

CITY OF NEWPORT BEACH

City Council Minutes
Study Session and Regular Meeting
February 11, 2020

I. ROLL CALL – 5:00 p.m.

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

II. CURRENT BUSINESS

SS1. Clarification of Items on the Consent Calendar

Regarding Item 7 (Ordinance No. 2020-5 – Harbor Code), Council Member Dixon clarified that the Harbor Commission will review live-aboard occupancy in commercial marinas. City Attorney Harp added that the Harbor Commission will also review all commercial uses as part of the Marine Activities Permit chapter.

Council Member Muldoon requested an item separate from Item 7 for the Harbor Commission to consider the purview of the City Manager to allow encroaching piers and floats to exist, the notice that must be given, and setbacks.

Council Member Herdman noted the Harbor Commission's review of Title 17 and live-aboards took an entire year, and the process provided ample opportunity for community input; expressed the opinion that receiving input this late in the process almost subverts the process; and noted that, if someone wanted to spend more than three nights in their boat, there are other options within the harbor to do that.

Mayor O'Neill received confirmation from City Attorney Harp that the motion for Item 7 could include a recommendation for the Harbor Commission to look at the pier issue.

SS2. Recognition of Jim Mosher for Hours Devoted to City Business

Mayor O'Neill and Council Member Brenner read the proclamation and presented it to Jim Mosher, who thanked Council for honoring him and recognizing the value of public input and the value added by everyone who takes the time to provide their input. Mr. Mosher suggested that a better way to recognize public participation is to restore the time limit for public comments to five minutes and the public's ability to remove items from the Consent Calendar.

SS3. Consideration of Prohibiting Motorized Uses on the Oceanfront Boardwalk

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

Public Works Director Webb and Principal Civil Engineer Sommers utilized a presentation to discuss the Oceanfront Boardwalk Safety Program and other regulations, electric bicycle (e-bike) classifications, emerging technology, summary of allowed and prohibited uses, the Oceanfront Improvement Project, and considerations for discussion.

Council Member Dixon remarked that many study sessions have been held on this topic over the years, indicated she would like to hear solutions because enforcement is not having an impact, noted the difficulty in differentiating the classifications of e-bikes, and pointed out that the boardwalk was originally a pedestrian path.

Mayor O'Neill indicated he would like to understand what makes an e-bike unique from a regular bicycle in terms of safety.

Bruce Schweitzer supported allowing e-bikes and pedal bikes on the boardwalk since the street does not have a bike lane, believed the issue is the overall speed of all bicycles, and expressed the opinion that e-bikes should be encouraged.

Shawn Lupton-Smith indicated he owns an e-bike manufacturing business in Newport Beach, noted speed should be regulated and enforced on the boardwalk without regard to the type of vehicle, stated visitors should be encouraged to come to the City, believed banning e-bikes will discourage many segments of the population from using e-bikes in the City, suggested posting and enforcing the speed limit, believed e-bikes alleviate traffic and parking concerns, stated it will be harder to enforce regulations that differentiate e-bikes from regular bikes since the motors will be located inside the frames, pointed out all types of crafts are allowed in the harbor but speed is strictly enforced, and read a review from his website about e-bikes.

Richard Piles, Corner of Paradise General Manager, remarked that speed is the problem, believed e-bikes are an equalizer for older or unfit people because it gives them the ability to go further, noted his employees use e-bikes rather than pay for expensive vehicle parking, believed e-bikes provide a lot of solutions and brings business to the City, and suggested that most accidents involve regular bicycles.

Martin Derek, Seaside Bikes, provided a handout which classifies e-bikes as non-motorized vehicles. He indicated that, when renting bikes, he advises his customers of the rules, stated speed laws need to be enforced, and believed that e-bikes bring visitors who spend money in the City.

Ruthie Matson, fourth grader, advised that there has not been a day that she has not seen an e-bike going too fast on the boardwalk, indicated she worries about younger children crossing the boardwalk and getting runover by an e-bike, believed e-bikes are too fast and dangerous for the boardwalk, and urged Council to ban e-bikes on the boardwalk to keep it safe.

Nathan Matson believed the real problem is safety and how fast e-bikes are going, noted that speeding is worse in the summertime, expressed concern about speeding passed Newport Elementary School, and believed solutions include banning e-bikes, increasing enforcement, or prohibiting the rental of e-bikes.

Manager at Pedego Newport Beach discussed Pedego's contract restrictions/rules for the rental of e-bikes, and believed the boardwalk is for pedestrians, bikes, visitors and residents.

Pam Bacich agreed there is a speed problem, noted she uses an e-bike because she cannot ride a regular bicycle, believed some regular bicycles are faster than e-bikes, and suggested rental companies place a monitor on e-bikes to limit their speed and residents place stickers on their bicycles.

Denys Oberman listed different types of motorized vehicles that use the boardwalk, expressed concern that riders cannot stop or control the vehicles, believed allowing the proliferation of motorized vehicles has created an unsafe situation, noted Manhattan Beach and Laguna Beach do not allow motorized vehicles on the boardwalk or sidewalks, and it has not hurt their economy, suggested using handicap stickers on e-bikes for those who need to use e-bikes for mobility, and expressed support for more enforcement.

Colonel Stephen Sharma believed, if there is a ban based on the critical mass of number, density, or the velocity of e-bikes, enforcement should create efficiency in the community. Further, if there is a move to create a system of avoidance of the critical mass number, the community will benefit and be a safer place for everyone.

Mike Catana stated he was hit by an e-bike which never stopped, believed e-bikes cannot stop quickly due to its weight, and suggested that e-bikes utilize alleys, side streets, Balboa Boulevard, and Seashore Drive, and be banned on the boardwalk.

Jan Cobb stated he lives on the boardwalk, believed e-bikes are not the problem, took issue with noisy skateboards, noted he and his wife have e-bikes and ride on the boardwalk every day, believed everyone is going too fast on the boardwalk, and stated that the only solution is to have more officers patrolling the boardwalk and enforcing speed limit laws.

Maureen Cotton, Central Newport Beach Community Association President, expressed opposition to allowing motorized vehicles on the boardwalk due to their weight, believed the City will be liable for accidents, suggested people have handicap stickers on their bicycles if they have a mobility issue, noted the rental businesses were supposed to install governors on e-bikes, discussed accidents and hazardous conditions, believed there is an enforcement issue because motorized vehicles are already banned on the boardwalk, and that the police department has received little direction.

Hal Pisors, owner of Pedego Corona del Mar, indicated safety is imperative for his business, he mandates a maximum speed of 8 mph for all bicycle tours on the boardwalk, and believed that, if e-bikes are banned on the boardwalk, there is no safe alternative on the Balboa Peninsula.

Don DiCostanzo, Pedego Irvine, stated that an average e-bike weighs 55 pounds versus 35 pounds for a regular bicycle, AB 1096 classifies e-bikes as non-motorized vehicles and calls them low-speed electric bicycles, believed the main issue is safety, especially since e-bike riders are getting younger and are putting the older riders at risk, and suggested placing blinking lights on the boardwalk, requiring people to walk in danger zones, and putting strips on the boardwalk. He asked to work with the City to improve safety, but opposed punishing law-abiding citizens.

Aaron indicated he chose to use an e-bike because he travels a lot on the Peninsula and does not ride on Balboa Boulevard because of safety concerns, agreed that rental companies and visitors need to follow the rules, discussed other dangerous devices, and believed the best solution would be to widen the boardwalk to accommodate a walking lane and a bike lane.

Dale Shephard stated he enjoys using his e-bike, believed electric skateboards are the most dangerous device, and stated solutions include better signage and more enforcement at McFadden Square.

Dennis Baker indicated technology is available to measure bicycle speeds, expressed interest in what staff has learned from talking to other cities, believed it is hard to get people to obey the law, and indicated that vendors are trying really hard to comply with laws.

Larry Tucker stated the issue is speed, believed all bicycles should be treated the same, and suggested that the City conduct a study to determine the real problem.

Ken Rawson recalled that Lieutenant Commander Moore previously explained why officers were having trouble enforcing the boardwalk speed limit, this has been an issue for years, stated the City is different than the other cities because there are homes on the boardwalk, and believed, if a study is conducted, it should extend for more than a couple of days to provide a true feel for the violation count.

Carmen Rawson noted the proponents today of e-bikes have e-bike businesses, believed riders cannot control e-bikes, and suggested banning e-bikes and enforcing the speed limit on the boardwalk.

Dennis Bress opposed placing a ban on motorized vehicles on the boardwalk and stated solutions include installing electronic speed signs, widening the boardwalk, updating the Newport Beach Municipal Code, and promoting alternate transit to and from bus stops.

Fred Levine stated that the real problems are speed and safety, believed e-bikes travel too fast, and believed a solution is needed before the summer season begins, like creating an enforcement division within the Police Department. He believed more studies are not needed because everyone knows there is a problem and safety issue.

Greg Hersh reported one of his favorite e-bike rides is on the boardwalk, but he needs the electric-assist to get home. He asked Council not to ban e-bikes from the boardwalk and suggested enforcing speeds for a short time with significant fines since the herd effect will take over.

Jim Mosher agreed with Mr. Bress' suggestion for speed signs, provided the signs flash only when bikes are speeding, indicated that 8 mph may be too slow, stated the City may want to consider increasing the speed limit to 10 mph and using speed signs, and indicated that another solution may be to encourage bicyclists to use the alleys.

Peter Beck agreed that speeding is an issue for both e-bike and pedal bikes, believed e-bikes go faster and weigh more than pedal bicycles, stated that possible solutions include adding a second path, consider not allowing any type of motorized vehicle on the boardwalk, enforcement through rental licensing/facilities, speed enforcement, and requiring the vehicles be licensed and issued stickers so that the sticker can be read and a violation reported.

Max Johnson agreed that e-bikes are an issue, noted AB 1096 leaves cities with the discretion to ban e-bikes, expressed concern for Class 2 and Class 3 e-bikes, expressed support for installing flashing lights and requiring e-bike renters to sign and acknowledge reading the rules and an educational pamphlet.

Council Member Muldoon agreed that people bicycle recklessly, but he is not interested in legislating the matter. He noted that the real issue is speed and safety, but does not support adding more bans but suggested installing speed bumps near the elementary school and piers.

Mayor Pro Tem Avery inquired regarding the viability of adding width to the boardwalk. Public Works Director Webb reported it has been done in other cities, and participants in Council Member Dixon's Town Hall meeting favored it. He noted that the key issues are community consensus and California Coastal Commission approval.

Council Member Duffield stated that pedal-assist bicycles did not go very fast five years ago, but e-bikes today can go 70 mph due to having a throttle and do not have to be pedaled. He believed e-bikes should be banned until Council can determine how to enforce the speeds.

Council Member Dixon believed the situation is affecting the quality of life for visitors, suggested speed governors be placed on rental e-bikes, agreed there is a problem on the boardwalk, took issue that people are ignoring the law, recommended that Council codify a prohibition of motorized scooters and skateboards, believed Council needs data, questioned whether this can be regulated on a seasonal basis, proposed implementing a pilot program first, creating walking zones around Newport Elementary School, McFadden Square, and other areas, and installing better signage, pointed out that rental companies are responsible for educating their patrons about the regulations, and expressed support for installing flashing signs, increasing fines and enforcing the speed limit.

Council Member Herdman noted the Balboa Island boardwalk does not have this problem because bicycles are not allowed on it, believed Council has a responsibility to take care of safety issues, agreed with Council Member Duffield's comments, and indicated he would be in favor of adding skateboards, human- and battery-powered bicycles, hoverboards, and Segways unless for handicapped use to the list of prohibited vehicles on the boardwalk.

Council Member Brenner indicated her primary concern is public safety and, if Council cannot ensure public safety by allowing e-bikes on the boardwalk, Council should ban e-bikes until it can figure how to do that.

Mayor O'Neill believed, if the concern is speeding on the boardwalk, speed needs to be continually enforced. He indicated he was not comfortable banning something that helps people who have physical disabilities, even if they do not qualify for a handicap placard. He stated he would not support a ban because it is an enforcement issue.

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A straw poll found two Council Members supporting Consideration 1, four Council Members supporting Consideration 2, three Council Members supporting Consideration 3, two Council Members supporting Consideration 4, four Council Members supporting the installation of a speed bump or structural change on the boardwalk, one Council Member supporting a pilot program limiting hours of access during the summer, and seven Council Members supporting an increase to the fines.

III. PUBLIC COMMENTS

Liz McNabb, Assemblywoman Petrie-Norris' Office, provided legislative updates to City Manager Leung.

Peter Beck inquired about the possibility of installing a restroom facility at the Wedge.

Colonel Stephen Sharma noted ratepayers pay 10-12 cents/kilowatt-hour for electricity while a nuclear fusion power plant charges 1.2 cents/kilowatt-hour, and suggested replacing California's fossil-fuel supply with nuclear fusion supply.

IV. CLOSED SESSION – Taken at the end of the meeting

V. RECESSED – 6:57 p.m.

VI. RECONVENED AT 7:09 P.M. FOR REGULAR MEETING

VII. ROLL CALL

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

VIII. CLOSED SESSION REPORT

IX. INVOCATION – Reverend Dr. George Okusi, St. John the Divine Episcopal Church, Costa Mesa

X. PLEDGE OF ALLEGIANCE – Council Member Brenner

XI. NOTICE TO THE PUBLIC

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

Council Member Herdman:

- Announced the Aviation Committee's subcommittees are meeting; requirements for boardwalk signage on Balboa Island have been updated; unused news racks are being removed from Marine Avenue; and the water quality in the harbor is as good as it was in the 1950s

Council Member Dixon:

- Shared Barbara Sloate's letter expressing her gratitude for Council's recognition
- Attended SCAG's Regional Transportation Policy meeting
- Utilized a slide to indicate ways the public could support Working Wardrobes after its headquarters burned

Council Member Brenner:

- Walked Balboa Island and found the water to be extremely clear
- Announced efforts to preserve governmental history, historic buildings and sites; and an art exhibit entitled Jungle Junk Critters on display from February 1 to April 30, 2020 at Sherman Library and Gardens

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Mayor Pro Tem Avery:

- Utilized slides to discuss the lifeguard tryouts

Mayor O'Neill:

- Addressed the Community Emergency Response Team (CERT) awards, Speak Up Newport, Christmas Boat Parade awards, the Mayor's Dinner, the Mayor's Youth Council, and the Assistance League
- Attended vigils and memorials, the Alyssa Altobelli jersey retirement, and the Altobelli memorial service; and announced that the Newport Coast Community Center will be lit in purple and gold in honor of the Bryants
- Utilized slides to highlight the community meeting and resident survey on February 18, 2020, youth homelessness event on February 27, 2020, and the City closure on February 17, 2020

XIII. PUBLIC COMMENTS ON CONSENT CALENDAR - None

XIV. CONSENT CALENDAR

READING OF MINUTES AND ORDINANCES

1. Minutes for the January 25, 2020 Planning Session and January 28, 2020 City Council Meeting [100-2020]

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.

ORDINANCE FOR INTRODUCTION

3. Pulled from the Consent Calendar

ORDINANCES FOR ADOPTION

4. Ordinance No. 2020-2: Amending Chapter 14.12 of the Newport Beach Municipal Code to Comply with SB 998, the Water Shutoff Protection Act [100-2020]

- a) Determine this action to be exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Conduct second reading and adopt Ordinance No. 2020-2, *An Ordinance of the City Council of the City of Newport Beach, California, Amending Chapter 14.12 of Title 14 of the Newport Beach Municipal Code Relating to Water Service Discontinuation for Nonpayment.*

5. Ordinance No. 2020-3: Lobbyist Registration, Reporting and Disclosure Requirements [100-2020]

- a) Determine this action to be exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Conduct second reading and adopt Ordinance No. 2020-3, *An Ordinance of the City Council of the City of Newport Beach, California, Amending Section 1.12.020, Subsection J, and Adding Chapter 1.28 to Title 1 of the Newport Beach Municipal Code to Increase Transparency in Government Operations and Establish Lobbyist Registration, Reporting and Disclosure Requirements.*

6. Ordinance No. 2020-4: Cottage Preservation (PA2019-181) [100-2020]

- a) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 21065 of CEQA and State CEQA Guidelines Sections 15060 (c)(2), 15060 (c)(3), and 15378. The proposed action is also exempt pursuant to State CEQA Guidelines Section 15061(b)(3) because it has no potential to have a significant effect on the environment; and

- b) Conduct second reading and adopt Ordinance No. 2020-4, *An Ordinance of the City Council of the City of Newport Beach, California, Adopting Code Amendment No. CA2019-006 to Amend Title 15 Entitled "Building and Construction" and Title 20 Entitled "Planning and Zoning" of the City of Newport Beach Municipal Code Related to Cottage Preservation (PA2019-181).*

7. Ordinance No. 2020-5: Changes to the Newport Beach Municipal Code, Title 17 – Harbor Code [100-2020]

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Conduct second reading and adopt Ordinance No. 2020-5, *An Ordinance of the City Council of the City of Newport Beach, California, Amending Title 17 (Harbor Code) and Other Related Provisions of the Newport Beach Municipal Code Making Comprehensive Revisions Including, but not limited to, Updating Definitions, Regulating Marine Sanitation Devices to Protect Against Discharge of Waste in Newport Harbor, Amending Requirements for Mooring Sub-Permits, Adding a Procedure to Allow Mooring Length Extensions and Modifying and/or Adding Procedures for Issuance of Permits, Appeals/Calls for Review and Revocations, and directing the Harbor Commission to consider commercial uses as part of the Marine Activities Permit process, commercial leases, dock encroachments, and City Manager authority to sign leases.*

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

RESOLUTIONS FOR ADOPTION

8. Resolution No. 2020-15: Amending the August 2020 City Council Regular Meeting Date [100-2020]

- 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. 2020-15, *A Resolution of the City Council of the City of Newport Beach, California, Amending the Date for the August 2020 City Council Regular Meeting.*

9. Resolution No. 2020-16: Resolution in Support of Balanced Energy Solutions and Local Control [100-2020]

- 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. 2020-16, *A Resolution of the City Council of the City of Newport Beach, California, Supporting Balanced Energy Solutions and Maintaining Local Control of Energy Solutions.*

10. Resolution No. 2020-17: Correcting Recently Approved Fire Protection Service Water Rates and Charges Established in Resolution No. 2019-103 [100-2020]

- 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. 2020-17, *A Resolution of the City Council of the City of Newport Beach, California, Establishing and Correcting Fire Protection Service Water Rates and Charges for the 1-inch, 1½-inch, and 2-inch Meter, Adopting the Water Rates and Charges for the 2½-inch Meter with Phased in Increases and Removing the Water Rates and Charges for the ¾-inch Meter.*

Council Member Muldoon voted "no" on Item 10.

11. Resolution No. 2020-18: Proposed City Council Policy – Offshore Mooring Extensions [100-2020]

Continue the item to a future City Council meeting.

CONTRACTS AND AGREEMENTS

12. Restroom Buildings Maintenance Project – Notice of Completion for Contract No. 7509-1 (18F02) [38/100-2020]

- a) Accept the completed work and authorize the City Clerk to file a Notice of Completion for the project;
- b) Authorize the City Clerk to release the Labor and Materials Bond 65 days after the Notice of Completion has been recorded in accordance with applicable portions of Civil Code; and
- c) Release Faithful Performance Bond one year after acceptance by the City Council.

Council Member Muldoon recused himself on Item 12 due to real property interest conflicts.

13. Central Library Chiller Maintenance and Condenser Replacement/Relocation – Award of Contract No. 7776-1 (20F02) [38/100-2020]

- a) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301(c), Class 1, (maintenance of existing public facilities involving negligible or no expansion of use), of the CEQA Guidelines, because this project has no potential to have a significant effect on the environment;
- b) Approve the project plans and specifications;
- c) Award Contract No 7776-1 to Mesa Energy Systems, Inc., for the total bid price of \$302,609 and authorize the Mayor and City Clerk to execute the contract; and
- d) Establish \$45,000 (approximately 15 percent) contingency to cover the cost of unforeseen work not included in the original contract.

14. Annual Concrete Replacement Program – Award of Contract No. 7682-1 (20R06) to S&H Civilworks, Inc. [38/100-2020]

- a) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301(c), Class 1 (maintenance of existing public facilities involving negligible or no expansion of use) of the CEQA Guidelines, because this project has no potential to have a significant effect on the environment;
- b) Award Contract No. 7682-1 to S&H Civilworks, Inc. for the total bid price of \$763,500.00, and authorize the Mayor and City Clerk to execute the contract;
- c) Establish a contingency of \$39,000.00 (approximately five percent of total bid) to cover the cost of unforeseen work not included in the original contract; and
- d) Approve Budget Amendment No. 20-031 recognizing contribution funds of \$22,200 from Western Construction Specialists, Inc. in Account No. 13501-511050-20R06 and appropriating \$22,200 in increased expenditures for the Concrete Replacement Program (20R06) in Account No. 13501-980000-20R06.

15. Approve an Agreement with Newport Bay Conservancy to Designate Funds for Restoration Work in Big Canyon Phase 2A (20X12) (C-8625-1) [38/100-2020]

- 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 the City Manager to execute an Agreement with Newport Bay Naturalists and Friends (DBA Newport Bay Conservancy) to designate \$1,688,731 of grant funds for restoration work in Big Canyon Nature Park; and
- c) Approve Budget Amendment No. 20-033 recognizing contribution funds of \$1,688,731 from Newport Bay Conservancy in Account No. 13801-511050-20X12 and appropriating \$1,688,731 in increased expenditures for the Big Canyon - Phase 2A (20X12) in Account No. 13801-980000-20X12.

16. Approval and Award of Professional Services Agreement with JorgensenFM for the Facilities Maintenance Master Plan Update (C-8626-1) [38/100-2020]

- 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 Professional Services Agreement (PSA) with JorgensenFm for the Facilities Maintenance Master Plan Update for a not-to-exceed price of \$254,247, and authorize the Mayor and City Clerk to execute the Agreement.

17. Approval and Award of On-Call Maintenance and Repair Services Agreement with United Site Services of California, Inc. for Portable Toilet Services (C-8445-2) [38/100-2020]

- 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 United Site Services of California, Inc. to provide on-call portable toilet services for a total not-to-exceed amount of \$200,000, and authorize the Mayor and City Clerk to execute the agreement.

MISCELLANEOUS

18. Newport Beach Wine and Food Festival Request for Waiver of City Council Policy B-13 [100-2020]

- a) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15304 under Class 4 (Minor Alterations to Land), because it has no potential to have a significant effect on the environment; and
- b) Recommend approval to waive Council Policy B-13, Regulations and Restrictions, Section A1, Use of Alcohol to allow for NBWFF to be conducted at Peninsula Park. Approval of waiver would allow the NBWFF to move forward with the Special Event Permit Process. Event approval would be contingent upon Special Event Permit approval.

Motion by Mayor Pro Tem Avery, seconded by Council Member Brenner, to approve the Consent Calendar, except for the item removed (Item 3); and noting the “no” vote on Item 10 by Council Member Muldoon, the recusal by Council Member Duffield on Item 7, the recusal by Council Member Muldoon on Item 12, the amendments to Item 1, amendment to the recommendation for Item 7, and the continuance of Item 11.

The motion carried unanimously.

XV. ITEM REMOVED FROM THE CONSENT CALENDAR

3. Ordinance No. 2020-6: Amendment to Section 9.04.380 of the Newport Beach Municipal Code to Adopt the Local Amendments to the 2019 Edition of the California Fire Code [100-2020]

Mayor O'Neill recused himself due to real property interest conflicts.

In response to Council Member Brenner's concerns and questions, Fire Chief Boyles and Fire Marshal Bass explained provisions for failure to comply with the ordinance, including an hourly fee and an abatement process; reported that, beginning in 2012, annual inspections alternated between Buck Gully and Morning Canyon; noted that enforcement actions, including abatement, have occurred; indicated inspections begin in June and reviewed the process for noncompliant property owners; reported that, during the public outreach process, participants wanted City standards to exceed State standards; assured that the requirements do not compromise the integrity of the hillsides; stated that insurance companies set their own standards and cannot be held to State or City requirements; noted that property owners' fire insurance policies are being canceled statewide; and stated that the Insurance Commissioner is aware of the issue and is looking at options.

In response to Council Member Herdman's questions, Fire Marshal Bass assured that there is a plan to deal with compliance issues and what residents need to do with respect to mitigating the fire dangers in Buck Gully and Shore Cliffs, and reported that the abatement process will recover the City's cost for work performed to bring properties into compliance.

Jim Mosher requested clarification of Chapter 2 in which terms are defined, asked if the ordinance or the guidelines and standards are being revised, and requested that the public have the opportunity to provide input.

Fire Marshal Bass indicated the definitions were adopted in November 2019 as part of the Fire Code amendment and the guidelines are contained in the body of the ordinance.

Colonel Stephen Sharma believed the inspections should be done with care and equipment that can measure the heat generated from the material, and recommended a 100-day inspection.

Motion by Council Member Brenner, seconded by Council Member Herdman, to a) find the proposed actions are not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines, because they will not result in a physical change to the environment, directly or indirectly; and b) introduce amended Ordinance No. 2020-6, *An Ordinance of the City Council of the City of Newport Beach, California, Amending Section 9.04.380 (Replacement to Chapter 49 Requirements for Wildland-Urban Interface Fire Areas) of the Newport Beach Municipal Code to Adopt Local Amendments to the 2019 Edition of the California Fire Code as Set Forth in Title 24, Part 9, of the California Code of Regulations*, and pass to second reading on February 25, 2020.

With Mayor O'Neill recusing himself, the motion carried 6-0.

XVI. PUBLIC COMMENTS ON NON-AGENDA ITEMS

Nancy Gardner suggested that Council either resuscitate the Environmental Quality Affairs Committee (EQAC) or expand the Water Quality/Coastal Tidelands Committee's responsibilities, and provided a handout to City Clerk Brown of draft language.

An unidentified speaker believed the addiction problem in Orange County is adding to the homeless issue and stated the City has done nothing about the homeless issue.

Mayor O'Neill emphasized that the City has taken action, reported the number of people sleeping on City streets has reduced, and the City's Homeless Services Coordinator spoke for over an hour at a Speak Up Newport event about homeless services.

XVII. PUBLIC HEARING

19. Ordinance No. 2020-7: Amending the Newport Beach Municipal Code for Lido Isle Hedge Heights (PA2019-132) [100-2020]

Council Member Dixon recused herself due to real property interest conflicts.

Mayor O'Neill opened the public hearing. There being no testimony, he closed the public hearing.

Motion by Council Member Duffield, seconded by Council Member Herdman, to a) determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; b) waive reading, read by title only, introduce Ordinance No. 2020-7, *An Ordinance of the City Council of the City of Newport Beach, California, Amending Title 20 Entitled "Planning and Zoning" of the City of Newport Beach*

Municipal Code Related to Hedge Heights in Front Setbacks Abutting Stradas Within Lido Isle (PA2019-132), and pass to second reading on February 25, 2020; and c) adopt Resolution No. 2020-19, A Resolution of the City Council of the City of Newport Beach, California, Authorizing Submittal of Local Coastal Program Amendment No. LC2019-002 to the California Coastal Commission to Amend Title 21 Entitled "Local Coastal Program Implementation Plan" of the City of Newport Beach Municipal Code Related to Hedge Heights in Front Setbacks Abutting Stradas Within Lido Isle (PA2019-132).

With Council Member Dixon recusing herself, the motion carried 6-0.

XVIII. CURRENT BUSINESS

20. Ordinance No. 2020-8: Amending the Newport Beach Municipal Code for Short Term Lodging [100-2019]

Community Development Director Jurjis, License Supervisor Navarrete, and Code Enforcement Officer Contino utilized a presentation to discuss complaints about short-term rentals, citations issued, illegal rental properties, the history of short-term lodging, the formation of an ad hoc committee, public outreach, the number of short-term lodging in comparable cities, recommended updates and enforcement, and resources needed.

Council Member Dixon stated that the ad hoc committee received input from property management companies, residents, and staff; noted that District 1 has the most short-term rentals and are welcome in the City; however, with the inception of online rentals, short-term lodging has become burdensome to many neighborhoods; stated that the number of short-term lodging permits has grown significantly since 2015; clarified that the ordinance is also directed at individuals who are legally or illegally renting their homes for one night; expressed support for the recommendations; assured everyone that the ad hoc committee tried to balance the needs of property management companies, residents, and property owners; indicated that conducting an inspection of each property subject to a permit application may be burdensome for staff, but random inspections may be needed; indicated that a resident reviewed rental properties on Newport Island and found some properties list more bedrooms for short-term rentals than shown on sales listings; and expressed concern that the revolving door of overnight stays creates havoc, trash, and public safety issues.

Council Member Muldoon stated he preferred proactive enforcement versus responding to complaints, the \$110,000 in expenses will be recouped through the collection of additional Transient Occupancy Taxes (TOT). In response to his questions, City Attorney Harp, Community Development Director Jurjis, and License Supervisor Navarrete reported that fees may not be collected upfront when a hosting platform is not used, approximately 60 percent of properties use a hosting platform, consultants for the City conduct random audits of properties that do not use a hosting platform, most properties that have been audited are compliant, a percentage of compliant properties cannot be determined at the current time, and the size of exterior signage would be a maximum of two square feet.

Council Member Muldoon discussed why he would not support the recommendations for exterior signage and parking.

In response to Council Member Herdman's questions, Community Development Director Jurjis and License Supervisor Navarrete indicated the definition of "rent" is contained in the Newport Beach Municipal Code; gross rents collected and other fees, such as late checkout fees, are taxable; and the party that collects the TOT would remit it to the City. Council Member Herdman suggested the ordinance reference the Code section defining rent, taxable items, and nontaxable items.

Nancy Gardner stated that the property owner earns money while she pays the price for unruly tenants, encouraged Council to adopt the ordinance because it provides some teeth for enforcement, and believed the ordinance will keep short-term lodging more residential.

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Colonel Stephen Sharma indicated the U.S. Army Corps of Engineers can build housing in a month, discussed homeless issues, and noted that people can undergo drastic changes in a month.

Larry Robinson believed short-term rentals are changing the culture of Newport Island and the recommendations are not enough, and asked whether staff looked at areas of the City where short-term rentals may be appropriate.

Craig Williams stated he bought his Balboa Island property in 2017 to have short-term lodging, meets the guests and limits occupancy to four people, and his neighbors support his management of the property. He expressed concerns about the parking regulation for properties on Balboa Island and requirement for signage. He recommended requiring a window decal instead.

Connie Adnoff, Beachview Realty, requested that Council not issue another alcohol license in any of the pier areas, stated she vets her tenants, and believed parking is not as problematic for short-term rentals as long-term rentals.

Stacey Wyatt attributed much of the change to Newport Island to short-term rentals, stated that 17 of the 109 residences on Newport Island are short-term rentals, and believed more consideration should be given to the number of permits in close proximity to one another.

Kris Murray, Expedia Group, advised that Expedia Group represents VRBO and HomeAway, encouraged the City to develop a seamless registry portal and system that is available to all short-term lodging platforms, and recommended an effective date of 90 days following final passage of the ordinance. She suggested updating the City's license registry at least once a day and ideally in real-time, and believed the provision requiring platforms to collect the TOT requires voter approval under Proposition 218.

Yolena Tam liked the City's clear delineation of where vacation rentals are allowed, indicated the City's permitting process is cumbersome and archaic, believed the occupancy requirement is reasonable, and indicated she did not support the signage recommendation.

Jerry Cruz concurred with comments regarding the changes in quality of life on Newport Island and believed requiring only one parking space is incredibly low.

Scott Carpenter, iTrip Vacations, expressed concern that the ordinance may not address changes in technology, suggested placing noise monitors in each unit to assist with enforcement, expressed concern that the signage requirement may impose on the tenants' privacy and safety, and requested clear language be incorporated into the ordinance regarding which fees are taxable and nontaxable.

Carmen Rawson stated she has been doing short-term rentals since 1992 and has never heard of a visitor service fee, expressed concern that she would not be in compliance with Section 5.95.045 because the agreement is written between the user and her property management company, recommended telling tenants about the requirements rather than giving them copies of the Newport Beach Municipal Code sections, believed providing a contact name does not make sense if an answering service is used.

Ken Rawson indicated he attended all the community meetings and heard concerns about parking, encouraged his neighbors to contact the police with complaints about his properties, and stated he supports the recommendation for one parking space per unit.

Craig Batley, Burr White Realty, believed the proposed ordinance is a good start that, with revisions, will improve the City's ability to regulate short-term lodging, Newport Beach manages short-term lodging more effectively than any city in Orange County, asked if the City Attorney's Office could provide a model short-term lodging contract, indicated exterior signage indicating maximum occupancy could result in unnecessary complaints, suggested adjusting the occupancy count for square footage, and believed the requirement to use an answering service is impractical.

Don Abrams believed he has received no calls about disturbances at his rental properties because everyone has his phone number, this is being proposed because 35 citations were issued in 2019 compared to thousands of rentals, the ordinance is not needed, people may purchase a duplex but not be able to use one unit for short-term rental because of the permit cap, the cap devalues properties, and the parking recommendation will hurt the elderly.

Curtis Westland expressed opposition to the signage recommendation and believed the answering service will receive calls about property availability and complaints.

Tom Mann indicated the only complaints he has received come from renters complaining about construction noise, he screens his renters, and neighbors call him with complaints. He stated he opposed the signage recommendation.

Maria stated she has received no complaints about her rental property in the past ten years, and asked the rationale for eliminating units after ten years.

Wayne Smith believed the City should address a property with 12 units and no parking, stated the answering service could be inundated with complaints during the summer, and indicated neighbors should have the property manager's or owner's phone number to make complaints.

Council Member Brenner took issue with the R-1 exclusion, pointed out that short-term lodging is not a property right, believed the City needs to provide owners and property management companies a template to provide occupants so they know the rules and regulations, indicated she understood the concern about exterior signage but neighbors may not have the number of the owner or property manager, noted that there have only been 35 citations issued but there are a lot of complaints, and discussed a newspaper survey where respondents want the City to regulate short-term rentals in some way.

Mayor Pro Tem Avery agreed with almost all the suggested provisions in the ordinance because the City is getting overrun with rental units, believed more of the TOT funds should be put toward code enforcement, and stated the City needs to work harder to protect residents in distress over these kinds of issues.

In response to Mayor O'Neill's question, License Supervisor Navarrete advised that the short-term lodging registry went live the morning of the meeting.

Council Member Dixon noted the regulations are to assist with handling the trouble units, she has been hearing residents complain about short-term rentals for six years, the ordinance is a good neighbor policy and protects property values, indicated she concurred with the requirements for parking and occupancy, pointed out the ordinance does not address density, believed installing noise monitors is a clever idea, stated she could support having a smaller sign in the window, suggested placing the property owner's or manager's contact information on the MyNB app, and noted the community seems to support a minimum stay of two or three nights.

In response to Council Member Dixon's questions, Community Development Director Jurjis explained that the current ordinance states that short-term lodging is not allowed in R-1. In Newport Beach, people have purchased R-2 duplexes, torn them down, and built single-family residences. He reported that single-family residences in R-2 zones are allowed to obtain a short-term lodging permit, there are 1,800 single-family homes on R-2 lots, and 200 of the 1,800 properties have short-term lodging permits.

Council Member Dixon proposed that a permit cap for Newport Island be set at 17.

Council Member Herdman emphasized that the ad hoc committee did not intend for the sign to take the place of the police department.

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In response to Council Member Muldoon's questions, City Attorney Harp advised that the California Coastal Commission may require a coastal development permit or modifications to the Local Coastal Program, and discussed cities rights to regulate things within their police power. Community Development Director Jurjis added that short-term lodging is not permitted in mixed-use zones.

Council Member Muldoon believed mixed-use zones make the most sense for short-term lodging and recommended including short-term lodging in R-2 mixed use zone and prioritizing it in the wait list.

Council Member Duffield thanked everyone for their involvement and indicated he was glad the City is doing something.

Mayor O'Neill noted the City has good operators that spoke during public comments who represent probably more than half of all short-term rental units, believed the ordinance would make operations harder and more expensive, indicated placing more restrictions on good operators is not appropriate, suggested having more enforcement, expressed opposition to the sign recommendation, and stated the ordinance goes too far.

Council Member Dixon indicated multi-unit properties were excluded so they would not turn into hotel alternatives, assured that the ad hoc committee did not want to impose anything burdensome, and questioned the numbers due to the number of verbal complaints received and frustrated neighbors.

Council Member Brenner stated the ad hoc committee heard from a lot of people that, when the police were called, they gave warnings rather than citations, and believed that 35 citations does not accurately depict the problems experienced in the community.

In response to questions from the public, Community Development Director Jurjis and License Supervisor Navarrete explained that the total TOT is 10 percent, the ad hoc committee wanted to scale back where possible and to allow the existing 59 short-term lodging permits outside the Coastal Zone to continue for ten years and not to allow any additional permits.

Motion by Mayor O'Neill, seconded by Council Member Muldoon, to deny the recommendation.

Substitute motion by Council Member Brenner, seconded by Council Member Dixon, to a) find 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 reading, read by title only, introduce Ordinance No. 2020-8, *An Ordinance of the City Council of the City of Newport Beach, California, Amending Section 1.05.020 Subsection (F), Section 3.16.060 and Chapter 5.95 of the Newport Beach Municipal Code Relating to Short Term Lodging*, with amended language to Section 5.95.050.A, and pass to second reading on February 25, 2020.

In response to Council Member Duffield's question, City Attorney Harp advised that increasing the number of nights is not part of the motion; however, language could be added requiring a minimum stay of two nights.

In response to Council Member Dixon's question, City Attorney Harp indicated a provision regarding Newport Island should return to the City Council.

City Attorney Harp noted the revision to Section 5.95.045.A.6 of the notice shall be in substantial compliance with a template created by the City, which will be available on the City website.

Amended substitute motion by Council Member Brenner, seconded by Council Member Dixon, to a) find 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) waive reading, read by title only, introduce Ordinance No. 2020-8, *An Ordinance of the City Council of the City of Newport Beach, California, Amending Section 1.05.020 Subsection (F), Section 3.16.060 and Chapter 5.95 of the Newport Beach Municipal Code Relating to Short Term Lodging*, with amended language to Sections 5.95.050.A and 5.95.045.A.6 and requiring a two night minimum stay, and pass to second reading on February 25, 2020; and c) direct staff to return with a provision regarding Newport Island.

With Mayor O'Neill and Council Member Muldoon voting "no," the motion carried 5-2.

City Attorney Harp reported that the City Council would adjourn to Closed Session to discuss the item listed in the Closed Session agenda and read the title.

Jim Mosher discussed his understanding of the issues and believed Council should not sue the California Coastal Commission because it is likely to lose and the dispute involves the California Coastal Commission and private individuals.

In response to Mayor O'Neill's question, City Attorney Harp explained that the notice means that Council is contemplating the initiation of something.

IV. CLOSED SESSION – 9:40 p.m.

A. CONFERENCE WITH LEGAL COUNSEL
ANTICIPATED LITIGATION – INITIATION OF LITIGATION
(Government Code § 54956.9 (d) (2) and (e) (3)): 1 matter

On January 28, 2020, the City of Newport Beach received a Notice of Intent to Commence Cease and Desist Order, Restoration Order, and Administrative Civil Penalties Proceedings from John Ainsworth the Executive Director of the California Coastal Commission related to alleged prohibited encroachments on Peninsula Point from a 250 feet southeast of E Street to Channel Road, in the City of Newport Beach. A second Notice of Intent related to this same matter was received from John Ainsworth on January 30, 2020. A copy of the Notices of Intent are available for public inspection at the City Clerk's Office located at 100 Civic Center Drive, Newport Beach, California 92660.


Mayor O'Neill reconvened the meeting at 10:09 p.m. with all members of the City Council in attendance.

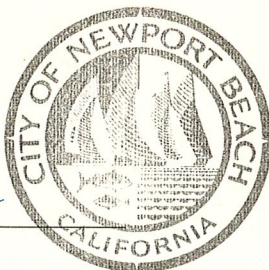
VIII. CLOSED SESSION REPORT – None

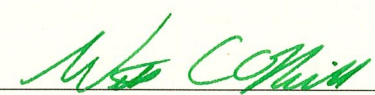
XIX. MOTION FOR RECONSIDERATION – None

XX. ADJOURNMENT – 10:10 p.m.

The agenda was posted on the City's website and on the City Hall electronic bulletin board located in the entrance of the City Council Chambers at 100 Civic Center Drive on February 6, 2020, at 4:00 p.m.


Leilani I. Brown
City Clerk




Will O'Neill
Mayor