

CITY OF NEWPORT BEACH

City Council Minutes
Study Session and Regular Meeting
September 10, 2019

I. ROLL CALL – 4:00 p.m.

Present: Mayor Diane Dixon, Mayor Pro Tem Will O'Neill, Council Member Brad Avery, Council Member Joy Brenner, Council Member Duffy Duffield, Council Member Jeff Herdman (arrived at 4:03 p.m.), Council Member Kevin Muldoon

II. CURRENT BUSINESS

SS1. Clarification of Items on the Consent Calendar - None

In response to Mayor Dixon's question, City Manager Leung explained the purpose of on-call agreements and contracts, reported staff reviewed the process, and believed it has been updated to improve accountability and reduce future amendments.

SS2. Proclamation Designating *International Literacy Day*

Mayor Dixon read the proclamation and presented it to Newport/Mesa ProLiteracy Literacy Coordinator Cherall Weiss and Advisory Board Chair Eve Marie Kuntzman, who provided handouts, invited everyone to attend the *International Literacy Day* Celebration on September 12, 2019, and relayed positive outcomes as a result of the program.

SS3. Check Presentation from the Friends of the Library

Amy Hunt, President of the Newport Beach Friends of the Library, and Wendy Frankel, Book Store Manager, presented a check for \$185,000 to the City, explained how the funds are generated, and indicated the Friends have donated \$3.5 million over the past 14 years.

SS4. Community Outreach by the Federal Bureau of Investigation (FBI)

Diane Gonzalez, Community Outreach Specialist, explained what the FBI does for the community, provided literature, assured they want to build partnerships and community awareness, and indicated the FBI has an office in Orange County.

SS5. Code Amendment Update Related to Residential Design Standards (PA2019-070)

Community Development Director Jurjis and Principal Planner Murillo utilized a PowerPoint presentation to discuss the current regulations and suggestions for third floors and attics, issues associated with the regulations, highlight difficulties associated with beach cottages and proposed incentives and changes, review issues and possible options associated with single-unit and two-unit dwellings in Multi-Residential (RM) zones, and review community input on the three issues.

In response to Council questions, City Attorney Harp clarified SB 330 and its possible implications to the City as it relates to buildable square footage, and staff reviewed how the current regulation for decks have been altered to become livable space after inspections, instead of remaining outdoor space, provided background to the 2010 Zoning Code changes, confirmed converting RM property to a single-family dwelling has always been in the Zoning Code, explained current issues with the conversion, and discussed how current parking regulations affect beach cottages.

Council Member Brenner emphasized the need to be very specific when dealing with decks.

Mayor Dixon believed decks should not be permitted to have walls.

Council Member Avery expressed concern about implementing restrictions in RM zones at this point, indicated requiring step backs might assist with the issue, believed massing is happening due to land values, emphasized surrounding neighbors to these properties need to be able to receive air and light, and noted he is in favor of modifications but keeping the height limit.

Council Member Brenner discussed the initial intent and style of buildings in RM zones and emphasized the City has changed the regulations in the past and can do it again since it is the City's job to protect the community.

Council Member Duffield explained how permanent residency versus summer residency has changed the makeup of homes over the decades.

Allan Beek noted a past Council did not adopt Corona del Mar's development standards, stated concerns with mansionization was brought up during the 2006 General Plan meetings and surveys, believed the City needs to review how it deals with non-conforming uses and suggested they only be allowed for a specific amount of time so the City will not have these issues in the future.

Charles Klobe expressed support for all three proposed changes, suggested having local architects advise staff on how to tighten loopholes, and agreed with Jim Mosher's written response to the RM component.

Ron Yeo suggested going back to the average 24-foot roof height to solve the third floor massing issue, took issue that the decks are not compatible with the community, and believed decks should be counted toward the square footage and remain open.

Tom Houston believed the charm of the older parts of the City is changing due to the abuses within building law, and discussed massing and building height issues on Balboa Island.

Lee Pearl noted beach cottages on Balboa Island that have been passed down to family members are being torn down because they had no option to keep them and cannot meet current building standards to improve them; and thanked the City for addressing the massing issue.

Denys Oberman believed decks should remain open with no permanent roof or side pieces, offered to provide Council with the background of the 2010 General Plan, and suggested following the American Planning Association's (APA) principles for heights, setbacks and design standards.

Jim Mosher believed SB 330 states the City would not be able to impose design standards after January 2020 unless they are objective, but does not completely restrict the City's authority, discussed sheer walls and how step backs are measured, expressed concern with building single-family homes in the RM zone due to the upcoming requirements to increase the housing count, and believed the City might need to provide incentives to create multi-family dwellings, possibly by making standards looser for multi-family units and stricter for single-family units.

Ken Rawson believed the ambiance from the 2000 Zoning Code was better, decks should not have roofs, more code enforcement is needed, expressed concerns with beach cottage parking issues, questioned if the City can restrict beach cottages from turning into short-term lodging, and discussed multi-unit height limits versus single-family height limits.

Hoiyin Ip asked if the City could implement sustainability features to create more green buildings, discussed Regional Housing Needs Assessment (RHNA) numbers, and highlighted San Clemente's letter to the Southern California Association of Governments (SCAG) and how they handled public outreach.

Nancy Skinner believed the solution for decks is to not allow any type of enclosure.

Larry Tucker disagreed with counting roofed decks as square footage, requested a better definition of "deck" in the Zoning Code, and emphasized the need for code enforcement.

Art Pease took issue with how the City changed the Floor Area Ratio (FAR) in Corona del Mar, believed property owners have entitlements under the existing Zoning Code, and requested the RM zoning issue be revisited or removed from consideration.

Linda Watkins took issue with over-development and increased traffic, suggested Council conduct several study sessions to determine how the 2006 General Plan turned into the current General Plan and Zoning Code.

Michael Mack expressed his opposition to changing anything in the RM zone and believed changes would be a taking of property when property owners have entitlements.

Joni Martin indicated she does not have a problem with the changes that are occurring in the RM zone around the 1800 block of Ocean Front, noted there is a financial value that comes with RM development standards, believed changing the RM regulations prohibits property owners from building a property that is consistent with the community, noted the small number of properties in RM zones, and indicated 9 of 15 RM property owners she spoke with expressed opposition to changing the regulations and she will be reaching out to as many of the RM property owners as possible.

Catherine Martin Wolcott, representing the Martin Family Trust, expressed opposition to any amendments in the RM zone, as they could significantly affect their property values and property rights, believed amendments would not change massing issues since the problem is with third floor decks, pointed out that it is difficult to pick out a single-family house or a multi-family house in this zone, noted all parcels should be treated equally, expressed support for the beach cottage proposal, and indicated deck shading is helpful for health and safety.

Carmen Rawson took issue with Zoning Code definitions associated with decks since they are subject to interpretation, believed livable spaces on decks should be prohibited, expressed concern for parking spaces and square footage associated with beach cottages, and expressed support for amending the RM zone.

Mark Teale, architect, believed massing should be mitigated in the City and covered decks should comply with setback regulations. He suggested keeping the area open on 50% of the perimeter of roof decks.

Referencing SB 330, Mayor Pro Tem O'Neill believed the City could deal with beach cottage preservation and roof deck issues; however, might be restricted relative to RM zone and buildable square footage issues since SB 330 will look at changes made since January 1, 2018.

Following Council discussion and input, Mayor Dixon summarized that all Council members supported cottage preservation, a majority supported the application of third floor step backs for covered decks, and requested staff bring back options to reduce mass and increase articulation of single-family and multi-unit structures in the RM zone.

Mayor Pro Tem O'Neill indicated he is supportive of third floor step backs for covered decks, but not supportive of the roof deck prohibition. He stated that, if this approach was pursued, he suggested sending postcards about this to Balboa Island and Corona del Mar residents.

Council Members Brenner and Herdman agreed that this needs more community input.

III. PUBLIC COMMENTS

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Hoiyin Ip displayed a slide to encourage the City to adopt an ordinance to ban single-use plastic food ware, noting the City has the weakest and fewest trash ordinances compared to Laguna Beach, Dana Point and San Clemente.

Referencing Item IV.B, Jim Mosher noted the address listed is the current site of the Newport Beach Animal Shelter.

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

IV. 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 REAL PROPERTY NEGOTIATORS
(Government Code § 54956.8): 1 matter**

Property: 20302 Riverside Drive, Newport Beach, CA 92660
APN: 439 251 05

Agency Negotiator: Grace Leung, City Manager
Carol Jacobs, Assistant City Manager

Negotiating Parties: 20302 Riverside Dr. LLC, represented by Kathy Leonard

Under Negotiation: Instruct negotiator as to price and terms of payment

V. RECESSED – 6:20 p.m.

VI. RECONVENED AT 7:10 P.M. FOR REGULAR MEETING

VII. ROLL CALL

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

VIII. CLOSED SESSION REPORT

City Attorney Harp reported that no reportable actions were taken.

IX. INVOCATION – Pastor Phil Eyskens, Lighthouse of Costa Mesa Church of the Nazarene, Costa Mesa

X. PLEDGE OF ALLEGIANCE – Council Member Avery

XI. NOTICE TO THE PUBLIC

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

Council Member Avery:

- Attended a Newport Beach Historical Society event at the Muth Interpretive Center regarding the Back Bay, an Aviation Committee meeting, a Homeless Task Force meeting, and a Homeless Task Force subcommittee meeting

Council Member Muldoon:

- Participated in the Tunnel to Tower 5K to remember the victims of 9-11

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Council Member Brenner:

- Displayed slides to announce a Short-Term Lodging Stakeholder meeting on September 16 and a Corona del Mar Meet and Great on September 28, and discuss the first check-out at the Corona del Mar Library with members of the Friends of the Corona del Mar Library, and her visit to the Fountain Valley Waste Water Recovery Center with Charles Klobe and Nancy Scarbrough
- Attended a roundtable on mental health organized by Congressman Harley Rouda along with Council Member Herdman and Homeless Task Force Members Jean Wegener and Terry Moore, three meetings of the Education and Outreach Subcommittee of the Homeless Task Force, the Corona del Mar Residents Association (CdMRA) meeting with Mayor Pro Tem O'Neill and Council Member Herdman, a public scoping meeting at the Orange County Sanitation District (OCSD) about their Facilities Master Plan with CdMRA President Debbie Stevens and City Engineer Sinacori, a community outreach meeting conducted by Principal Planner Murillo regarding the construction changes discussed during today's study session, a City Council Ad Hoc Committee on Election Reform meeting and announced a public input session will be conducted on October 14 at 5:00 p.m. in the Friends Room, the Second Annual OASIS Car Show and Pancake Breakfast, the Newport Beach Chamber of Commerce Eco Expo and Community Emergency Response Team (CERT) Disaster Preparedness Expo, the Newport Shores block party, and an event at the Muth Interpretive Center to kick off the new book about the Robinson's efforts to save the Back Bay from development (displayed slide)
- Met with Craig Smith, Lilly Mazieres and Bob Taylor of the Citizen' Climate Lobby regarding sea level rise; stakeholders regarding short-term lodging issues with Mayor Dixon and Council Member Herdman; Tom Callister of the City's CERT program and CERT Coordinator Brisbois regarding ideas for the Emergency Council; Jayne Ruane and Bob Evans to discuss Jasmine Park Homeowners Association issues; Friends of the Newport Beach Animal Shelter Board Members Jean Watt, Walt and Karen Howald, and Sharon Esterley and Council Member Muldoon to discuss the future of the shelter, and Newport Harbor High School Mentee, Vanessa Conejo

Council Member Herdman:

- Attended the Newport Beach Chamber of Commerce Government Affairs Committee meeting, the Police Department badge pinning ceremony, the Water Quality/Coastal Tidelands Committee meeting and announced next month's meeting will discuss the possibility of banning single-use plastics, the Newport Beach Chamber of Commerce Eco Expo and CERT Disaster Preparedness Expo, and the Newport Shores block party
- Met with constituents regarding sea level rise and pending legislation and Board of Supervisor Steel regarding the Requests for Proposals (RFP) for the General Aviation Implementation Plan (GAIP) along with Mayor Dixon and two Aviation Committee members
- Visited potential homeless shelter sites
- Spoke at the Board of Supervisors meeting today regarding the GAIP RFP, along with Mayor Dixon and several community members
- Announced the Balboa Island Carnival and Taste of the Island event on September 15

Mayor Pro Tem O'Neill

- Attended the CdMRA meeting, the Newport Beach Chamber of Commerce Government Affairs Committee meeting, the Fire Department badge pinning ceremony, Wake Up! Newport where Fire Chief Boyles spoke, the Second Annual OASIS Car Show and Pancake Breakfast, the City Council special meeting to discuss homeless issues and reviewed the direction relative to site locations
- Announced the Homeless Task Force meeting on September 17
- Displayed slides to discuss his visit to the Orange County Water District Groundwater Replenishment System, and announce Lincoln Elementary School's blood drive on September 11, his office hours on September 11, Spyglass Hill's picnic on September 15, and the Fire and Lifeguard Appreciation Dinner on September 19

Mayor Dixon:

- Attended the Board of Supervisors meeting today and read her statement regarding the GAIP RFP

- Announced the opening of the SAP Innovation Center, which includes the HanaHouse coffee shop and community workspace, the “Newport Beach: Glimpses of the Past” exhibit from Sherman Gardens at the Central Library until November 1, the *International Literacy Day* Celebration on September 12, Concert on the Green on September 15, featuring Flashback Heart Attack, and a Neil Diamond Tribute at Marina Park on September 29
- Provided lifeguard statistics for June, July and August associated with the 4,348,000 beach visitors

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

- **Develop a sign and messaging program, throughout the City, that discourages giving money directly to panhandlers and encourages donations to programs that offer services to assist persons experiencing homelessness [O’Neill]**

The City Council unanimously concurred to place the matter on a future agenda.

XIV. PUBLIC COMMENTS ON CONSENT CALENDAR

Regarding Item 19 (Recommendation of Parks, Beaches, and Recreation Commission (PB&R) with regard to Marine Avenue Tree Maintenance), Council Member Muldoon thanked PB&R for listening to the residents.

Denys Oberman asked what services ECO/NOMICS, Inc. will be performing for the City, and questioned the term and fee for service (Item 8).

Jodi Bole, Balboa Island Preservation Association (BIPA), thanked Council and PB&R for support in keeping a majority of the Marine Avenue trees (Item 19).

Prior to comments regarding Item 5 (Initiation of Zoning Code and LCP Amendments Related to Hedge Heights in Front Yard Setbacks for Lido Isle (PA2019-132)), Mayor Dixon recused herself and left the dais.

Shana Conzelman believed the issues associated with hedge heights on Lido Isle deal with line of sight versus privacy, asked if the City will be conducting the code enforcement, and expressed concern with the definition of “front setback.”

Scott Souders pointed out that the Lido Isle community voted to raise the hedge height to 60-inches for privacy reasons and expressed opposition to the proposed change.

Mr. Kittinger believed the amendment should include protection of property lines between neighbors or relief from neighbors whose tree encroaches on their neighbor’s property.

In response to Mayor Pro Tem O’Neill’s questions, Community Development Director Jurjis indicated the initiation intends to focus more on strada, not front setback, and confirmed enforcement would be through the City.

In response to Mary Fitzgerald’s question, Mayor Dixon clarified that the panhandling item will be on the September 24, 2019 agenda.

XV. CONSENT CALENDAR

READING OF MINUTES AND ORDINANCES

1. **Minutes for the August 3, 2019 City Council Meeting [100-2019]**
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. Second Reading and Adoption of Ordinance No. 2019-13 Amending PC-19 (San Joaquin Plaza Planned Community) and Ordinance No. 2019-14 Approving a Development Agreement for the Vivante Senior Housing Project Located at 850 and 856 San Clemente Drive (PA2018-185) (C-8187-1) [38/100-2019]

- a) Find that the EIR Addendum for the Vivante Senior Housing Project certified by the City Council on August 13, 2019, and Museum House Project Environmental Impact Report (EIR) No. ER2016-002 (SCH No. 2016021023) certified by the City Council on November 29, 2016, by Resolution No. 2016-126 was prepared for the project in compliance with California Environmental Quality Act (CEQA), the State CEQA Guidelines, and City Council Policy K-3;
- b) Conduct second reading and adopt Ordinance No. 2019-13, *An Ordinance of the City Council of the City of Newport Beach, California, Adopting Planned Community Development Plan No. PC2018-001 Amending the San Joaquin Plaza Planned Community (PC-19) Located at 850 and 856 San Clemente Drive (PA2018-185);* and
- c) Conduct second reading and adopt Ordinance No. 2019-14, *An Ordinance of the City Council of the City of Newport Beach, California, Approving Development Agreement No. DA2018-005 for the Vivante Senior Housing Project Located at 850 and 856 San Clemente Drive (PA2018-185).*

RESOLUTIONS FOR ADOPTION

4. Resolution No. 2019-77: A Request by the Newport Shores Community Association to Opt Out of the Designated High-Density Area [100-2019]

- a) Find this action 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, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly;
- b) Find the removal of the Newport Shores Community Association from the geographical designation of the high-density area will not negatively affect the surrounding property owners; and
- c) Adopt Resolution No. 2019-77, *A Resolution of the City Council of the City of Newport Beach, California, Excluding the Geographical Boundaries of the Newport Shores Community Association from the Definition of the Designated High-Density Area Pursuant to Newport Beach Municipal Code Section 10.28.040(F).*

City Clerk Brown recused herself on Item 4 due to real property interest conflicts.

5. Resolution No. 2019-78: Initiation of Zoning Code and LCP Amendments Related to Hedge Heights in Front Yard Setbacks for Lido Isle (PA2019-132) [100-2019]

- 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. 2019-78, *A Resolution of the City Council of the City of Newport Beach, California, Initiating Amendments to Title 20 Entitled "Planning and Zoning" and Title 21 Entitled "Local Coastal Program Implementation Plan" of the City of Newport Beach Municipal Code Related to Hedge Heights in Front Yard Setbacks within Lido Isle (PA2019-132).*

Mayor Dixon recused herself on Item 5 due to real property interest conflicts.

6. **Resolution No. 2019-79: Update to City Council Policy F-27 – Policy and Procedures for City Distribution of Tickets or Passes [100-2019]**
- 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. 2019-79, *A Resolution of the City Council of the City of Newport Beach, California, Amending City Council Policy F-27 "Policy and Procedures for City Distribution of Tickets or Passes" to Include Newly Adopted Fair Political Practices Commission Rules.*

CONTRACTS AND AGREEMENTS

7. **Approval and Award of On-Call Maintenance/Repair Services Agreements with Joslin Mobile, Inc. (C-7508-2) and Computer Deductions, Inc. (C-8531-1) for Vehicle Customization and Upfitting Services [38/100-2019]**
- 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 On-Call Maintenance/Repair Services Agreements with Joslin Mobile, Inc. and Computer Deductions, Inc. for vehicle customization and upfitting services, each for a three-year term and a total amount not to exceed \$450,000 per agreement, and authorize the Mayor and City Clerk to execute the agreements.

Council Member Muldoon recused himself on Item 7 due to business interest conflicts.

8. **Amendment No. One to On-Call Professional Services Agreement with ECO/NOMICS, Inc. (C-8478-1) [38/100-2019]**
- 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 Amendment No. One to Professional Services Agreement with ECO/NOMICS, Inc. to extend the term of the agreement until May 8, 2025, and to increase the not to exceed amount by \$750,000 for a total not to exceed amount of \$1,050,000, and authorize the Mayor and City Clerk to execute the amendment.

Council Member Muldoon voted no on Item 8.

9. **Amendment No. One to On-Call Maintenance and Repair Services Agreements with Academy Electric, Inc. (C-7150-1), Laughlin & White, Inc. (C-7149-1), and A.C. Pozos Electric Corp. (C-7148-1) for On-Call Electrical Repair Services [38/100-2019]**
- 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 Amendment No. One to On-Call Maintenance and Repair Services Agreement for On-Call Electrical Repair Services with Academy Electric, Inc. to extend the term of the agreement to five years and increase the not to exceed amount by \$150,000, for a total not to exceed \$250,000, and authorize the Mayor and City Clerk to execute the amendment;
 - c) Approve Amendment No. One to On-Call Maintenance and Repair Services Agreement for On-Call Electrical Repair Services with Laughlin & White, Inc. to extend the term of the agreement to five years and increase the not to exceed amount by \$150,000, for a total not to exceed \$250,000, and authorize the Mayor and City Clerk to execute the amendment; and
 - d) Approve Amendment No. One to On-Call Maintenance and Repair Services Agreement for On-Call Electrical Repair Services with A.C. Pozos Electric Corporation to extend the term of the agreement to five years and increase the not to exceed amount by \$150,000, for a total not to exceed \$250,000, and authorize the Mayor and City Clerk to execute the amendment.

- 10. Amendment No. One to On-Call Maintenance and Repair Services Agreement for Roll-Up Door Preventative Maintenance and As-Needed Repairs with Excel Door and Gate Company, Inc. (C-7381-1) [38/100-2019]**
- 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 Amendment No. One to On-Call Maintenance and Repair Services Agreement for roll-up door preventative maintenance and as-needed repairs with Excel Door and Gate Company, Inc. to extend the term of the agreement to five years and increase the not to exceed amount by \$380,000 for a total not to exceed amount of \$500,000, and authorize the Mayor and City Clerk to execute the amendment.
- 11. Approval of Amendment No. One to Professional Services Agreement with Chambers Group, Inc. for Environmental Services for the Superior Avenue Pedestrian and Bicycle Bridge and Parking Lot Project (15T09) (C-8020-4) [38/100-2019]**
- 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 Amendment No. One in the amount of \$44,242.00 to the Professional Services Agreement with Chambers Group, Inc. for additional environmental services for a new not-to-exceed total price of \$161,217.00, and authorize the Mayor and City Clerk to execute the Amendment.
- 12. Approval of Amendment No. One to Lease Agreement with Williams Scotsman, Inc. for Temporary Fire Station No. 5 Facility (15F12) (C-8136-1) [38/100-2019]**
- 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 Amendment No. One in the amount of \$30,000.00 to the Lease Agreement with Williams Scotsman, Inc. for additional rental charges for a new not-to-exceed total price of \$150,000.00, and authorize the Mayor and City Clerk to execute the Amendment.
- Council Member Brenner recused herself on Item 12 due to real property interest conflicts.*
- 13. Acceptance of the State of California Office of Traffic Safety Selective Traffic Enforcement Program Grant (C-8201-4) [38/100-2019]**
- 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;
 - b) Authorize the City Council to accept a \$250,000 Selective Traffic Enforcement Program (STEP) award granted to the NBPD by the OTS per Council Policies F-3 and F-25. To comply with Council Policy F-3, City Council must formally accept the award of \$250,000 and create a new appropriation to expend the funds; and
 - c) Approve Budget Amendment No. 20-010 increasing NBPD revenue estimates and expenditure appropriations by \$250,000.
- 14. Tentative Agreement with Newport Beach Lifeguard Management Association (NBLMA) (C-2058-B) [38/100-2019]**
- 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) Receive and consider the Tentative Agreement between the City of Newport Beach and the Newport Beach Lifeguard Management Association.

15. Approval and Award of Printing Services Agreement with I Color Printing & Mailing Inc. for the Newport Navigator and Summer Camp Guides (C-7600-1) [38/100-2019]

- 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) Award a five (5) year printing services contract for the Newport Navigator brochure and summer camp guide to I Color Printing & Mailing Inc. for the total not to exceed bid price of \$520,000 (\$104,000 each year), and authorize the Mayor and the City Clerk to execute the contract agreement.

MISCELLANEOUS

16. Planning Commission Action Report for the August 22, 2019 Meeting [100-2019]

Receive and file.

17. Budget Amendment to Accept a Check from the Friends of the Newport Beach Library and Appropriate Funds to the Library's Fiscal Year 2019-20 Maintenance and Operation Budget [100-2019]

- 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) Accept a check in the amount of \$185,000 from the Friends of the Newport Beach Library and approve Budget Amendment No. 20-008 to increase revenues and expenditures by the same amount in Division 0106052 (Friends of the Library).

18. City Hall and Limited Off-Site Holiday Closure from Tuesday, December 24, 2019, through Wednesday, January 1, 2020 [100-2019]

- 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) Approve closing the Civic Center and providing limited services at off-site facilities from Tuesday, December 24, 2019 through Wednesday, January 1, 2020. All facilities would reopen on Thursday, January 2, 2020. The proposed closure does not apply to public safety services or emergency on-call functions.

19. Recommendation of Parks, Beaches, and Recreation Commission with regard to Marine Avenue Tree Maintenance [100-2019]

- a) Find 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, Code of Regulations, Title 14, Chapter 3 because it will not result in a physical change to the environment, directly or indirectly; and
- b) Receive and file the report.

Council Member Herdman recused himself on Item 19 due to real property interest conflicts.

Motion by Mayor Pro Tem O'Neill, seconded by Council Member Herdman, to approve the Consent Calendar; and noting the recusals by Mayor Dixon on Item 5, Council Member Muldoon on Item 7, Council Member Brenner on Item 12, and Council Member Herdman on Item 19; the "no" vote by Council Member Muldoon on Item 8; and amendments to Item 1.

The motion carried unanimously.

XVI. ITEMS REMOVED FROM THE CONSENT CALENDAR – None

XVII. PUBLIC COMMENTS ON NON-AGENDA ITEMS

Denys Oberman noted she provided written comments, disputed a previous staff comment regarding side setback standards, discussed the City's fire and safety standards, and requested the City enforce its regulations.

Jim Mosher discussed the California Coastal Commission's (CCC) limited power over the City, the location of the Pine Knot Motel, and the public's ability to appeal projects to the CCC. Regarding homelessness, he noted religious organizations that own Private Institution (PI) property have State-mandated authority to be able to operate a shelter, suggested hotels offer unused rooms to the homeless, and believed providing shelter is not entirely a government issue and the lack of a shelter is not entirely the City's fault.

Mo Garkani, California Visitors Bureau Board Member, believed the homeless issue needs immediate action.

Fred Sotomayor expressed concern that Buck Gully property owners have not conducted their fire mitigation measures, discussed potential hazards due to the overgrown vegetation, and believed more enforcement is needed.

In response to Council Member Brenner's questions, Fire Chief Boyles explained Fire Marshal Bass' roll, confirmed the City is working with the homeowner associations in the Buck Gully area and code enforcement, and indicated he can meet with Mr. Sotomayor to discuss this further.

Angela Ashmore expressed frustration regarding the homeless issue, relayed incidents involving herself and her family, believed we need to take back the City, the Police Department needs to make more arrests, and other ordinances may be able to assist the City.

Ron Meskis discussed scholarship impacts to female Newport Aquatic Center (NAC) rowers as a result of the City not removing NAC board members from office and read quotes from NAC rowers.

XVIII. PUBLIC HEARINGS

20. Resolution No. 2019-80: Appeal of Reed Residential Variance for 1113 Kings Road (PA2019-060) [100-2019]

Community Development Director Jurjis and Principal Planner Murillo utilized a PowerPoint presentation to display location maps, discuss existing developments, grade comparisons, topography, the gully and its effect on the overall design, report on the subject property and variances, project details, variance findings, building height features, variance effects on surrounding properties, the Planning Commission's decision, discussed the appeal from Stop Polluting Our Newport (SPON), and reviewed the recommended actions.

Council Member Avery noted the amount of communication received from both sides of the issue and expressed disappointment that the neighborhood could not work together.

The following ex parte communication occurred:

- Council Member Avery spoke on the phone with Carolyn Reed, Ed Selich, and Gus Azadian
- Council Member Duffield spoke on the phone with Carolyn Reed and Ed Selich
- Council Member Muldoon met with Carolyn Reed and their neighbor
- Council Member Brenner met with Carolyn Reed, Shawna Shaffner, Ed Selich, and Gus and Fawzia Azadian
- Council Member Herdman met with Carolyn Reed, Shawna Shaffner, Ed Selich, and neighbors from both sides of the project
- Mayor Pro Tem O'Neill met with Carolyn Reed, Shawna Shaffner, Ed Selich, and Gus and Fawzia Azadian
- Mayor Dixon met with Carolyn Reed, Shawna Shaffner, Ed Selich, and a neighbor on the street, and corresponded with a number of the neighbors

Shawna Schaffner, CAA Planning/representing the applicant, utilized a PowerPoint presentation to discuss the Planning Commission's approval, their response to the appeal, the variance request, existing variances on the property and neighboring properties, plan changes and revisions, display existing and proposed photos, rear elevation and variances, highlight variance findings and conclusions, and noted a variance would be needed even if a one-story house was built.

In response to Mayor Dixon's questions, Ms. Schaffner stated the current variance is to increase the height of a garage, more massing would occur on the street side if they adjusted the square footage to eliminate the variance, discussed the difficulty of measuring height limit on the steep slope, noted a majority of the Kings Road homes are built property line to property line, believed the design is trying to be sensitive to those that could see the house, and requested Council approval.

Bruce Bartram, President of Stop Polluting Our Newport (SPON)/appellant, believed the project does not meet California law, the Newport Beach Municipal Code (NBMC) or Supreme Court guidelines for needing a variance, pointed out that the variance is only for 353 square feet of the 10,803 square foot project, asked that a finding be included in the documentation that the square footage is necessary for the variance if the variance was approved, noted the project has created dissension and conflict in the neighborhood, highlighted the findings of SPON's attorney, Michelle Black of Chatten-Brown, Carstens & Minter LLP, requested Council not set precedent, and believed the remainder of the structure can be built without the variance and the variance is inconsistent.

Mayor Pro Tem O'Neill noted the size of the variance compared to the overall project size cannot be a consideration, asked what legal basis in the NBMC or case law discusses the remaining structure, and emphasized Council is not supposed to look at the rest of the structure and can only focus on the variance.

Mayor Dixon opened the public hearing.

Fawzia Azadian provided a handout, noted she is the next door neighbor, expressed concerns relative to her family's privacy, safety, view rights, decreased property value, and stability of the bluff, believed this would set a bad precedent, read a quote from Ms. Shaffner about the Marina Park project that could be used as an argument in this appeal, believed the project is incompatible with the neighborhood, and requested that Council deny the request.

Peter Zak stated he is the former Chair of the Planning Commission that unanimously approved the project, discussed their role and amount of time that was put into reviewing the project, noted the project met all the findings, and expressed concern with SPON targeting a homeowner.

Manizheh Yomtoubian noted she is the next door neighbor, indicated they built their home without any variances or possible harm to the neighbors, believed the structure would be a public nuisance, expressed concern it might compromise her and the neighbor's homes, discussed topography and passive soils, asked why the applicant is not terracing down the bluff, and requested Council deny the variance.

Bill Dunlap, former Planning Commissioner, believed that, although the project fits within the code and the applicant can build a 22,000 square foot house, the bigger issues are related to massing and setbacks. He requested the City look at the character and nature of the neighborhood.

Jim Navai indicated he lives two houses from the project, stated he previously was told he would be granted a variance if he did not block the neighbors' views, believed this would begin a massing precedent, expressed issues with sewer backups, and suggested that this project be required to install its own sewer system.

Peggy Palmer discussed a meeting she had with the applicant and neighbors, believed there is no hardship, and took issue that the size of the project is not compatible with the neighborhood.

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Jon Foshie believed the appeal is based on emotions, not law, and requested Council uphold the Planning Commission's decision.

Nick Kovacevich expressed support for Planning Commission's decision since the variance has little impact on the overall project and believed the variance is necessary due to the slope.

Chris Gruber stated he is disappointed the project is in the appeal process, believed the design fits with the community, noted how the gully affected the design, and expressed support for the variance.

John Pomer appreciated that the applicant is not building more on the street side, expressed support for the project, and believed the variance is a minor request.

Carol Anne Dru believed the project should have a 20-foot setback instead of a 10-foot setback to make everything fair. Principal Planner confirmed the ocean side has 10-foot setbacks.

Gary Sokolich took issue with the staff report and findings, believed the project is detrimental to the property values for the surrounding residents on Kings Road, the variance is unnecessary and inappropriate, and Council should review the letter from SPON's attorney.

Bruce Trotter displayed and read a flyer regarding the 2006 General Plan Update and requested Council deny the variance because it negates neighborhood standards and devalues properties.

Brian Krebs expressed support of the variance.

Nate Mattson expressed support for the variance and believed it is reasonable.

Lee Goodin expressed support for the variance, noted the applicant has the right to build their home, and believed the variance process was created for situations like this.

Matt Wooley expressed support for the variance, believed SPON should focus on broader issues in the City, and noted the applicant could build something that takes up a larger footprint.

Gretchen Krebs stated she lives on Kings Road and requested Council uphold the Planning Commission decision.

Ross Gielow expressed support for the variance, believed the project will increase property values, and noted the smaller project size for the lot.

DJ Countess noted the applicant's property rights and expressed support for the variance.

Marlowe Moy expressed support for the variance.

TJ Williams expressed opposition to the variance and indicated he has 40 signed petitions from Kings Road neighbors who also oppose the variance.

Ghassem (Gus) Azadian expressed opposition to the variance, noted that most of the supporters do not live on Kings Road, believed the project would affect his property value, expressed concern for his family's privacy and quality of life, stated why he believed some City officials would not meet with him when they met with the applicant and the applicant's consultants, took issue with Mr. Selich's involvement with the project, believed the process has not been transparent, and expressed concern for the community's health, safety and welfare since the project is incompatible with the existing neighborhood.

Jim Mosher noted the variance should be denied if it does not meet all six findings, pointed out the applicant purchased the property knowing it had the gully, believed staff is inventing property rights that do not exist, the design should take any detriments to the neighbors into consideration, this might start a trend for surrounding neighbors to request variances that are higher than this one, noted the General Plan protects natural resources and believed the variance would destroy the bluff, agreed that the structure does not seem compatible with the neighborhood, and requested that any changes to the project be sent directly to the Planning Commission.

Charles Klobe stated SPON took on this issue at the request of the residents, requested this item be referred back to the Planning Commission, suggested placing a moratorium on ocean side construction until the City reviews the history of the Zoning Code, and expressed opposition to massing on the street side.

Sandra Ayres questioned if the project meets all the necessary findings.

Max Johnson asked if Council Members would approve the project if it was next door to them, applauded SPON for appealing the project, indicated he does not currently support the variance but suggested no action be taken until the Zoning Code can be reviewed.

Allan Beek stated he is the Secretary of SPON and a past Planning Commissioner, believed all projects should be limited to what is in the regulations, took issue with the massing of this project, and believed the gully is part of nature and not a hardship.

Josh Baehr expressed support for the variance and noted the applicant has done everything necessary for approval.

Shawna Shaffner utilized a PowerPoint presentation to show how the project would be redesigned without the variance and issues related to doing this, discussed property rights, believed the SPON attorney letter is misleading and indicated they submitted a response, noted neighboring property received variances, pointed out the geotechnical report showed there would be no significant issues, indicated the property is within the allowable setbacks, expressed concern with a moratorium, believed alternative plans would be more impactful and the current project would not cause the detriments discussed earlier.

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

Mayor Pro Tem O'Neill explained the reason variances are requested, reiterated Council is required to focus only on the variance, not public views, how large the project will be, or if the neighborhood is harmonious. He reported SB 330 will prohibit the City from placing a moratorium on construction or making any zoning changes that would cause a house like this not to be built; expressed concern that Line in the Sand, an Internal Revenue Code 501(c)(4) organization, got involved and suggested they get involved in SB 330; believed this does not create precedent since variances are specific to the property and the ones around it, and does not extend to all the homes in the neighborhood; stated that, even if the Planning Commission decision is overturned, the City should never bypass the Zoning Administrator process and go directly to the Planning Commission; and indicated he is supportive of the Planning Commission decision.

At Council Member Herdman's request, a list of the variance findings was displayed.

Council Member Brenner expressed concern for what will happen to the Azadians, indicated she is having a problem with seeing a hardship, expressed disappointment that the applicant was not able to find a solution with the neighbors. She indicated she will not be supporting the variance because she does not feel there is a hardship.

Council Member Avery indicated, if this same house came before Council tonight without a variance, he would support it because he supports property rights; however, he expressed concern that the project could not be designed without the variance.

Council Member Duffield pointed out that the applicant paid for the gully, asked if there was proof that the gully made the lot size larger, indicated the applicant has the right to build on the lot, and believed there was a hardship.

Motion by Mayor Pro Tem O'Neill, seconded by Council Member Duffield, to a) find this project categorically exempt under Section 15303, of the California Environmental Quality Act ("CEQA") Guidelines - Class 3 (New Construction or Conversion of Small Structures), California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment; and b) adopt Resolution No. 2019-80, *A Resolution of the City Council of Newport Beach, California, Upholding and Affirming the Planning Commission's Approval of Variance No. VA2019-002 to Allow Portions of a New Single-Family Residence to Exceed the Maximum Height Limit for Property Located at 1113 Kings Road (PA2019-060).*

Mayor Dixon indicated she is unsure why a variance is needed, noted that the variance request is small but believed the project could have been adjusted, expressed concern for the impacts of the project to the adjacent neighbors, and believed the gully could not be considered a hardship if the applicant purchased the property knowing the gully would be a problem.

With Mayor Dixon, Council Member Avery and Council Member Brenner voting no, the motion carried 4-3.

21. Community Development Block Grant (CDBG) Program Year 2018-2019, Consolidated Annual Performance and Evaluation Report (C-8209-5) [100-2019]

Community Development Director Jurjis introduced Consultant David Nunez and utilized a PowerPoint presentation to discuss the CDBG expenditures by category and highlight accomplishments.

Mayor Dixon suggested listing the amount of CDBG capital improvement funds that are being held for future projects and recommended that future funding be used for programs that affect the City, specifically to address the homeless issue. Community Development Director Jurjis noted that, of the 343 homeless individuals that were helped, there were only 16 Newport Beach residents.

Mayor Dixon opened the public hearing. Hearing no testimony, she closed the public hearing.

Motion by Council Member Muldoon, seconded by Mayor Pro Tem O'Neill, to a) find this activity 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, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly; b) approve the Program Year 2018-19 CAPER; and c) authorize the City Manager or her designee to submit the Program Year 2018-19 CAPER to HUD.

The motion carried unanimously.

XIX. CURRENT BUSINESS

22. Resolution No. 2019-81: Proposed Revisions to City Council Policy B-17 – Parks, Facilities and Recreation Program Donations [100-2019]

Motion by Council Member 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; b) consider the recommendation from the Parks, Beaches, and Recreation Commission, and approve revisions to Council Policy B-17; and c) adopt Resolution 2019-81, *A Resolution of the City Council of the City of Newport Beach, California, Amending City Council Policy B-17 "Parks, Facilities, and Recreation Program Donations."*

Jim Mosher suggested including the PB&R minutes in future staff reports.

The motion carried unanimously.

23. Ordinance No. 2019-15: Amending Newport Beach Municipal Code Chapter 6.04 – Garbage, Refuse and Cuttings and Adding Chapter 6.06 – State Mandated Municipal Solid Waste Diversion Programs [100-2019]

Deputy Public Works Director Martin provided a brief staff report.

Jim Mosher noted the clean and redline versions do not match. City Attorney Harp indicated any discrepancies will be corrected for the September 24, 2019 meeting.

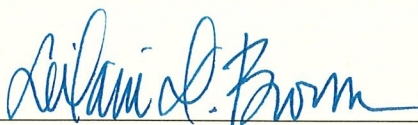
Motion by Council Member Avery, seconded by Mayor Pro Tem O'Neill, to a) determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and b) waive full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2019-15, *An Ordinance of the City Council of the City of Newport Beach, California, Amending Portions of Chapter 6.04 and Other Related Provisions of the Newport Beach Municipal Code and Adding Chapter 6.06 to Title 6 of the Newport Beach Municipal Code to Incorporate State Mandates on the Diversion of Municipal Solid Waste*, and pass to second reading on September 24, 2019.

The motion carried unanimously.

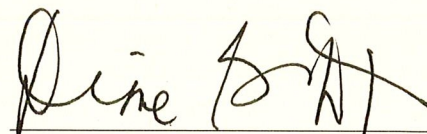
XX. MOTION FOR RECONSIDERATION – None

XXI. ADJOURNMENT – Adjourned at 10:40 p.m. in memory of Jack Skinner

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 September 5, 2019, at 4:00 p.m. The amended 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 September 6, 2019, at 12:00 p.m.


Leilani I. Brown
City Clerk




Diane B. Dixon
Mayor