

## June 13, 2023, City Council Agenda Comments

The following comments on items on the Newport Beach City Council agenda are submitted by:

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### ***Item XIII. MATTERS WHICH COUNCIL MEMBERS HAVE ASKED TO BE PLACED ON A FUTURE AGENDA (NON-DISCUSSION ITEM)***

#### **Request 1: Consider having staff research Planning Commission stipends in surrounding and comparable Orange County cities to determine if Newport Beach compensates its Planning Commissioners appropriately**

During the full Council's May 23 preliminary review of the 2023-2024 Budget I [noted in writing](#) that in 1990 a former Council had adopted [Resolution 90-70](#) authorizing staff to pay each Planning Commissioner \$60 for attendance at each of up to two meetings per month. I don't know if a prior amount had been paid, but as best I could tell, the appropriateness of that had not been reexamined since.

With seven commissioners and a potential of 24 meetings per year, this represents a possible annual expenditure of \$10,080 (which is very minor in the bigger picture of things, but which I did not know where to look for in the budget).

While I applaud the suggestion to compare our practice to that of other cities, I think the investigation should be broadened to ask: **should the City be paying any "stipend" at all?**

I believe, there may be two problems.

First, the Council's discretion in this regard is constrained by the voters through City Charter [Section 705](#), which says in relevant part: "***The members of boards and commissions shall serve without compensation for their services as such, but may receive reimbursement for necessary traveling and other expenses incurred on official duty when such expenditures have received authorization by the City Council. In addition, the City Council may by resolution fix an amount as reimbursement of other expenditures incurred by the members of boards and commissions while in the performance of their official duties.***"

The Council in 1990 appears to have been operating under the second provision, although it is not clear what not-formally-authorized "other expenditures" they were offering reimbursement for.

Second, I believe there could be a problem with City's characterization of these payments, and whether they have to be reported as wages if they are paid without requiring itemization of the expenses being reimbursed.

[Section 402 of the original City Charter](#) adopted in 1954 contained very similar language with regard to our volunteer City Council members, prohibiting "*compensation for their services as such,*" but setting a payment \$50 per month to cover out-of-pocket expenses associated with their duties. After this amount had been raised over the years, I believe the IRS inquired as to whether the Council members were actually being required to submit receipts, or were operating as independent contractors whose compensation had to be reported as such (something that

would appear to have been in conflict with the Charter since Council members were not allowed to charge the City for their service).

The City solved this dilemma by asking voters in 2012 to (among 37 other things in that year's [Measure EE](#)) rewrite Section 402 to its [present form](#), in which the Council members stipends are recharacterized "as compensation for their services" (apparently making them eligible for employment benefits, as well). The same was not done for board or commission compensation.

While I appreciate that given the complex and often voluminous documentation they need to read and analyze if they are to prepare properly for their hearings, people appointed to the Planning Commissioners are arguably expected to provide more hours of service than those appointed to most other boards and commissions. But, unlike Council members since 2012, our Charter does not allow them to charge for those extra hours.

The idea, of course, is that appointees should not have to pay to serve. But if they cannot charge for the time they spend, the only potentially compensable additional expenses I can think of is mileage on local trips they might not otherwise have to make (such as, from and to the meetings) and what they might spend on personal investigations into matters before them. And in the case of Planning Commissioners, although many have seemed proud to conduct site visits and reach out to involved parties, there is considerable question as to whether they should be performing those extracurricular activities at all. Noting that Planning Commissioners perform a quasi-judicial function, the California Institute of Local Governments' [Planning Commissioners Handbook](#) warns that "the basic requirements of procedural due process" require commissioners to "Avoid Ex Parte Contacts" and that "Site Visits Raise Concerns" ([Topic 5](#) under [Meetings and Procedures](#)).

In short, if the Council wishes to increase the expense limit, I think it should clarify what expenses can be billed for. Or if it wishes to pay Planning Commissioners for their service, as other cities may do, it should ask voters to amend the Charter to allow that.

**Request 2: Consider initiating the process of renaming Back Bay View Park in honor of former Council Member Jean Watt**

I am one of the many who had the pleasure of being able to regard Jean Watt as a friend. And I greatly admire her accomplishments and contributions to the betterment of our city.

So, saddened as I am by her recent death, it further pains me to have to say I think this proposal is premature.

Section B.5 of City Council [Policy B-9](#) ("Naming of City Parks/Public Facilities & Plaque Dedications") wisely limits the names of persons that can be considered for the naming or renaming of a park or public facility to "*Persons that have been deceased for at least fifteen (15) years.*"

This has been a matter of extended discussion over many years. Many may remember the controversy over whether the rebuilt OASIS Center could be named after Evelyn Hart (now, sadly, also recently deceased).

A prior version of the policy ([April 8, 2003](#)) allowed beginning the process of naming parks after “renowned citizens of the community” six months after their death. That provision was removed by [Item 20](#) at the Council’s May 13, 2003, meeting, but later returned with the 15-year rule.

On August 1, 2017 (their [Item VII.A](#)), our Parks, Beaches and Recreation Commission wisely, I think, denied a request to rename Balboa Island Park (site of the Carroll Beek Community Center) to Ralph Rodheim Park in honor of a recently-deceased community member.

More recently, as [Item 11](#) on August 23, 2022, the immediately prior Council appears to have entirely waived the intent of Policy B-9 to allow the proposed Library Lecture Hall facility (rather than a room or amenity within it) to be named after two living non-resident donors, and without review by PB&R.

In my view, for the many reasons that have been articulated over the years, I think the existing policy is a good one, and except in the most exceptional of circumstances, which this is not, should be followed uniformly.

This should be a decision for the Council in place in fifteen years. Not for the present one.

### ***Item 1. Minutes for the May 23, 2023 Special Joint Meeting of the City Council and Finance Committee and the May 23, 2023 City Council Meeting***

The passages shown in *italics* below are from the draft minutes with suggested corrections shown in ***strikeout underline*** format. The page number refers to Volume 65.

**Page 558**, paragraph 6 from end: “*Jennifer Krestan expressed concern for safety if all the boats ***faced are unable to face*** the same direction.” [See [video](#). Ms. Krestan believed sailboats can only moor safely if they can approach the mooring from the single direction dictated by the wind and currents, but that the proposal would dangerously require some to approach from the opposite direction so as to tie up bow-to-bow. On the next page Harbormaster Blank asserts that “there is no required vessel orientation language included in the plan” – but I believe it may be difficult for a sailboat to back up into its berth.]*

**Page 558**, last paragraph, sentence 1: “*Jerry LaPointe, NMA Board Member, expressed the opinion that all of the frontline stakeholders would oppose the proposal due to the safety concerns, noted NMA’s support for a better mooring field and more effective plan, and indicated that NMA’s ***NMBC NBMC*** Title 17 suggestions were not included in the document.*”

**Page 559**, paragraph 4: “*Steve Scully, Harbor Commission Chair, recommended that Council approve the resolution, noted the pilot program opens the Harbor’s waterways, improves safety for human powered, sailing, ***and electric powered and power*** boats, and realigns haphazard mooring rows, views, and space for future moorings. He noted the plan is consistent with current and future Harbor development, is a one-time exchange of mooring locations within the same field, is supported by many, addresses safety, provides for more space, angles, and options to deal with wind, tides and conditions, and preserves and improves the Harbor.*” [see [video](#)]

### ***Item 3. Ordinance No. 2023-8: Recommendations Resulting from Harbor Commission Objective 2.3 to Improve Navigation Safety, Allow for Additional Moorings Within the Fields and Mooring Size Exchange Requests***

At this ordinance's introduction on May 23, the Council had before it a 496-page agenda [Item 15](#), as well as 65 pages of [later correspondence](#) urging adoption, rejection or modification of the staff-proposed ordinance.

Having been introduced, the proposal is now reduced to 15 pages, omitting the arguments previously advanced for its adoption, rejection or modification, as well as the correspondence, if any, received since the proposed ordinance's publication.

I would note that the first page of the ordinance (agenda packet page 3-3) refers to a resolution approved contemporaneously with the introduction of the present ordinance and containing recommendations contingent upon the ordinance's adoption, but leaves the resolution's number blank. I don't know why that is, for the minutes of the May 23 meeting (Item 1 on the current agenda) indicate it was [Resolution No. 2023-32](#).

I continue to be baffled why Newport Beach continues to adopt resolutions contingent upon the adoption of an ordinance before it knows whether the ordinance will actually be adopted. The time between introduction and adoption is supposed to allow for additional consideration of whether the proposal is a wise one, or not. Wouldn't it make more sense to adopt resolutions dependent on an ordinance at the time the Council votes on the *adoption* of that ordinance, **not** at its *introduction*, when its fate is uncertain?

In that connection, I would note [Section 8](#) of Resolution No. 2023-32 says it went into effect immediately, and nothing about it being contingent on adoption of the present ordinance. I would also note that [Section 2](#) of the adopted resolution says that after implementation of a Pilot Project in Mooring Field "C", "*City staff shall return to the City Council and report on the Pilot Project so the City Council can decide whether a **Harbor wide reconfiguration** should be established.*" However, the Council was told on May 23 that the two yacht clubs that manage the arguably least compact mooring fields in the harbor will be forever exempt from reconfiguration. I continue to wonder why what is good for other boaters is not good for yacht clubs.

I would also note that page 3-2 of the staff report says "*The proposed NBMC amendments also include a provision for any new moorings installed or acquired by the City of Newport Beach to be made available to the public pursuant to a revised mooring permit that ensures equal opportunity for new mooring permittees to access public tidelands in Newport Harbor.*"

I believe I asked at the May 23 meeting if the City was planning to go into the mooring tackle ownership and rental business. I actually think that is a very good idea, but I fail to see how the procedures for managing this City-owned tackle are clearly spelled out in these proposed Title 17 revisions. I suspect there will be, or already is, a waiting list, but I don't see that mentioned. Similarly, I do not know if a person issued a permit to use City-owned tackle obtains a non-transferable, but still lifetime right to use it. Or what the charges will be (as I understand it, the

existing regulations refer to rental of a space, not the equipment at that location, and make no clear distinction between City-owned and non-City-owned tackle).

Finally, questions were raised at the May 23 hearing about the proposed ordinance's use of the phrase "established length" without any explanation of what that means.

I believe this language may originate in an earlier code revision proposal, not seen by the Council, that was considered by the Harbor Commission. If I am recalling correctly, it dealt exclusively with how to adjudicate mooring length extension requests and included a plan to reconfigure the mooring fields into rows of equal length – but not double rows. I seem to recall that earlier proposal contained definitions of the terms it used. Those definitions may have been lost as the proposal evolved into one requiring the double-row configuration so many mooring permit holders object to.

I believe, as a number of people commented on May 23, it is unwise to adopt an ordinance that depends on "established lengths" but does not explain what those are or who is authorized to establish them (I think in the earlier proposal they would have been something like the numbers shown in red in [Slide 12](#) from the May 23 staff presentation, but established by Council or Harbor Commission resolution).

### ***Item 7. Resolution No. 2023-36: Confirmation of Nominations to the Water Quality/Coastal Tidelands Committee***

This item is something of a mystery for multiple reasons.

On page 7-2, the staff report refers to a prior Council's action on February 23, 2021 ([Item 5](#)), where they adopted a revised enabling [Resolution No. 2021-11](#) enabling two of the current nominees, George Robertson and Tom Houston, to be reappointed for two years even though they had already exceeded the two-term limit. They are now at the end of that two year extension.

But why the Clerk thinks that extension ends on June 30, 2023, is one of the mysteries. Both Resolution No. 2021-11 and its predecessor [Resolution No. 2012-115](#) make clear that Water Quality appointments occur in January for terms starting February 1. Some subsequent Council action may have extended the Water Quality terms to June 30, but it was not Resolution No. 2021-11.

Setting that aside, saying that one of the three vacancies is "unscheduled" seems a little misleading since the resigned individual's term would, by the Clerk's reckoning, have ended on June 30, anyway, making it, for all practical purposes, a "scheduled" vacancy by the time the appointment will be made (the committee is not expected to holding any meetings in the few days of the resigned member's remaining term).

Additionally, it is misleading to say the two current members who are re-applying "*were originally appointed to the Committee on January 22, 2013.*" That is only how long they have been on the Committee since terms and term limits were established by [Resolution No. 2012-115](#). In the case of Mr. Robertson, that was indeed when he was first appointed (see [Item 14](#) from that date).

But as explained in my [written comments](#) on Item 5 from February 23, 2021, Mr. Houston has, as his application comments imply, actually been on this committee, under its predecessor names, continuously since his initial appointment at “its inception” on August 11, 1986. If he completes an additional four-year term (through 2027) he will have been on the committee 41 years. While I appreciate his service, given that term limits are enacted to ensure the Council is guided by fresh perspectives, it is hard to see how an exception to allow such an exceptionally long tenure can be justified.

### ***Item 13. Amendment No. One to the Professional Services Agreement with Kimley-Horn & Associates, Inc. for Housing Element Implementation***

If I understand the staff report correctly, the increased scope and costs are larger than they may at first appear, or in addition to the \$395,310 that is being requested, another \$92,000 that would otherwise have been saved is being “repurposed” to fund the same vendor.

It is interesting to hear about the [Housing Element and Circulation Element Update EIR Scoping Meeting](#) apparently conducted by Kimley-Horn in the Community Room on [August 16, 2021](#).

I do not recall being aware of or attending it, but I can easily forget.

Curiously, there is no mention of an EIR of that name on the City's [Environmental Documents page](#) nor on the adopted [Housing Element](#) or [Circulation Elements](#) pages. The explanation of how the actions to approve those without an EIR has never made sense to me. The idea that “we will consider the impacts later” doesn't usually wash.

As a member of the General Plan Advisory Committee's Noise Element Subcommittee, I am a bit concerned about the description of new Task 10 on page 13-21. I am guessing that “Housing Element” in line 1 may be a typo for “Noise Element,” but I am unable to guess who, if anyone, will be assisting the Noise Element Subcommittee and what help they will offer us.

### ***Item 15. Professional Service Agreement with Granicus, LLC for Granicus Web and govAccess Updates***

The staff report is short on details of how the website redesign will take place.

While staff promises the future site will be “citizen-focused,” it is not clear citizens will have any input into what design they would like to see. Will they? And how?

As to the current structure, it certainly is strange with regard to public meeting materials, which first appear hosted by Granicus (at a [“Legistar”](#) URL), but shortly after most meetings occur disappear from Granicus and reappear, often with internal links disabled, on the City's seemingly separate [Laserfiche](#) archive. This makes sharing where information about those meetings can be found both difficult and ephemeral (in part because the future location cannot be predicted). Does Granicus propose to improve this? And will the Laserfiche archive continue to be maintained?

Also, the staff report says some departments will have specially-designed subsites. How does this affect the Police Department, which seems to have its own completely separate website?

### ***Item 17. Community Programs and Special Event Grants Recommendations for Fiscal Year 2023-24***

I do not understand the final sentence of the staff report (page 17-5): “As a City Council grant program, staff met with Mayor Blom and Council Members Kleiman and Stapleton to review the recommendations prior to today’s meeting.” I do not understand why the meeting with three Council members took place, or what about it would qualify it “as a City Council grant program.” Why were these three Council members singled out? Who chose them? Was a meeting with them compelled by some Council policy?

Of the organizations being recommended for Community Program Grants (page 17-10), one (“Youth Employment Services”) says only 1% of those it serves are Newport Beach residents. Is the grant to them targeted at those few?

Regarding the Speak Up and Wake Up Newport rental fee waivers, the City also appears to record and post video of them on its website and YouTube channel. How is that paid for, and at what cost? It would seem to be in addition to the fee waiver.

Of the Special Event fee waivers (page 17-12), it is good to see there are some new applicants and not just a list of the prior year’s beneficiaries. Is the Peninsula Point “Picnic in the Park” open to all? Is staff confident that groups holding comparable events are aware of the opportunity to have their fees waived? Of the returning requests, a “Beerfest” seems a strange thing for a city government to be supporting.

Of the Signature Events, has staff checked they are not receiving additional City funding via the City’s payments to Visit Newport Beach? If they have, shouldn’t that be disclosed?

### ***Item 18. General Plan Update Steering Committee (GPUSC) Bi-Monthly Update to the City Council***

Although Attachment A is signed by the three members of the Steering Committee, I do not believe it was actually discussed and agreed to by them. At least I do not believe they did so publicly.

The staff report also, of course, does not cover the outcome of the most recent GPAC meeting, which would normally have been held on June 7, but was postponed to June 12 at 5:00 p.m., the same date and time at which public comments for the June 13 Council meeting are due.

### ***Item 20. Confirmation of Nominees for Scheduled Board and Commission Vacancies, and for One Unscheduled Vacancy on the City Arts Commission***

As someone who thought he had an application on file to serve on the Board of Library Trustees continuously since 2009, I was disappointed to discover my most recent application seems to have lapsed and is no longer in the Clerk’s folder for consideration.

While I know applications remain valid for only two years, I thought the Council had asked staff to advise prior applicants that their applications are about to expire before their forms are discarded. I may have been reminded, but if so, I missed it. If it is no longer happening, does

this need to be made a formal policy? Reviving the practice might help with situations like that of Item 7, above, where insufficient current applications were found for the Water Quality Committee.

As I have likely pointed out in the past, it would additionally be helpful if this report indicated how many applications were available for the nominations committee to consider for each position. That would let the other Council members know if there were more possibilities to explore – or, conversely, if there is a problem with waning public interest in serving. I know, for example, that with three nominations required for the Civil Service Board position, only three applications were received, which seems sad.

I also don't recall the nominating committee ever having been formally appointed at a Council meeting. Doing so would let applicants know who they should contact if they are really eager to be nominated.