herself from Landscape Enhancement Program related to Lido Isle due to general financial interest conflicts.*
- *City Clerk Brown recused herself from Balboa Peninsula Crosswalks Improvement and Oceanfront Boardwalk and Parking Lot Improvements due to real property interest conflicts.*

Deputy Public Works Director Houlihan utilized a presentation to discuss the purpose of the CIP, provided a recap of the 2020-2021 CIP projects, listed completed projects, projects in progress or in construction, and major projects in design, discussed the proposed 2021-2022 CIP budget, reviewed City Council priorities, highlighted projects by CIP budget section, and reviewed the CIP budget summary and funding sources. Public Works Director Webb added that the CIP budget includes planning for the next five years, and both are available online.

Council Member O'Neill preferred to set aside Federal funding for the library lecture hall and Junior Lifeguard building if guidelines allow use of the funds for those purposes.

Council Member Dixon noted \$10 million from the GF supports CIP projects and commended staff for seeking additional funding sources.

Jim Mosher indicated the source of funds for many projects is contributions, but contributions are marked as grants rather than private donations. He suggested that the budget distinguish private donations from grants.

In response to Hoiyin Ip's question, Deputy Public Works Director Houlihan clarified that the City received a grant of \$500,000 for the water wheel project, which was added to the total.

XVIII. MOTION FOR RECONSIDERATION

Prior to discussing anything related to the Newport Beach Restaurant Association Business Improvement District, Council Member Blom recused himself due to business interest conflicts.

Council Member Dixon stated she would like to change her May 11, 2021 Consent Calendar vote relative to bringing back a Resolution of Intention to disestablish the Newport Beach Restaurant Association Business Improvement District and fixing the time of a public hearing because the discussion was difficult to hear via Zoom.

Council Member Brenner noted the meeting was extremely confusing, and she did not recognize at the time that she was voting to disestablish the BID. She requested the item return to Council.

City Attorney Harp advised that staff will present a resolution to set a public hearing to disestablish the BID at a future meeting, Council Members can discuss the topic during the public hearing, and a motion to reconsider is not needed at this time.

Council Member O'Neill indicated the minutes reflect that four Council Members voted "no" on that item and noted that neither Council Member Dixon nor Council Member Brenner were part of the "no" votes.

City Attorney Harp noted there was not a vote on the appropriateness of bringing the item back, and the minutes adequately reflected Council Member Brenner's and Council Member Dixon's vote with the minority. He added the minutes indicate everyone voted to bring back a resolution for disestablishment, noting that Council Members voted 4-2 on the main motion, but everyone voted to bring disestablishment back as a next step.

Motion by Council Member O'Neill, seconded by Council Member Brenner, to change Council Member Dixon's and Council Member Brenner's May 11, 2021 Consent Calendar votes to "no" votes relative to bringing back a Resolution of Intention to disestablish the Newport Beach Restaurant Association Business Improvement District and fix the time of a public hearing.

With Council Member Blom recusing himself, the motion carried 6-0.

XIX. ADJOURNMENT – 11:14 p.m.

The agenda was posted on the City's website and on the City Hall electronic bulletin board located in the entrance of the City Council Chambers at 100 Civic Center Drive on May 20, 2021, at 4:00 p.m.

Brad Avery
Mayor

Leilani I. Brown
City Clerk