

June 8, 2021, City 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 May 25, 2021 Special Joint Meeting of the City Council and Finance Committee and the May 25, 2021 City Council Regular Meeting

The passages shown in *italics* below are from the [draft minutes](#) with suggested corrections shown in **strikeout underline** format. The page numbers refer to Volume 65.

Page 39, Item 1, paragraph 3, sentence 2: “*In response to her questions, Finance Director Catlett indicated the City’s 17% share of the property tax increase was provided by the City’s consultant.*”

[The City has not increased the property tax to 17%. The [reference](#) was, instead, to the fraction of the basic 1% of assessed value property tax that goes to the City and whether it is 16% or 17%. The last I checked, that fraction varied geographically by what the [Orange County Auditor-Controller](#) calls “Tax Rate Areas” (see “[Annual Tax Increment factor by tax rate area](#)”), going from a low of 5.9 cents of every dollar of the 1% collected (in TRA 07-015) to 23.9 cents of each dollar (in TRA 07-193). The 17% figure is presumably a weighted average calculated by dividing the City’s share of the 1% collected by the County by the total collected in Newport Beach. It would be expected to vary slightly from year to year depending on how that year’s assessed valuation is concentrated in TRA’s with high or low City shares. The City share varies by TRA because Proposition 13 effectively [apportioned](#) the 1% basic property tax among governmental agencies according to the fractions of the total property tax revenue they received at the time of its passage and did not allow for future changes.]

Page 40, paragraph 4, sentence 1: “*Jim Mosher understood that the fraction of property tax that goes to the City is based on ratios contained in that existed when Proposition 13 passed, the number may be different for each property, and 17% is probably a Citywide average.*”

[See previous comment.]

Page 42, full paragraph 6: “*Council Member O’Neill did not support the code enforcement staffing increase, proposed decreasing funding for the Ambassador Program by half and seeing if speed violations decrease, noted trash increased because dining was take-out only, and wanted to figure out if this is the right approach for this year.*”

[the [video](#) verifies this is what was said, but I think “**increase**” was intended]

Page 46, Council Member Brenner, last bullet: “*Requested a future agenda item regarding direction to the Park Parks, Beaches and Recreation Commission to agendize an Ocean Boulevard Bluff Walk presentation*”

Page 51, last paragraph: “*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 unsuitable material to be dredged decreased from 270,000 cubic yards of material to 100,000 cubic yards.”

Page 54, Item 17, paragraph 3: “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 General Fund (GF), funding is needed for aging infrastructure, and removing this restricted fund forces competition and does not stop enhanced maintenance.”

[note: The abbreviation “GF” was defined in the Joint Meeting minutes. But the Regular Meeting minutes are a separate standalone document, and the use of “GF” to stand for “General Fund” had not been previously explained in them.]

Item 3. Ordinance No. 2021-13: Amending Exhibit A of Section 3.36.030 of the Newport Beach Municipal Code Relating to Cost Recovery to Update Library Photocopying Fees

I support the staff recommendation, but was confused as to whether the March 9 increase referred only to the Library’s self-service **photocopiers**, or to **printing** from personal or public computers, as well, which is a much more heavily used service and I believe currently charges the same rates. The printing is output on quite different machines, and it was suggested at the April 19 Board of Library Trustees meeting that the rates for the two services are two separate things.

I remain uncertain where the rates for public use of Library printers (as opposed to photocopiers) are set in the fee schedule, and have long been concerned that the cost is much higher than that for public printing by all other departments (which, per lines 6 & 7 of the fee schedule, recover costs at the rate of 3 cents per page for black and white and 10 cents for color). The differential seems extreme, and is apparently related to the method of payment at the Library (through a self-service coin/credit card device) rather than to the actual costs of printing.

In any event, this action would appear to require not only the ordinance but also a revision to Resolution No. 2021-21, which set the higher rate.

Item 4. Ordinance No. 2021-12 and Resolution No. 2021-47: Eliminating the Balboa Village Area Benefit District and Directing All Unprogrammed Funds Returned to the General Fund

As indicated in the draft minutes of the May 25 meeting, I indicated I agreed with Council member O’Neill’s premise that restricted funds are generally undesirable, particularly when they are applied unequally throughout a city.

I also indicated I seemed to recall that before there was a Balboa Village Area Benefit District, Newport Beach had other parking benefit districts that were discontinued at the time the Balboa Village-specific one was created. This is borne out by page 6 of the Item 20 staff report from

November 25, 2014. Two of those, dating from 1995, are still on the books in NBMC [Sec. 12.44.027](#) (Neighborhood Enhancement Reserve), but apparently no longer funded. I also seem to recall the Peninsula-wide Enhancement Reserve was raided to pay for improvements in Balboa Village

I am less certain about the propriety of returning the unprogrammed balance in the current reserve to the General Fund. That seems to be backtracking on a prior commitment made for those particular moneys.

I also find it interesting that although the formerly-funded Neighborhood Enhancement Reserves (plural) were specific to the benefit districts, the newer [NBMC Sec. 12.44.029](#) seems to have created just *one* Area Benefit District Reserve (singular) into which many Area Benefit Districts could pay.

In view of that, the reference in the proposed Resolution No. 2021-47 to the “*Balboa Village Area Benefit District Fund*” seems a bit of a misnomer.

The original [Resolution No. 2014-101](#) simply directed money into the single “*Area Benefit District Reserve*” that had been created with that name by [Ordinance No. 2014-21](#). The reserve did not have a separate *Balboa Village*-specific name, and (strange as it may seem given the apparent intent of the districts) the ordinance would not even seem to have allowed a separate name or fund to be created.

Item 15. Board and Commission Scheduled Vacancies - Confirmation of Nominees

As I have said before, I think the Council should publicly interview the applicants for appointment, so the whole Council, not just an ad hoc committee can see how they perform and ask questions of them.

The rather secretive process Newport Beach follows makes it difficult to know if the committee, in making its recommendations, has considered maintaining the geographic diversity encouraged by Policy A-2 (see end of first section on [page 2](#)).

I also think the Ad Hoc Committee, in making its recommendations, places too much importance on incumbency. Giving preference to new blood might increase the interest people have in applying. Incumbents should be given a priority over them only if their performance has been truly exceptional. Otherwise, all applicants should be treated the same.

Item 16. Resolution No. 2021-53: Resolution of Intention to Disestablish the Newport Beach Restaurant Association Business Improvement District and Fix the Time and Place of Public Hearing

I was bothered by some misinformation about the Restaurant BID given in public comment at the May 25 Council meeting.

Among other things, former BID President Jim Walker said payment of the assessment was voluntary and there were no late fees.

Mr. Walker may have been thinking of a brief penalty amnesty program offered by the CdM BID in 2013 (see Council [Resolution No. 2013-22](#)), which as I recall was offered with a veiled threat that those who did not take advantage of the late fee amnesty program would have their accounts sent to a collection agency.

I do not recall the NBRA BID telling assesses the payment was voluntary or not charging late fees. Late fees were part of the 2020 plan submitted by the board to the Council (see [page 11](#) of Item 17 from June 9, 2020). And even though I specifically asked the BID Board if, in light of COVID, they wanted to include them in their 2021 plan, they did (see [page 12](#) of May 11, 2021, Item 7).

The fact that those who receive little or no benefit from the BID (such as supermarkets) are forced to pay is one of the primary reasons for disbanding it.

Mr. Walker also said no one had ever complained about paying the NBRA BID assessment. This was a little ironic since there was a [letter](#) in the lobby from Victoria De Frenza of Crockers – Balboa Island (whose husband, John, had served on the BID Board around 2016-2018) doing precisely that.

Item 22. Appointment to the Visit Newport Beach, Inc. Executive Committee

This is an unusual position, since it is the only Council appointment in the [Clerk's Roster](#) whose purpose and terms are defined by a Council-approved contract ([C-4961](#)) rather than the City Charter, a Council resolution or state law.

The [Item 10](#) from September 27, 2011, in which the contract was approved and the new position created, said (on [page 3](#)):

“A recent compliance review by the City's internal auditor, found VNB to be in good compliance with the terms of the Agreement.

The internal auditor did identify some possible improvements to the City's partnership with VNB, and VNB has been open to those improvements along with suggesting that the partnership's term be extended by an additional two (2) years to June 30, 2016.”

I believe this understates the findings of the City's compliance review, which was not shared publicly with the Council, and which I believe raised several suspicions of misuse of public funds.

While the duties of the appointee are not entirely clear, I believe the need for enhanced oversight and publicly reporting back to the Council remains. If nothing else, the most recent [tax return](#) (signed November 11, 2019) posted on the IRS' "[Tax Exempt Organizations Search](#)" site shows (on [page 17](#)) Visit Newport Beach Chief Executive Officer Gary Sherwin receiving reportable compensation of \$311,782 plus another \$55,201 of benefits, not to mention the perks he is likely eligible for as a tourism official. That is comparable too or more than Newport Beach's City Manager receives for running a much larger organization. Something seems wrong with that picture.

As an applicant for the position, I received an interesting note from the City Clerk's office providing me "*the staff report related to the appointment to the Visit Newport Beach, Inc. Executive Committee that is scheduled for vote by the entire City Council at the Tuesday, June 8, 2021 City Council meeting.*" And telling me "*If you are not appointed at that time, **you are always welcome to attend the Visit Newport Beach, Inc. Executive Committee's public meetings.***"

What is interesting about this is that, to the best of my knowledge, the VNB Executive Committee has never held a meeting of which the public was notified, let alone welcome to attend.

Moreover, the meetings of the larger [Visit Newport Beach Board of Directors](#), which likely includes a majority of the [Tourism Business Improvement District](#) board, are not publicly noticed, either. Even though the state law under which the TBID exists requires meetings of BID board members to comply with the Brown Act.