

CITY OF NEWPORT BEACH

City Council Meeting Minutes
Regular Meeting
August 24, 2021

I. **ROLL CALL** – 4:04 p.m.

Present: Mayor Brad Avery, Mayor Pro Tem Kevin Muldoon (arrived at 4:07 p.m.), Council Member Noah Blom, Council Member Joy Brenner, Council Member Diane Dixon, Council Member Duffy Duffield, Council Member Will O'Neill

II. **PUBLIC COMMENTS ON AGENDA AND NON-AGENDA ITEMS** – None

City Attorney Harp announced that the City Council would adjourn to Closed Session to discuss the items listed in the Closed Session agenda and read the titles.

III. **CLOSED SESSION** – Council Chambers Conference Room

A. **CONFERENCE WITH LEGAL COUNSEL**
ANTICIPATED LITIGATION – INITIATION OF LITIGATION
(Government Code § 54956.9(d)(4)): 1 matter

B. **CONFERENCE WITH LABOR NEGOTIATORS**
(Government Code § 54957.6): 1 matter

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), Newport Beach Police Association (NBPA), Newport Beach Professional and Technical Employees Association (NBPTEA), Newport Beach City Employees Association (NBCEA), and Newport Beach Firefighters Association (NBFA).

IV. **RECESSED** – 4:05 p.m.

V. **RECONVENED AT 5:03 P.M.**

VI. **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

VII. **CLOSED SESSION REPORT**

City Attorney Harp announced that no reportable actions were taken.

VIII. **INVOCATION** – Imam Mahdi al-Qazwini, Islamic Educational Center of Orange County

IX. **PLEDGE OF ALLEGIANCE** – Council Member Brenner

X. **PRESENTATIONS**

- **Proclamation Recognizing *International Literacy Day***

Library Services Director Hetherton introduced Cherall Weiss, Newport Mesa ProLiteracy Coordinator, who reported annual statistical data, 2021 partnerships, new branding, and upcoming events. Mayor Avery read the proclamation and presented it to Ms. Weiss.

- **Proclamation Recognizing U.S. Olympic Athletes from Newport Beach**

Mayor Avery highlighted several Olympic gold medalists with ties to Newport Beach and presented proclamations to gold medalists Maddie Musselman and Alys Williams from the U.S. Women's Water Polo Team.

XI. NOTICE TO THE PUBLIC

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

Council Member Brenner:

- Attended the Housing Element scoping meeting, a meeting with Dan Moody, Wake Up Newport featuring Sheriff Barnes, a telephonic meeting with Greg Nickless from the State Department of Housing and Community Development, and a meeting of the Mosquito and Vector Control Board that provides information at ocvector.org
- Utilized slides to announce the September 10, 2021 Movie in the Park, *Raya and the Last Dragon*, and the Sherwin Gardens Annual Garden Party on August 28, 2021
- Requested a future agenda item regarding waiving all fees related to 207 Evening Canyon Road
- Noted B-Candy vandalism and the arrest of one perpetrator

Council Member O'Neill:

- Attended a tree planting and the Chabad Center for Jewish Life grand opening
- Reminded the public of the 25 mph. speed limit with school starting
- Utilized a slide to announce voting options for the September 14, 2021 special election

Council Member Dixon:

- Updated Aviation Committee activities including a meeting with Federal Aviation Administration (FAA) senior staff members, and noted the August 2021 Aviation Activity Update is available on the City's website
- Utilized a slide to announce the Balboa Peninsula Trolley will operate through Labor Day

Council Member Blom:

- Participated in the pier jumping fundraiser for the Junior Lifeguard building

Mayor Avery:

- Attended an Orange County Sanitation District (OCSD) meeting
- Utilized a slide to highlight the Vessel Turn-In Program

XIII. MATTERS WHICH COUNCIL MEMBERS HAVE ASKED TO BE PLACED ON A FUTURE AGENDA

- **Consideration of extending the outdoor dining temporary permits until the end of the year [Muldoon]**

Council Member Blom recused himself due to business interest conflicts.

Mayor Avery, Mayor Pro Tem Muldoon, Council Member Brenner, Council Member Dixon, Council Member Duffield, and Council Member O'Neill concurred to bring the item back at a future meeting.

- **Consideration of adopting a resolution supporting a Veterans' Cemetery at Gypsum Canyon in Anaheim Hills [Muldoon]**

It was unanimous to bring the item back at a future meeting.

- Explore additional options regarding the recent City Council direction on the rehabilitation of the McFadden Square area to include a re-envisioning of the Newport Pier, oceanfront parking lot, existing pier buildings, boardwalk improvements and other City facilities within the area [Blom, Dixon]

It was unanimous to bring the item back at a future meeting.

XIV. PUBLIC COMMENTS ON CONSENT CALENDAR – None

XV. CONSENT CALENDAR

READING OF MINUTES AND ORDINANCES

- 1. Minutes for the July 27, 2021 City Council 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.

RESOLUTIONS FOR ADOPTION

- 3. Pulled from the Consent Calendar**
- 4. Resolution No. 2021-72: California Office of Emergency Services Governing Body Resolution for Designation of Applicant Agent [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. 2021-72, *A Resolution of the City Council of the City of Newport Beach, California, Providing Written Authorization to the State of California Governor's Office of Emergency Services of the Standard Assurances Required to Apply for the Emergency Management Performance Grant (EMPG) and Homeland Security Grant Program (HSGP).*
- 5. Resolution No. 2021-73: Acceptance of Grant Funds from the California Department of Alcoholic Beverage Control [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 grant and accept the California Department of Alcoholic Beverage Control (ABC) 2021-2022 Alcohol Policing Partnership Program (APP) grant award in the amount of \$24,830.00, and authorize the Chief of Police to execute the agreement;
 - c) Approve Budget Amendment No. 22-003 to increase revenue estimates by \$24,830.00 in the ABC grant account, No. 01035352-431472-G2202 and to increase expenditure appropriations in the amount of \$22,330.00 in Detective Division Overtime account, 01035355-713002-G2202; and \$2,500.00 in the Detective Division Special Department Expense account, 01035355-841046-G2202; and
 - d) Adopt Resolution No. 2021-73, *A Resolution of the City Council of the City of Newport Beach, California, Authorizing the Acceptance of the California Department of Alcoholic Beverage Control's FY 2021-2022 Alcohol Policing Partnership Grant Program Award, and Authorizing the Chief of Police to Act as "Authorized Agent" to Execute on Behalf of the City Grant Documents Necessary to Secure Payment and Implementation of Grant Funds to Supplement the Police Department's Alcohol Education and Enforcement Efforts.*
- 6. Resolution No. 2021-74: Approve Revisions to Council Policy H-1 Recommended by Harbor Commission [100-2021]**
Pulled from the agenda by staff.

7. **Resolution No. 2021-75: Amendments to the Records Retention Schedule [100-2021]**
 - a) Determine that the 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 it will not result in a physical change to the environment, directly or indirectly; and
 - b) Adopt Resolution No. 2021-75, *A Resolution of the City Council of the City of Newport Beach, California, Amending Certain Sections of the Records Retention Schedule and Authorizing Destruction of Certain Records Accordingly.*
8. **Resolution No. 2021-76: Proclaiming the Termination of the Local Emergency Declared on May 25, 2021 Related to the Infestation of Caulerpa Prolifera in Newport Harbor [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. 2021-76, *A Resolution of the City Council of the City of Newport Beach, California, Proclaiming the Termination of the Local Emergency Declared on May 25, 2021 Related to the Infestation of Caluerpa Prolifera in Newport Harbor.*

CONTRACTS AND AGREEMENTS

9. **Street Pavement Repair Program – Notice of Completion for Contract No. 7929-1 (Project No. 21R03) [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) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project;
 - c) 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
 - d) Release Faithful Performance Bond one year after acceptance by the City Council.
10. **2020-2021 Playground Improvements Project – Award of Contract No. 7934-1 [38/100-2021]**
 - a) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 Class 1 (Rehabilitation of Deteriorated Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because this project results in no expansion of an existing use;
 - b) Approve the project plans and specifications with modifications as discussed in this report;
 - c) Award Contract No. 7934-1 to R.E. Schultz for the adjusted bid price of \$279,915 and authorize the Mayor and City Clerk to execute the contract; and
 - d) Establish a contingency amount of \$25,193 (approximately 9 percent) to cover the cost of unforeseen work not included in the original contract.
11. **Mission Bay Drive Street Improvements – Award of Contract No. 7889-3 (21R03) [38/100-2021]**
 - a) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (repair and maintenance of existing highways and streets, sidewalks, and gutters involving no expansion of use) of the CEQA Guidelines, because this project has no potential to have a significant effect on the environment;
 - b) Approve project drawings and specifications;
 - c) Award Contract No. 7889-3 to All American Asphalt for the total bid price of \$196,691.00, and authorize the Mayor and City Clerk to execute the contract; and
 - d) Establish \$20,000 (approximately 10 percent) contingency to cover the cost of unforeseen work not included in the original contract.
12. **Transportation Engineering Services – Approval and Award of On-Call Professional Services Agreements [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) Approve separate on-call Professional Services Agreements with Iteris, Inc. (C-8390-2), LSA Associates, Inc., (C-7231-2), Kimley-Horn and Associates, Inc. (C-8502-2), Mark Thomas and Company, Inc. (C-8761-1), and Stantec Consulting Services, Inc. (C-7208-2) for three-year terms and a total not-to-exceed amount of \$200,000 per agreement, and authorize the Mayor and City Clerk to execute the agreements.

13. Approval of Agreement for On-Call Custom Sign Fabrication, Installation and Repair (C-8681-1) [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) Approve a three-year agreement with two automatic annual extensions with Outdoor Dimensions, LLC for on-call custom sign fabrication, installation and repair, with a total not-to-exceed amount of \$625,000.

14. City Bridge Maintenance Project – Rejection of All Bids for Contract No. 7679-1 (21R13) [38/100-2021]

Reject all bids received for Contract No. 7679-1 and direct staff to modify the scope of the project and re-advertise.

15. Acceptance of an Assistance to Firefighters Grant from the Federal Emergency Management Agency [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 grant and accept the Federal Emergency Management Agency (FEMA) Assistance to Firefighters Grant award in the amount of \$274,900; and
- c) Approve Budget Amendment No. 22-007 to increase revenue estimates by \$274,900 in account 75604-431390-G2240 (Fire Equipment-FEMA-Vehicle Exhaust Systems) and increase expenditure appropriations by \$302,390 in account 75604-911013-G2240 (Fire Equipment-Assist Firefighter Grant-Vehicle Exhaust Systems).

MISCELLANEOUS

16. Planning Commission Agenda for the August 19, 2021 Meeting [100-2021]

Receive and file.

17. Pulled from the Consent Calendar

18. Pulled from the Consent Calendar

Motion by Mayor Pro Tem Muldoon, seconded by Council Member O'Neill, to approve the Consent Calendar, except the items removed (Items 3, 6, 17 and 18); and the amendment to Item 1.

The motion carried unanimously.

XVI. ITEMS REMOVED FROM THE CONSENT CALENDAR

3. Resolution No. 2021-69: Supporting Local Schools as they Return to Normal and Parental Choice in Deciding Whether Children Should be Masked or Vaccinated at School (continued from the July 27, 2021 City Council meeting) [100-2021]

Council Member Blom indicated that Council hears residents' voices, noted the voices regarding this item have been numerous, frequent, and steady, expressed the opinion that not responding is a

dereliction of Council's duty, Council wants to empower the Board of Education, change is better when the community agrees, the Board of Education has jurisdiction over schools and has to work with the State, Council speaks for the residents, and this item concerns the freedom to make a choice.

Evelyn Best related that speakers are forced to speak on behalf of their children, expressed the opinion that mask and vaccination mandates have outgrown their purpose, authority in Sacramento and Washington, D.C., has been abused, children, whether or not they are masked, do not increase the risk for the community, and shared findings from studies of children wearing masks. She requested that Council support the resolution.

Jodi Burnham referred to the First Amendment and expressed the opinion that requiring students to wear masks or be vaccinated is illegal, schools and individuals mandating vaccinations can be sued, COVID-19 vaccinations are not vaccinations but experimental gene therapy, children have little or no risk of harm from COVID-19, and mask and vaccination mandates are a government overreach.

Claire Jessen thanked Council for supporting the parental right to choose what is best for children and commented that this is not about children's safety, leaders are ignoring data, masking children does not affect the spread of COVID-19, and COVID-19 cannot be fully eradicated, which means children will wear masks indefinitely if a mandate is approved.

Peggy Rose expressed the opinion that students have a greater risk of contracting influenza than COVID-19, and she and her family survived COVID-19.

Tammy commended Council for ending the local emergency in June, expressed concerns about the normalization of masking in schools, conditioning students to believe the gold standard of health is a syringe or mask and erosion of parental rights, advised that school attendance has and always will have inherent risks, and asked Council to support parental decisions.

Julie Speegun believed everyone wants what is best for the health and safety of children and indicated schools with mask mandates had a higher rate of infection, masks provide a false sense of security, masks create no benefit for children, and studies show masks are harmful.

Kristin West supported not wearing masks.

Kennett Beecher Moye stated, as a teacher, she wants to see her students' faces and that students' ability to speak and breathe are important.

Jessica Wolf stated wearing a mask in school has been proven to stunt children's emotional and developmental growth and ability to interpret social cues and form relationships, and parents have the right to determine how their children live and go to school.

Lyndi Kennedy noted her son has missed days from school due to migraines caused by wearing a mask, expressed concern about the mental health struggles caused by wearing masks, supported parental choice, and thanked Council for listening to the public.

Chris Jones concurred with comments regarding the ineffectiveness and negative psychosocial impacts of masks, and asked Council to support parents and their children.

Nicole thanked Council Member Blom for placing this item on the agenda, and expressed the opinion that a mask mandate sacrifices children to protect adults, for the past year society has filled children with fear and anxiety, suicide rates have increased, children should be allowed to be children, and this is about freedom of choice and the fundamental right to privacy.

An unidentified speaker shared his daughter's experience with school and the pandemic and his child's illnesses caused by wearing a mask, and emphasized that common sense is needed.

An unidentified speaker commented that parents want to protect their children, and asked Council to find a way to allow choice.

An unidentified speaker reported that 100 families, representing 200 children, joined a list in opposition to children wearing masks and asked the audience to stand if they support a no mask mandate.

Julie Prouty shared her friends' and clients' experiences with children's mental health issues during the pandemic, expressed the opinion that breathing is natural and covering the nose and mouth does not make sense, and hoped Council supports children's rights.

An unidentified speaker indicated that a peer-reviewed study of children wearing masks has not been conducted, masks were not intended for use in schools, her children have been sick due to wearing cloth masks but paper masks cause migraines, and expressed the opinion that masks are not doing what parents hope they will.

Barbie George noted that parents voiced the same concerns to the Newport-Mesa Unified School District Board of Education, shared her child's need not to wear a mask, appreciated the opportunity to voice her concerns, and asked Council to support parents.

Paul Jones stated this is an opportunity for Council to have an impact and create its legacy. He expressed hope that Council makes a difference.

Nancy Skinner believed the public needs to address the Board of Education, suggested Council advocate for ending the pandemic faster through vaccinations, commented that healthcare providers are doing the best they can to handle a new health threat, expressed the opinion that Council action on this topic is not appropriate when half the City may not agree, and an end to the pandemic is not in sight until everyone works together.

Carol Elliott advised that she has watched parents fight for their children before the Board of Supervisors and Board of Education, 47 studies found that masks are ineffective, and 32 studies confirmed the negative health effects of masks. She thanked Council for listening to parents.

Diane Morris supported families, indicated doctors support both sides of the issue, and doctors against masks are being censored.

Deborah Klein shared her child's speech difficulties and need to see faces to understand speech, and expressed the opinion that wearing a mask is not beneficial and parents and children should have a choice. She asked Council to support parental choice.

Stacy Jones shared her children's experiences with mask wearing at school and speech difficulties, wanted the ability to decide whether her children wear masks or receive vaccinations, and asked Council to support parents.

Hallie Hill advised that her son cannot learn to speak because he and teachers wear masks, doctors will not provide him with an exemption to wearing a mask, and asked Council to stand up for children and provide them with a choice.

Kristin West stated children need to see faces to learn empathy, and not learning empathy could lead to psychopathy, anxiety, and depression.

Susanne related her neighbor's inability to wear a mask or receive a vaccination, even though colleges are requiring them, and appreciated anything Council could do to support children.

Council Member O'Neill thanked the public for attending the meeting and sharing their thoughts, and noted residents' right to petition Council, the importance of the public addressing Council, the rules are made by the Governor and the Director of the California Department of Health, the Governor did not respond to his contacts in 2020, the first guiding principle in the City's legislative platform concerns local control, and Council will take stands to retain local control on behalf of the City and the School District.

Mayor Pro Tem Muldoon concurred with Council Member O'Neill regarding a fundamental right to petition government, related that a Supervisor's decision to tell parents how to take care of their children is upsetting, and parents' rights are natural rights, expressed support for the resolution, and encouraged speakers to spread the word.

Council Member Dixon indicated that wearing masks has affected her grandchildren, and the fear instilled in young children is heartbreaking, commended Council Member Blom for bringing the item forward, the Newport-Mesa Unified School District should be empowered to make these decisions, but their hands are tied by a State mandate, the speakers' stories are heartbreaking, adults are forcing these decisions on the lives of children, urged speakers to address the Governor, State Superintendent of Schools, and the head of California Public Health, appreciated speakers taking time to speak to Council, and reiterated that Council can only support the School District.

Council Member Duffield thanked speakers and Council Member Blom for raising the issue, expressed support for the resolution, and indicated the message has been conveyed.

Council Member Blom reiterated that it is about working together, stated that the important thing is standing up to get movement, Council will fight for the public, and encouraged the public to run for public office, boards, and commissions to make a difference.

Council Member Brenner shared her comments she made to her daughters regarding making decisions for their families and Council's inability to make decisions for the School District, and related that the Board of Education is not making the decision on masks and vaccinations, she dislikes the polarization caused by the issue, physicians are providing their considered and professional opinions, divisiveness is detrimental to the desired result, staff has not researched the issues or reached out to medical professionals, Council tries to collaborate with and support the Board of Education, encouraged the community to continue reviewing information, and expressed support for local control.

Motion by Mayor Pro Tem Muldoon, 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) adopt amended Resolution No. 2021-69, *A Resolution of the City Council of the City of Newport Beach, California, Supporting Local Schools as They Return to Normal and Parental Choice in Deciding Whether Children Should be Masked or Vaccinated at School.*

Mayor Avery thanked speakers for providing compelling and articulate comments, noted the importance of civility and respect for everyone, and appreciated and supported the revised resolution.

With Council Member Brenner voting “no,” the motion carried 6-1.

Mayor Avery recessed the meeting at 7:11 p.m. and reconvened the meeting at 7:22 p.m. with all members of the City Council in attendance.

17. Visit Newport Beach, Inc. FY 2022 Destination Business Plan Supplement and Budget, and FY 2021 Performance Standards Report [100-2021]

Council Member Blom reported he has been looking at how marketing dollars are spent and how the City is promoted, his desire to continue promoting the City, there has been a cataclysmic change in the way revenue is generated by tourism and sales tax which affects the marketing plan, a huge amount of money focused outside the local market is a concern, foreign dollars may not be coming in the same way they previously did, local dollars are coming in at a greater rate than ever, Visit Newport Beach has been a great partner with the City for a long time, marketing is always on the cusp of change, the budget should reflect adjusted forecasts and more money for growing local markets, spending huge amounts of money on international markets is a concern, his goal is fiscal responsibility, the City's marketing arm needs to understand that fiscal responsibility is the first and foremost goal, and the budget should reflect changes rather than the past.

Gary Sherwin indicated Visit Newport Beach canceled all international efforts in the first week of March 2020 and has not activated any international markets since then, the proposed funding reflects anticipation that markets for Canada and the United Kingdom will open in 2022, there are no plans to reactivate any other markets, the plan will change to exclude the two markets if COVID-19 surges, hotels ask for international marketing, a \$200,000 campaign was targeted in Southern California to stimulate business over the summer, \$1 million will be strategically deployed depending on market performance, international efforts attempt to build market share in key markets with long-term potential, the plan for 2021 is recovery, international and group markets will not return until the public is comfortable with conventions, the plan's style, focus, and strategy are different from anything developed in 2019, the marketing committee, which is composed of sales leaders, unanimously approved the plan.

Debbie Snavelly added that hotel general managers meet with marketing leaders who work with Mr. Sherwin's team to draft the marketing plan, the international market is huge for Newport Beach, and hopefully the international market will return by April 2022 so that funds can be invested in it.

In response to Council Member Blom's question, Mr. Sherwin advised that Visit Newport Beach's fees of \$1.9 million are overhead costs, and the Board and City staff review the fees and costs.

Council Member Dixon suggested that future budgets include comparisons of actual and proposed funding and the percentage of variance for the prior two years, and indicated Transient Occupancy Tax (TOT) revenue has decreased significantly, a comparison will help tell the story of investments, and understanding the rationale for changing the allocations of resources would be helpful. In response to Council Member Dixon's questions, Mr. Sherwin related that 2019 data is almost an irrelevant comparison due to significant financial and market changes since 2019, the marketing plan lays out the rationale, research, and most fruitful markets, the budget is adjusted several times a year, Visit Newport Beach is set up as an independent nonprofit corporation so that it can be market-driven and entrepreneurial, and the marketing plan is an internal document prepared for Council and the industry. Ms. Snavelly indicated revenue comparisons can be provided and decisions regarding the allocation of capital can be articulated. Council Member Dixon liked the section about strengths and weaknesses, wanted to be supportive, noted Visit Newport Beach is doing significant work that brings in significant revenue, and wanted a financial discussion instead of a marketing presentation.

Homer Bludau was amazed by the science of Visit Newport Beach's methodology for determining the effectiveness of ad campaigns and the target audience, and its financial situation.

In response to Council Member O'Neill's question, Mr. Sherwin indicated community relations may include arts grants but will review the information, and the amount may not be \$600,000.

In response to Council Member Blom's questions, Mr. Sherwin reported managers of major hotel brands have permanent seats on the Board. Ms. Snavelly indicated managers represent the

ownership, not necessarily the management company, and confirmed that the contractor for Newport Dunes has a seat on the Board.

In response to Council Member Duffield's question, Ms. Snavely related that Visit Newport Beach sells the destination from a group perspective, 50% of her sales are group-related, and without Visit Newport Beach, she would lose half of all revenues. Mr. Sherwin clarified that 60% of large hotels' business comes from group events and 40% from leisure, Visit Newport Beach drives group business, and Visit Newport Beach would know the number of visitors that the campaign in South California generated.

David Tanner requested hotels address how the industry plans to recover given the constraints of the past couple of years, and stated Visit Newport Beach covers the broader picture of marketing.

Motion by Council Member O'Neill, 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; b) receive and file the FY 2022 Newport Beach & Company Destination Business Plan Supplement; c) receive and file the Visit Newport Beach, Inc. Leisure Marketing (TOT) FY 2021 Performance Standards Report; and d) approve the Visit Newport Beach, Inc. Leisure Marketing (TOT) FY 2022 Budget.

With Council Members Blom and Duffield voting "no," the motion carried 5-2.

18. Tourism Business Improvement District (TBID) Annual Report and Fiscal Year 2021-22 Budget [100-2021]

In response to Council Member Blom's questions, Mr. Sherwin clarified that Short-Term Lodging (STL) is not included in the TBID, large hotels but not STLs are assessed 3% of the gross short-term room rentals, STLs pay the 10% TOT only, STL is promoted under the TOT leisure budget, and STLs and hotels are promoted in the same way as leisure rooms.

In response to Council Member Dixon's questions, Mr. Sherwin indicated the Fashion Island Hotel remains closed, Marriott is open but undergoing a major renovation, the summer season was reasonably successful due to promotions targeted, occupancy exceeded 80% for many weeks, hotels' average daily rate of more than \$400 per night is almost a market leader for Southern California but the high rate is neither sustainable nor healthy, Newport Beach needs a balanced tourism portfolio, group business for the fall is being delayed to 2022 or canceled because of the surge in COVID-19 cases, and the group market is extremely competitive.

Motion by Mayor Pro Tem Muldoon, seconded by Council Member O'Neill, 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; b) authorize a waiver of the timeline provided in Section 3.5 of the Tourism Business Improvement District Management Agreement; c) approve the NB TBID'S FY 2021-22 Annual Report; and d) approve the NB TBID's FY 2021-22 Budget.

With Council Members Blom and Duffield voting "no," the motion carried 5-2.

XVII. PUBLIC COMMENTS ON NON-AGENDA ITEMS

David Tanner provided a handout of his comments, discussed Council comments regarding the General Plan Update and staff comments made during the Environmental Impact Report (EIR) scoping meeting, questioned which are correct, and expressed the opinion that the State Attorney General's Office would comment on the piecemeal approach to the EIR. He suggested Council take control of the General Plan Update process.

Rick Tilley opposed removal of the no-parking zone behind Port Sheffield Place and reported no one contacted residents before the change was made, took issue with staff's assertion that removal of the

zone is necessary, City and contractor vehicles, as well as personal vans and campers, occupied on-street parking for weeks at a time, and the Police Department has not been contacted about illegal parking. He requested restoration of the no-parking zone along Ford Road.

Tom Radtke discussed the history of the neighborhood and park, expressed concern about noise from the park and machinery, and asked Council to restore the no-parking zone.

Katie Osbourne expressed concern that removing the no-parking zone behind Port Sheffield Place will exacerbate long-term parking of contractor and construction vehicles, recreational vehicles, and vans, and asked Council to prohibit overnight parking on the entire street.

Council Member O'Neill indicated that Council will be considering a resolution prohibiting overnight parking at the September 14, 2021 City Council meeting.

Council Member Blom added that Council was aware of the construction parking, and the gas company should be completing construction in Harbor View in a month. Ms. Osbourne clarified that other projects are also using the street for parking.

Cole Borggreve discussed his employment as a lifeguard, closure of the pool at Newport Harbor High School, its effect on the water polo team, his efforts to resolve the conflict between team practices and his work as a lifeguard, and his termination.

Billy Rankin shared his proposals to continue working as a lifeguard while attending water polo practices, his supervisor's approval but Assistant Chief Halphide's denial of his request, his work on a lifeguard tower and requalifying to work as a lifeguard in 2022, expressed the opinion that he was treated unfairly, and requested Council investigate his termination.

Owen Bartlett indicated his performance as a lifeguard was good, he was forced to decide between playing water polo and working as a lifeguard, and believed he was treated unfairly and is qualified to return as a lifeguard in 2022.

Finn Genc related his sports accomplishments and requested Council review his and his teammates' terminations. He assured that he wanted to continue his commitment as a lifeguard and recertify rather than requalify for a lifeguard position in 2022.

Judd Borggreve expressed concern that dismissal of the young men was unwarranted, stated numerous water polo players have become Newport Beach lifeguards, the young men are dedicated and hard-working student-athletes, and another water polo player was given more than 20 days off for practice. He indicated he did not understand staff's unwillingness to work with the young men, reiterated the young men's hope to return in January 2022, and pointed out that the young men have worked more hours than required in their contracts.

Mike Rankin related Assistant Chief Halphide's comments regarding difficulties with the Newport Harbor High School water polo program, Assistant Chief Halphide's aggressive posture with lifeguards who also play water polo at Newport Harbor, his opinion of Assistant Chief Halphide's questions during the call, and questioned the wisdom of the City paying to retrain the young men as lifeguards.

City Attorney Harp advised that Council may not discuss the issues that were brought up since they are not on the agenda, Council only manages the City Manager, City Attorney, and City Clerk, Council does not get involved in staff employment matters, and City Manager Leung is the appropriate person to discuss these types of issues at a later time.

Kristin West indicated she is drafting a petition, hoped electric wires could be removed from some City blocks as they are a health risk, and requested a ban on children, teens, and young adults using personal cell phones until the age of 26.

City Attorney Harp noted that Mayor Pro Tem Muldoon recused himself and left the room during Ms. West's comments due to potential business interest conflicts.

In response to Council Member Dixon's question, Community Development Director Jurjis discussed submission of the draft Housing Element to the State Department of Housing and Community Development (HCD), receipt of HCD's comments in mid-October and subsequent presentation of the comments and staff recommendations to Council, preparation of an EIR for the Housing Element and Circulation Element, including a traffic study, formation of a General Plan Steering Committee, a vote on the Land Use Element Update but not the Housing Element Update, and the schedule for the Housing Element. He reported that SB 9 would provide ministerial approval of a project to demolish a single-family home and construct a duplex, eliminate single-family zoning, and result in the City losing local control of single-family zoning; and SB 10 would give Council authority to rezone any property to allow up to 10 units and does not require California Environmental Quality Act (CEQA) review.

XVIII. PUBLIC HEARINGS

19. Ordinance No. 2021-15: Non-Exclusive Commercial Solid Waste Franchise Agreements [42/100-2021]

Mayor Avery opened the public hearing. Hearing no testimony, he closed the public hearing.

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. 2021-15, *An Ordinance of the City Council of the City of Newport Beach, California, Granting Non-Exclusive Franchise Agreements for Commercial Solid Waste and Divertible Materials Handling Services within the City of Newport Beach* to the two so named companies, and pass to second reading on September 14, 2021.

The motion carried unanimously.

20. Appeal of Denial of Special Neighborhood Trees Removal Request at 1317 and 1323 Ashford Lane [100-2021]

Deputy Public Works Director Martin and Landscape Manager Pekar utilized a presentation to discuss the matter and Neighborhood Trees.

In response to Council Member Dixon's questions, Landscape Manager Pekar clarified that the appeal concerns two Special Trees on Ashford Lane and noted that additional trees are located on Ashford Lane.

Landscape Manager Pekar continued the presentation with initial inspection findings, denial and appeal, June 1, 2021 Parks, Beaches and Recreation Commission (PB&R) meeting, PB&R results and basis for appeal to Council, infrastructure repair at 1317 Ashford Lane, mitigation options, infrastructure repair options, and recommendations.

In response to Council Member O'Neill's questions, Landscape Manager Pekar reported that only certain species of trees can be designated as Problem Trees, trees not designated as Special Trees and responsible for infrastructure problems can be removed under the Standard Tree category, and a homeowner cannot construct improvements that damage a Special Tree's roots, even though the roots extend into the homeowner's property.

In response to Mayor Avery's questions, Landscape Manager Pekar estimated that the largest trees in the area are probably 50-60 years old, their roots likely extend under the street and into private property, sidewalks and streets in the area have been repaired due to damage from tree roots, two Special Trees on Candlestick Lane have been removed, the subject trees will probably have to be removed in eight years at the City's expense, City Council Policy G-6 allows a choice of replacement trees on most streets, the appellant would pay for removal and replacement of the trees, a 48-inch box is the largest size allowed for the site, the maximum height of a strawberry tree is 30 feet, strawberry trees are not invasive, a lemon-scented gum tree is not recommended for the site because of infrastructure issues, lemon-scented gum trees are planted along Marine Avenue, and they are pruned annually at a cost of \$60 per tree. Public Works Director Webb added that the homeowners are redeveloping the property and may bear some of the cost, and division of the cost will depend on the homeowners' plans and Council's action.

Mayor Avery opened the public hearing.

Justin Wheeler, appellant, advised that eucalyptus trees in front of his home are a liability to the City, have damaged the public thoroughfare, suffer limb failure, and have structural concerns documented in the Level 3 Tree Assessment, the arborist stated the trees should be removed in five years, sidewalk damage is extensive, the concern is risk rather than aesthetics or personal preference, and he obtained more than the required number of signatures in support of removing the tree.

Shanel Arnold, appellant, utilized a presentation to discuss utility access, streetlamp damage, sloping sidewalks, pooling water, fallen limbs, new construction, and an independent Level 3 Tree Assessment.

Rich Tait supported the request to remove the trees because they are a safety hazard and damage infrastructure.

Elise McKasson expressed the opinion that there are no safety concerns related to the eucalyptus tree near her home, indicated that birds of prey need tall trees, the trees contribute to the charm of the neighborhood, and at least eight neighbors opposed the tree removal at previous hearings.

Mrs. Tait stated she lived at 1323 Ashford Lane in her youth, and her mother removed fallen limbs from her yard and swept the driveway daily to remove tree droppings. She expressed support for the removal of the eucalyptus trees and replacement with a tree more appropriate for the site.

Mark Aurelich commented that the trees make Glenwood Lane and Ashford Lane special, mitigations can preserve the trees, and the neighbors work together. He requested Council deny the appeal.

Jim Mosher expressed the opinion that the trees' lifespans are greater than eight years.

John McKasson related that the major appeal of the street is the tree canopy, new trees will be woefully inadequate compared to existing trees, Council needs to consider any option to preserve the trees, previous projects did not require tree removal, and tree removal seems to be an extreme measure.

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

Council Member O'Neill indicated that trees are designated as Special Trees for a reason, trees should be preserved if they are healthy, eight years is a long time, and stated his support for denying the appeal.

Council Member Dixon recalled a previous Council discussion about Special Trees and reported that Council revised the policy to designate trees and include professional opinions. In response to her questions, Landscape Manager Pekar discussed the blue gum eucalyptus tree that was responsible for the accident, noted blue gums are more prone to failure after root pruning, the consultant is more concerned about the amount of pruning rather than the frequency of pruning, trees are evaluated when they are pruned, infrastructure repairs are needed regardless of development on the lot, and the tree could live much longer than eight years if repairs are not made. Council Member Dixon supported the policy and PB&R's decision.

In response to Council Member Brenner's questions, Landscape Manager Pekar advised that staff would work with the homeowner to ensure development does not cut through large, structural roots, staff would negotiate a tree protection zone that extends into private property, and preserving the trees could require a redesign of the development project.

Shanel Arnold noted that relocating utilities away from trees requires 3-feet of excavation, and one of the trees has grown around a water meter access. Landscape Manager Pekar agreed that the water meter would have to be relocated regardless of construction.

In response to Council Member Duffield's question, Public Works Director Webb advised that the City would abandon the water meter and install a new one at a different location.

Mayor Avery stated trees make a difference in the feel of the street, trees are sometimes an issue between neighbors, and residents value trees.

Motion by Council Member O'Neill, seconded by Mayor Avery, to a) determine this action is categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to Sections 15301 (Existing Facilities) and 15304 (Minor Alterations to Land) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because the activities are in the classes of projects which have been determined not to have a significant effect on the environment; and b) adopt Resolution No. 2021-77, *A Resolution of the City Council of Newport Beach, California, Denying the Applicants' Appeal of the Parks, Beaches and Recreation Commission's Decision to Prohibit the Removal of Two Special Neighborhood City Trees at 1317 and 1323 Ashford Lane.*

With Council Members Blom and Duffield voting "no," the motion carried 5-2.

21. Resolution No. 2021-78: Appeal of Director's Determination No. DD2021-001 Interpreting Accessory Residential as an Allowed Use within Resort Hotels (PA2021-096) [100-2021]

Mayor Avery opened the public hearing.

Michelle Black, representing Stop Polluting Our Newport's (SPON), utilized a presentation to discuss the statutory interpretation, Charter Section 423 ("Greenlight"), the Director's Determination as a project, the Coastal Act, required findings, finality of Council's direction, and the General Plan Update. She urged Council to reject the Director's Determination.

Charles Klobe, President of SPON, believed Council did not understand the ramifications of City Council Policy K-4 when it adopted it in March 2021, indicated adding this to the General Plan Update would satisfy SPON, and expressed the opinion that staff's written response to the California Coastal Commission was a mistake for Newport Beach.

Jim Mosher discussed changing the rules through a Director's Determination, hotels affected by the Determination, and the Director's inability to make the required findings. He expressed the opinion that a change in land use should be incorporated into the General Plan Update.

David Tanner suggested that staff and Council should refer an interpretation in writing to the Coastal Commission for input or a determination, and the City should seek the Coastal Commission's assistance.

Dennis Baker, Treasurer of SPON, referred to the definitions of hotel and dwelling, indicated that the Director's interpretation reverses definitions in the General Plan, Council is not following the process to amend the General Plan, and objected to Council's action.

Gary Sherwin, President of Newport Beach and Company and Visit Newport Beach, supported the Director's Determination, requested Council uphold the policy, and noted current hotel projects include some form of residential product, mixed-use hotels are an established trend in the hospitality industry, and most hotel projects would have difficulty obtaining financing without residential products.

Nancy Skinner expressed disappointment with the attempt to circumvent the established process, recalled a previous attempt to avoid the Greenlight initiative, and encouraged Council to follow the process.

Michelle Donohue, Vice President of Sales for Visit Newport Beach, discussed drivers of occupancy, the need for luxurious amenities to attract business, and the need for a residential component for hotels to remain competitive.

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

Council Member O'Neill recalled public comments from previous Council hearings regarding City Council Policy K-4, advised that the interpretation is consistent with the policy, recent appeals to the Coastal Commission paint the City as the poster child for legislation such as SB 9 and SB 10, the City is caught between conflicting directions from State agencies, and hoped Council and the community would work together.

In response to Council Member Dixon's questions, Community Development Director Jurjis discussed past interpretations regarding the Fire Station 2 site, conversion of tennis courts to hotel units, and conversion of hotel units to residential units, implementation of City Council Policy K-4 through the Determination, combining hotel and residential uses, the global trend for a mix of residential and hotel uses, the 30% limit on residential units, traffic impacts, and interactions with the Coastal Commission on this topic.

Council Member Brenner disclosed communications with members of SPON, and noted that the issues were not raised during previous discussions and discussed Council's intention to support housing production. In response to her questions, Community Development Director Jurjis reiterated that City Council Policy K-4 was Council's direction to staff to find a way to convert 30% of hotel rooms to residential uses, staff did not redefine hotel and residential uses but combined the two, hotels continue to suffer from the pandemic, and the proper process was followed.

Mayor Pro Tem Muldoon indicated that hotel resort use will be an ideal use and will benefit the City and its aging residents.

Motion by Mayor Pro Tem Muldoon, seconded by Council Member O'Neill, to a) find this Director's Determination is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. This Director's Determination is also exempt pursuant to CEQA Guidelines Section 15061(b)(3), the general rule common sense exemption that CEQA applies only when there is the potential for causing a significant effect on the environment; and b) adopt Resolution No. 2021-78, *A Resolution of the City Council of Newport Beach, California, Denying an Appeal and Upholding the Community Development Director's Determination No. DD2021-001, and Associated Findings, that Accessory Residential is an Allowed Use within Resort Hotels (PA2021-096).*

Council Member Blom recalled a unanimous Council vote to reduce barriers to housing after a public hearing and stated that Council reduced the barriers, followed the process, and is trying to increase housing production in creative ways, at times the process has to be refined, staff has done a great job, and this policy is needed.

In response to Council Member O'Neill's question, City Attorney Harp opined that there is no right to appeal a denial to the Coastal Commission, and the Director's Determination is not a project.

The motion carried unanimously.

XIX. CURRENT BUSINESS

22. Tustin Avenue Trial Closure at Cliff Drive [100-2021]

Motion by Council Member Brenner, 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) direct staff to install temporary barricades to implement a trial closure of Tustin Avenue at Cliff Drive for a four-month trial observation period, and report back to City Council on findings and recommended next steps.

The motion carried unanimously.

XX. MOTION FOR RECONSIDERATION – None

XXI. ADJOURNMENT – Adjourned at 10:50 p.m. in memory of Joseph T. Devlin

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 August 19, 2021 at 4:00 p.m.

**Brad Avery
Mayor**

**Leilani I. Brown
City Clerk**