

# CITY OF NEWPORT BEACH

City Council Minutes  
Study Session and Regular Meeting  
February 10, 2015

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**I. ROLL CALL - 3:30 p.m.**

Present: Council Member Peotter, Council Member Petros, Council Member Curry, Council Member Duffield, Council Member Muldoon, Mayor Pro Tem Dixon, Mayor Selich

**II. CURRENT BUSINESS**

**SS1. Clarification of Items on the Consent Calendar - None**

**SS2. Presentation: Orange County Human Relations Commission Annual Report**

Dave Rader, Orange County Human Relations Commission, provided a report on 2014 Commission activities which included the Commission's missions and goals, and their work and accomplishments during the past year. He distributed a handout and presented the City with a Certificate of Recognition.

Mayor Selich commented positively on a recent encounter he witnessed between a Newport Beach Police Officer and a homeless female, in which the Officer treated the female with compassion and respect. He thanked Mr. Rader for the acknowledgement.

**SS3. Review of the 15th Street Rehabilitation Project**

Public Works Director Webb described the needs of the area and introduced Dan Herman, Rabben/Herman, for a presentation.

Mr. Herman provided a PowerPoint presentation to show the existing conditions, project goals, public meetings and community feedback, and details of the 15th Street concept plan. Public Works Director Webb noted key features on the ocean side of 15th Street, including installation of a turn-around.

Mr. Herman presented a series of simulations, crosswalk treatments, the Lower Bay side of 15th Street, site elements and materials, softscapes and hardscapes, approximate sidewalk and median widths, entry elements, improvements near Marina Park, and improvements to other sections on Balboa Boulevard. He noted that the project schedule is pending direction from Council and provided an estimate of the conceptual construction costs. Public Works Director Webb addressed funding and noted opportunities for additional public input through Council's vetting of the project.

In response to Council Member Petros' questions, Public Works Director Webb addressed the purpose of the handrails, the possibility of headlights impacting the new home being constructed in the area, public dock amenities, median trees, and diameters of tree trunks. He commented on grade differentials and opportunities to flatten the grade in order to eliminate the need for handrails. Additionally, in terms of the medians, he indicated that they may not be ADA compliant. Council Member Petros stressed the need to ensure that navigating the narrow medians is safe. Mr. Herman addressed the size of the trees proposed for the median and safe access at the median.

Council Member Petros stated that he is glad to see that Tim Psomas is involved in this project and noted that he is one of the leaders in sustainable engineering practices. Mr. Herman reported that efforts are being made to apply those practices, including improving water quality. Council Member Petros encouraged staff to implement sustainable engineering practices wherever possible.

Mayor Pro Tem Dixon commented positively on the City's investment in District 1 and stated that the public and business owners would like the opportunity to have additional discussions with staff relative to the project. She commented on challenges with tree and landscape maintenance and safety vehicle maneuverability in the turn-around. Public Works Director Webb indicated that traffic models were run and ambulance and paramedic vehicles are able to maneuver in the turn-around, but not fire trucks. He noted that they would be able to pull straight in. Additionally, he noted that the signal will be upgraded and that a dedicated left turn will be added. He noted that complete circulation will be maintained on the intersections.

Council Member Duffield commented on dinghies and noted that there are plans to accommodate them at Marina Park. He hoped that a shore boat will be established there as well. Public Works Director Webb reported that there is a related item on tonight's agenda and that the City is building an entire dinghy bay for the mooring field in the new Marina Park marina.

Joe Angelo requested and received information from Public Works Director Webb regarding the location of the drop-off area. Mr. Angelo suggested converting the parallel parking spaces into a two-minute drop-off area.

Richard Meyer noted that the palm trees are different than the original plan, believing that the original trees are more rich and luxurious for the corner.

Grace Dove expressed concerns with the bulb-outs due to congestion during the summer and lack of restrooms. Additionally, she spoke against the bollards resembling beach balls. She suggested that consideration be given to the fact that the majority of the area is residential.

George Schroeder commented on impacts of the push-outs and noted that, during the summer, the intersection is extremely busy with pedestrians, bicyclists, and cars. He spoke against having the concrete pushed out into the street and expressed concerns relative to the trees being placed in the narrow medians and with large trees impacting views.

Ed Healy requested that the area gets the right kind of trees in order to maintain existing views and commented on safety challenges related to the two nearby alleys. Public Works Director Webb commented on the alleys' textured warning strips to advice of an impending change.

Maureen Cotton spoke in support of the turn-around. She noted that stop signs are often ignored and suggested installing a stop sign behind the alley. She asked that Council not approve the installation of trees at the end of the alley on the build-outs and suggested installing a drop-off area instead of parallel parking.

Peter Anderson expressed the opinion that more trees will make the corridor something to be proud of and suggested that Council consider planting more trees along Balboa Boulevard instead of just on the medians.

Elliott Bonn expressed concerns with placing trees in the medians and asked whether meters will be installed between 16th and 18th Streets in front of Marina Park. Public Works Director Webb indicated that the area will eventually have metered parking.

Elizabeth Wiley expressed concerns regarding adding trees and improving the medians, noting that there already is a lack of parking for parents of Newport Elementary School students and the bigger trees will create limited visibility. Additionally, she reported that the third lane to leave the Peninsula was removed in front of Marina Park and believed it is a safety hazard to only have two lanes as it will create traffic impacts.

Public Works Director Webb reported that the project will be phased construction and that no parking spaces will be removed. He indicated that the trees in front of Newport Elementary School will be replaced and parking will also be temporarily removed during construction. He referenced a previous traffic study and stated that two lanes work well on Balboa Boulevard and that Council took out the third lane years ago. He also addressed access to the beach for lifeguard trucks.

Brian Ouzounian reported that it is very hard to get off the Peninsula during heavy traffic hours and encouraged Council to reconsider opening up the third lane from 15th Street to the Newport Pier.

In response to Mayor Pro Tem Dixon's question, Public Works Director Webb reported that the primary exit from Marina Park is 16th Street and that there is access to the alley.

Mayor Selich commented on the trees in the median and expressed concern that there may be obstacles. He suggested installing one or two pay stations in order to eliminate poles. Public Works Director Webb reported that the City's traffic consultant advised this area would be a better place for meters.

In response to City Manager Kiff's questions, Public Works Director Webb reported that the original palms trees that were proposed are subject to a disease and that the new palms are thinner, airier, and have less visibility impacts.

Mayor Selich noted that there are details that need further refinement, but believed that the project is in concert with Council policy and direction for the Peninsula. Mayor Pro Tem Dixon expressed her agreement.

Council Member Petros agreed, but requested that staff ensure that the median trees not present problems for people getting out of their vehicles. He added that beach balls might not be the best bollards and, although they are whimsical and beachy, the City is not Target. Regarding furniture, he suggested that they not be inviting for overnight stays.

Public Works Director Webb emphasized that the bulb-outs provide additional areas for pedestrians.

Council Member Peotter referenced the Facilities Finance Plan (FFP) and presumed that the project is included in same. City Manager Kiff clarified that construction has not yet been budgeted. Public Works Director Webb added that the project is not in the FFP, but noted that it is part of the Capital Improvement Program (CIP).

Council Member Curry commented positively on the project and its importance in revitalizing the Peninsula.

**SS4. Actions Steps Relative to Utility Undergrounding - Follow-up to the January 27, 2015 Meeting**

Deputy Public Works Director Vukojevic provided a PowerPoint presentation to address the background, the status of potential Rule 20B projects, and categories of policy guidance that staff is seeking Council input.

In response to Mayor Selich's questions, Deputy Public Works Director Vukojevic provided examples of various cost-reduction options. Additionally, he addressed financial options for owners. He discussed the discount rate for assessment pre-payment and provided an example of a typical financing scenario. He addressed financial options for property hook-ups, City-owned parcels, leveraging opportunities, and staff recommendations. He also explained the State Controller's property tax postponement program. Council Member Curry noted that it is similar to obtaining a loan from the State.

Mayor Pro Tem Dixon commented on the possibility of bundling or projecting out financing for 20 years and the timeline from petition to completion. Deputy Public Works Director Vukojevic noted the timeline could take four to five years. Finance Director Matusiewicz added that bundling can be done and commented on spending down the bond proceeds within three years.

Gail Demmer reported that objection to Underground Utilities District 118 (UUD 118) relates to the cost since many residents are on fixed incomes. She noted that she has lived with telephone poles for 45 years and that her property value has still increased over the years. She commended staff for being transparent on this matter.

Brian Ouzounian, Balboa Island property owner, referenced a letter he wrote to the City on this matter and recommended the formation of an ad hoc committee to study this issue. He expressed his opposition to having 60% of the people imposing a financial obligation on 100% of the people and suggested changing the petition threshold to 80%. Deputy Public Works Director Vukojevic reported that, to be compliant with the State, the minimum is 50% per the Streets and Highways Code and Assessments Acts. Mr. Ouzounian addressed submerging power underwater and hoped that staff takes public comments seriously. He asked regarding whether property owners would be taxed on the improvement. City Attorney Harp stated that property owners would not be assessed additional taxes, however, the benefit to the property would be determined and that is what the property owner would pay. He added that with the State, property owners can defer taxes but would need to pay interest.

Jim Mosher expressed his opposition to lowering the petition threshold and against having the City vote in the final decision for the undergrounding district.

Tom Baker announced a website the residents set up for UUD 118 ([www.noundergrounding.com](http://www.noundergrounding.com)). He believed that the 60% petition threshold should be raised, there is no mention of how the City will vote on its parcels, and there is no information regarding how commercial parcels will be handled.

City Manager Kiff noted that the cost for undergrounding depends on the project. Public Works Director Vukojevic reported that the City does not currently have an estimate for UUD, but that \$400K is probably a good estimate.

Mr. Baker believed that the postcard sent to residents is vague and that the City should not have a significant vote or that the vote should be proportionate to the lot sizes.

Mark Simon believed that the City should lower the petition threshold to 51%, the City should vote on UUDs since it owns property and has a right to determine what to do with it, and that underground utilities are five times less likely to fail than above-ground utilities. He urged Council to vote in support of the matter.

Jeff Woodman urged Council to reduce the timeline for completion and to support having the City pay its share of the assessed undergrounding costs, which would reduce the assessment to the remainder of the property owners.

Mayor Selich clarified that, when the City changed its policy regarding voting on the Balboa Island undergrounding utility district, it only regarded voting on the City property. He added that the City would be assessed just as any other property.

Dr. Richard Tester believed that the ambiance of the City is destroyed due to telephone poles. He commented that the area around Buck Gully is an entrance point to Newport Beach and Corona del Mar, and addressed criteria for Rule 20A. He asked regarding the status of undergrounding the utilities on San Joaquin Road.

Josh Yocam spoke in opposition to changing the 60% petition threshold. He indicated that the City has made efforts to make the petition-gathering process less laborious. He commented on the 2009 Balboa Island underground utilities vote and believed that there was no authentication procedure. Additionally, he commented regarding residents on fixed incomes and read the eligibility requirements.

Patty Corsica, UUD 117, spoke in support of lowering the petition threshold to 50%. She reported that the data provided by the County lacks information and commented on challenges with locating non-resident property owners. She addressed rentals, spoke in support of the recommendations, reported that cost is an issue, and urged Council to look at other options than using bonds.

Terry Janssen believed that some residents cannot afford the assessment fee or utility fee, and asked the City to participate in the deferred assessment program. He reported that there is a group of residents on Balboa Island that have high hook-up costs and urged staff to do something different for these people. He suggested isolating a few poles and put the connection overhead rather than underground.

Jim Dastur stated that he does not understand concerns related to the percentage threshold. He stated that he is in favor of undergrounding utilities, but believed that the issue is related to costs and issues with the process.

Don Whitaker believed that alley access would be enhanced with undergrounding utilities and urged the City to do what it can to bury power lines. He added that emergency vehicles could maneuver better in alleys that have undergrounding.

Bill Willis spoke in support of undergrounding on Balboa Island. Regarding City-owned property, he believed that the City should make a choice one way or the other, and if the City does not vote the property, it should be taken out of the petition process.

Council Member Peotter spoke in support of the undergrounding process. He added that the City should continue with public meetings, commented on the 60% threshold, and believed that the City property should automatically vote "yes" but should not count towards more than 10% of the total vote. He also spoke in favor of the City doing its own engineering, drawings, and construction, since it can probably provide this service quicker

and faster than Southern California Edison. He asked if the City explored options regarding financing and if it has worked with local banks to facilitate loans for residents.

Council Member Curry spoke in support of undergrounding due to improved neighborhoods, property values, and public safety. He emphasized the need to ensure there is adequate public support to move forward and that the data is up-to-date in terms of the actual costs. He commented in support of a 50% voter threshold and, if voters support or do not support the matter, it would not be the City's fault, but rather a neighborhood decision. He expressed concern that how the City votes may skew the signatures needed, therefore, he recommended taking the City out of the equation. He expressed opposition to the City voting, believing it shows favoritism one way or another. He pointed out that the Balboa Island Assessment District lost by four votes but, had the City voted to overturn the decision, it would have divided the community. He believed that the City should not add more staff and asserted that this is an Edison improvement that should be managed by Edison.

Council Member Petros stated that his home is in a potential UUD, but emphasized that the card that the residents received also included a letter that explained the petition thoroughly. He pointed out that the UUD process is not a City-driven process, but rather is initiated by the neighborhood. He commented on City funds being spent during the process and believed that the City should be prudent and not lower the 60% threshold. He added that undergrounding utilities is good for the community since it enhances property values; however, he understands that the realization of the property value is only reached during the sale of the property, which would be a burden to long-term residents. He stated that he is unsure whether it is in the best interest for the City to vote as it would set up a situation where the City could unfairly burden the residents.

In response to Mayor Pro Tem Dixon's question, Deputy Public Works Director Vukojevic reported that Rule 20A credits is for the public domain and does not benefit residents. Regarding reducing costs, he addressed costs in terms of rough order of magnitude and stated that the City may be able to do it cheaper. However, he noted that costing information obtained from Edison or other utilities is not open book. He also addressed costs associated with management and noted that the detailed work in alleys takes a lot of time, which equates to money. He reported that above-ground vaults are 10% of total construction costs. Mayor Pro Tem Dixon suggested stripping out some of the overhead costs.

Council Member Muldoon agreed with Council Members Petros and Curry relative to keeping the processes as they are to protect those on fixed incomes. However, he stated that the City should weigh in on a case-by-case basis.

Mayor Selich commented on the time it takes from petition to voting, and needing the cushion of contingencies. He stated that he would like to find a way to lower the threshold, but added that it may not be prudent. In terms of City participation, he indicated that the City would have skewed the vote in the Balboa Island vote.

City Manager Kiff noted a need to look at the issue to determine the legality of not voting because the City would need to pay an assessment. City Attorney Harp added that his office will need to review this.

Public Works Director Vukojevic commented on Rule 20C in which the City-owned land would be carved out of the UUD and the City would underground its own property.

Mayor Pro Tem Dixon asked if this would be disadvantageous to residents.

Mayor Selich noted the need to find a way to speed up the petition process and reduce the time it takes from petition to construction.

City Manager Kiff summarized the discussion and Council direction to not change the 60% petition threshold, look at Rule 20C opportunities for City-owned property in order to remain neutral, continue to pursue Rule 20A credits, consider San Joaquin Hills in a priority list for Rule 20A funds, work on ways to speed up the process, and look at each project for the City to do the work if it lowers costs. He added that the matter will return for Council consideration as a policy.

Mayor Selich spoke in support of the City taking on the project if it saves substantial cost. Council Member Petros agreed, if it means that it can be done at the current staffing level. City Manager Kiff noted that even if the City hires consultants, it requires supervision time.

Mayor Pro Tem Dixon asked for alternative financing methods, including private financing.

Council Member Peotter clarified that the City would be taken out of the petition and pool vote.

### III. PUBLIC COMMENTS

Jim Mosher commented on the *Woody's Wharf, Inc.* case and Council's consideration of modifying the Council appeal policy. He urged Council against considering appealing to the Supreme Court. He also commented on the *Pacific Shores Properties* case.

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

### IV. CLOSED SESSION – 5:44 p.m.

#### A. CONFERENCE WITH LABOR NEGOTIATOR (Government Code § 54957.6)

**Agency Designated Representatives:** Dave Kiff, City Manager, Negotiator.

**Employee Organizations:** All Labor Associations: Association of Newport Beach Ocean Lifeguards (ANBOL); Newport Beach City Employees Association (NBCEA); Newport Beach Employees League (NBEL); Newport Beach Firefighters Association (NBFA); Newport Beach Fire Management Association (NBFMA); Newport Beach Lifeguard Management Association (NBLMA); Newport Beach Police Association (NBPA); Newport Beach Police Management Association (NBPMA); Newport Beach Professional and Technical Employee Association (NBPTEA); and Part-Time Employee Association of Newport Beach (PTEANB).

#### B. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION (Government Code § 54956.9(a), (d)(1)): 3 matters

*Pacific Shores Properties, LLC, et al. v. City of Newport Beach*  
*Newport Coast Recovery, LLC, et al. v. City of Newport Beach*  
United States District Court, Central District Case Nos. CV 08-00457-JVS (RNBx) & CV 09-00701-JVX (RNBx)  
United States Court of Appeals, 9th Circuit Case Nos. 11-55460 & 11-55461

*Woody's Group, Inc. v. City of Newport Beach, et al.*  
Orange County Superior Court Case No. 30-2013-00687091  
California Court of Appeal, Division 3, Case No. 4th Civ. G050155

*City of Newport Beach v. Lido Partners, et al.*  
Orange County Superior Court Case No. 30-2014-00715029-CU-OR-CJC

V. RECESS

VI. RECONVENED AT 7:00 P.M. FOR REGULAR MEETING

VII. ROLL CALL

Present: Council Member Peotter, Council Member Petros, Council Member Curry, Council Member Duffield, Council Member Muldoon, Mayor Pro Tem Dixon, Mayor Selich

VIII. CLOSED SESSION REPORT - City Attorney Harp announced that no reportable actions were taken.

IX. PLEDGE OF ALLEGIANCE - Council Member Curry

X. INVOCATION - Reverend Canon Cindy Evans Voorhees, St. James the Great Episcopal Church

XI. PRESENTATION

*Junior Lifeguard of the Year Abigail Clark*

Mayor Selich read and presented a proclamation to 2014 Junior Lifeguard of the Year, Abigail Clark.

Lifeguard Leeper commented on the City's Junior Lifeguard program, invited Council Members to learn about the program, and congratulated Miss Clark on her accomplishments. He presented her with a scholarship check for \$250.

XII. NOTICE TO THE PUBLIC

XIII. CITY COUNCIL ANNOUNCEMENTS OR MATTERS WHICH COUNCIL MEMBERS WOULD LIKE PLACED ON A FUTURE AGENDA (NON-DISCUSSION ITEM)

Regarding the Orange County Sanitation District (OCSD) construction project along Mariners Mile, Council Member Petros reported that they hit a gas line, twice in one week, and hit a traffic signal conduit. He requested that someone from OCSD appear before Council and speak about the project and provide assurances about when construction will be over and what to expect going forward. Council Member Curry stated that he sits on the OCSD Board and will call them about making a presentation to the City Council.

Council Member Curry announced that the Civic Center and Park Project received the 2015 American Society of Civil Engineers of Orange County Architectural Project Award and was on the cover of *Civil Engineering Magazine*. He added that there is a long series of awards presented to the City and listed them.

Mayor Selich reported on the recent Speak Up Newport Mayor's Dinner, noting the large turnout. Additionally, he commented on the recent Youth Council meeting. He announced that there will be



vacancies on Boards and Commissions in June 2015 and that the recruitment process will start early this year. He listed the vacancies and encouraged residents to apply. He reported that the deadline for filing is 4:00 p.m. on May 13, 2015.

**XIV. PUBLIC COMMENTS ON CONSENT CALENDAR**

Regarding Item 7 (Lease Agreement with Newport-Mesa Unified School District for the Lease of Playground Area on Tidelands and Filled Lands for Joint Use with Newport Elementary School Located at 1327 West Balboa Boulevard), Jim Mosher believed that the proposal is not a renewal since the existing contract lapsed five years ago. He displayed Exhibit B and believed that Council is renewing something different than what was approved 60 years ago.

Laura Curran believed that Item 9 (Request to Initiate a Zoning Code Amendment Regarding Appeal Procedure) is incomplete and lacks important information. She urged Council to consider pulling this matter until the public has a better understanding of what is being voted on. City Manager Kiff reported that the matter involves an initiation of a change and that the matter will need to go before the Planning Commission and then to Council. Additional information will be provided for those hearings. This matter only gives consideration to initiating it.

Regarding Item 10 (Council Policy A-6: Balboa Peninsula Overlay District), Nathan Mulhauser indicated that he represents a number of commercial owners on the Peninsula who have concerns about how this matter will affect property values. He asked that Council consider the property owners and not just businesses. Mayor Selich announced that this matter concerns initiation of the process and will be discussed during a Study Session.

Michael Glenn questioned Item 10's objective. He believed that this is a significant reach by the government into businesses in a specific area and that the matter seems vague.

Denys Oberman indicated that the reasons for Item 10 deal with problems associated with the overconcentration of alcohol-serving establishments in the area. She addressed nuisance problems and safety incidents associated with problematic behaviors due to the consumption of alcohol without appropriate controls. She believed that performance standards should be applicable across the City and business uses. She suggested conducting a concentrated look at use permits, as well as communicate and enforce in areas where such problems have manifested.

Regarding Item 6 (Back Bay Drive Roadway Maintenance Project), Council Member Petros commended the Public Works Department for a job well done.

**XV. CONSENT CALENDAR**

**A. READING OF MINUTES AND ORDINANCES**

1. **Minutes for the January 27, 2015 Study Session and Regular Meeting [100-2015]**  
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.

**B. ORDINANCE(S) FOR INTRODUCTION**

3. **Massage Establishment Regulations [100-2015]**  
Continue the item to the February 24, 2015, City Council meeting.

**C. CONTRACTS AND AGREEMENTS**

- 4. Harbor Piers Maintenance Project – Completion and Acceptance of Contract No. 5756 (CAP14-0023) [38/100-2015]**
  - 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 the Civil Code; and
  - c) Release the Faithful Performance Bond one year after this Council acceptance.
  
- 5. Marina Park Project – Marina Basin Construction Including Dredging, Bulkheads, Grading and Soil Remediation (Bid Package 2) – Notice of Completion of Contract No. 3897-B (CAP-09-0070) [38/100-2015]**
  - 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 the Civil Code; and
  - c) Release the Faithful Performance Bond one year after acceptance by the City Council.
  
- 6. Back Bay Drive Roadway Maintenance Project – Award of Contract No. 6005 (CAP15-0014) [38/100-2015]**
  - a) Approve the project plans and specifications;
  - b) Award Contract No. 6005 to Pavement Coatings Company for the total bid price of \$182,098.20, and authorize the Mayor and City Clerk to execute the contract;
  - c) Establish a contingency of \$18,002.00 (approximately 10%) to cover the cost of unforeseen work not included in the original contract; and
  - d) Approve Budget Amendment No. 15BA-032 transferring project savings from completed Bike Safety Reserve projects (\$23,394.00 from Account No. 7014-C3002021 Eastbluff Drive/Ford Road Bike Lane and \$3,551.00 from the Account No. 7014-C3002025 Bicycle Lane Signs) to Account No. 7014-C3002032; and appropriating \$69,230.20 from the unappropriated Bike Safety Reserve Fund to Account No. 7014-C3002032 for a total Bike Safety Reserve funding of \$96,175.20 for Back Bay Drive Roadway project.
  
- 7. Lease Agreement between the City of Newport Beach and Newport-Mesa Unified School District, Authorizing the Lease of Playground Area on Tidelands and Filled Lands for Joint Use with Newport Elementary School Located at 1327 West Balboa Boulevard (C-651) [38/100-2015]**
  - a) Find that this action is not subject to the California Environmental Quality Act (CEQA) pursuant to 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 and authorize the Mayor and City Clerk to execute a 50-year lease agreement with Newport-Mesa Unified School District; and
  - c) Approve a waiver of City Council Policy F-7 based on the findings contained in the staff report and lease agreement.

**8. Authorize the Purchase of ATT Telecommunication and Network Services through the State of California CALNET 3 Agreement (C-6040) [38/100-2015]**

Authorize the City of Newport Beach (City) to use the State of California CALNET 3 statewide contract (telecommunications and network services) to purchase ATT (ATT) telecommunications products and services, and authorize the City Manager or his delegate to sign the required Authorization to Order (ATO) form on behalf of the City.

*Council Member Muldoon recused himself due to a potential source of income to his employer; and Council Member Curry recused himself because he has a stockholder conflict.*

**C. MISCELLANEOUS**

**9. Request to Initiate a Zoning Code Amendment Regarding Appeal Procedures [100-2015]**

- a) Find that this action is not subject to 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; and
- b) Direct staff to initiate an amendment to the procedures included in Chapter 20.64 Appeals of the Zoning Code that would allow members of the City Council and Planning Commission to initiate an appeal of the Community Development Director, Zoning Administrator, Planning Commission, and Hearing Officer as appropriate, and to be exempt from paying any filing fee.

**10. Council Policy A-6: Balboa Peninsula Overlay District [100-2015]**

Direct staff to initiate an amendment to the Zoning Code and other related Municipal Code sections as necessary to create the Balboa Peninsula Overlay District. The overlay district would include performance standards and regulations specific to the Balboa Peninsula in order to address the effects of on-sale alcoholic beverage service and, direct staff to bring this matter back to the City Council for a Study Session prior to scheduling Planning Commission hearings.

**Motion by Mayor Pro Tem Dixon, seconded by Council Member Petros**, to approve the Consent Calendar, and noting the recusals to Item 8 by Council Members Muldoon and Curry and continuation of Item 3 to the February 24, 2015, City Council meeting.

The motion carried by the following roll call vote:

Ayes: Council Member Peotter, Council Member Petros, Council Member Curry, Council Member Duffield, Council Member Muldoon, Mayor Pro Tem Dixon, Mayor Selich

**XVI. ITEMS REMOVED FROM THE CONSENT CALENDAR - None**

**XVII. PUBLIC COMMENTS ON NON-AGENDA ITEMS**

Merle Moshiri, Residents for Responsible Desalinization (R4RD), invited Council and residents to attend a town hall meeting on March 5, 2015, at 7:00 p.m. at John H. Eader Elementary School in Huntington Beach, and addressed topics that will be discussed. She noted that the meeting will be videostreamed. She submitted a flyer to the City Clerk with information on the meeting.

Michael Glenn commented on the City's lease with ExplorOcean, noting that it amounts to \$1 per day. He offered to pay ten times the contract amount for the same deal and urged Council to bring the matter to a public bid.

Jim Mosher commented on Council's appointment of four citizens to the Finance Committee and referenced his previous comments on the matter. He referenced examples of how other agencies handle vacancies and discussed portions of the Maddy Act. He also expressed concerns with people acting as representatives of the newly-elected Council Members.

Carl Cassidy agreed with Mr. Mosher's comments and referenced his written comments relative to the appointments to the Finance Committee. He requested that the City Attorney provide Council with a legal opinion. He discussed the Maddy Act.

City Attorney Harp summarized Mr. Cassidy's allegations. He noted that Council Policy A-2 provides an appointment process, but also allows for an alternative process if Council chooses to do so. He indicated that this is what Resolution No. 2015-5 did in creating the Finance Committee and its own process. He indicated that there was no violation of that Council policy. Regarding alleged violations of the Brown Act, City Attorney Harp reported that the Brown Act excludes from its purview, individual contact between City Council Members and any other person. As provided in the resolution, each Council Member not serving on the Committee was to appoint one resident to serve on the Committee. He emphasized that the one-on-one communications were not a violation of the Brown Act. Further, the entire City Council considered who was being appointed and ratified those appointments. He commented on the Maddy Act related to unscheduled vacancies, such as if a board member resigns in the middle of their term. He stated that the procedure does not apply to the formation of a new committee. He added that, if someone is not registered to vote, the appointment would be invalid; however, his office will review that matter further.

Denys Oberman, Coalition of Concerned Citizens, believed that there has been no public process relative to the fire ring issue. She reported reviewing the alternatives on the City's website and believed that four of them were inarticulate, did not include a community map, and was confusing. She believed that the remaining options were unacceptable. She asked that Council retract or amend the Coastal Commission application. She thanked those Council Members who met with her group and those who spoke on the phone regarding this matter. She presented two different scenarios that the people would consider acceptable. She urged Council to give residents the right to a public process.

Laura Curran expressed concerns that wood-burning fire rings are being brought back and that the proposal brings more density to the area. She stated that it feels like eminent domain on behalf of the City on residents.

City Manager Kiff reported that all seven fire ring plans are on the City's website and each has a detailed map linked to it, including the overlay of the existing footprint. He indicated that the Coastal Commission requested that the City provide other plans to consider, specifically plans with 60 wood-burning fire rings. He added that the Coastal Commission is not likely to act on this matter before June and that there is a community engagement site which provides the public with the opportunity to weigh in through February 28, 2015. Additionally, he noted that anyone can email or call the Coastal Commission at any time. He noted that the Coastal Commission will act on a plan and return the matter back to the City Council to see if it is acceptable.

## **XVIII. ORAL REPORTS FROM CITY COUNCIL ON COMMITTEE ACTIVITIES**

Council Member Petros provided an update of the recent Aviation Committee meeting, announced a meeting of the Balboa Village Advisory Committee (BVAC) on February 11, 2015, at ExplorOcean, and announced a meeting of the Tidelands Management Committee on February 18, 2015.

Mayor Pro Tem Dixon provided a brief overview of the February 4, 2015 meeting of the Balboa Village Community regarding the residential permit program.

Council Member Curry reported that he serves on the Orange County Parks Commission and was reelected as Chairman.

Mayor Selich reminded the public of four upcoming community outreach meetings regarding the Local Coastal Plan: 1) February 11, 2015, from 7:00 p.m. to 9:00 p.m. at the OASIS Senior Center, 2) February 18, 2015, at 7:00 p.m. in the old City Council Chambers, 3) February 25, 2015, at 7:00 p.m. in the Civic Center Community Room, and 4) March 4, 2015, at 7:00 p.m. in the old City Council Chambers. The last meeting will focus on commercial properties.

## **XIX. PUBLIC HEARINGS**

### **11. A Zoning Code Amendment to Modify the Standards and Process for Reviewing Building Additions to Nonconforming Structures (PA2014-083) [100-2015]**

Assistant Planner Zdeba provided a PowerPoint presentation to address the definition of *nonconforming*, provide an overview of the City's Zoning Code relative to nonconforming structures, and discuss Zoning Code current standards, Planning Commission review of the matter, details of the proposed amendment, and recommendations.

Community Development Director Brandt reported receiving written comments from Mr. Mosher which were reviewed by the City Attorney's Office. She noted that staff feels that the recommendation is clear in its intent, but noted that the additional proposed language does not change the intent of the ordinance, just merely clarifies it. She added that the clarifying language does not require further review by the Planning Commission.

In response to Council Member Peotter's question, Community Development Director Brandt reported that the 50% maximum does not apply if the property will be brought into compliance.

Mayor Pro Tem Dixon spoke in support of the proposed change.

*Mayor Selich opened the public hearing.*

Jim Mosher noted that this is a large staff report and thanked staff for making an effort towards clarity.

W.R. Dildine stated that he was glad this has gotten this far, expressed concerns with encroachments, and voiced his support.

John Loomis, 30th Street Architects, believed that the proposal is a fair solution. He commended the Planning Commission and staff for their efforts.

Sharon Hormann thanked everyone involved in this process and expressed her support.

*Hearing no further testimony, Mayor Selich closed the public hearing.*

**Motion by Council Member Petros, seconded by Council Member Curry,** to a) find that the adoption of Code Amendment No. CA2014-004 is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines; and b) introduce Ordinance No. 2015-3, *An Ordinance of the City Council of the City of Newport Beach Approving an Amendment to Title 20 (Zoning Code) of the Newport Beach Municipal Code Revising the Amount of Floor Area Additions Allowed to Nonconforming Structures (PA2014-083)*, approving Code Amendment No. CA2014-004 as recommended by the Planning Commission, and pass to second reading on February 24, 2015.

The motion carried by the following roll call vote:

Ayes: Council Member Peotter, Council Member Petros, Council Member Curry, Council Member Duffield, Council Member Muldoon, Mayor Pro Tem Dixon, Mayor Selich

**12. Annual Monitoring Review of Development Agreement No. 14: Newport Coast (PA2011-030) (C-3382) [38/100-2015]**

Community Development Director Brandt reported that the agreement includes the pre-annexation agreement that the City entered into with The Irvine Company prior to annexation. Another component to this agreement was to include the Irvine Coast Development Agreement with the County of Orange. Since the annexation occurred, she indicated that there is nothing to report in relation to the actual annexation action. She addressed completion of the public benefit component and stated that the County concluded that there was no further review needed by the County. She added that the City has taken on the responsibility of preparing an annual report and that staff is instead reporting on development activities occurring within the Newport Coast area.

Assistant Planner Zdeba provided a PowerPoint presentation addressing an overview of the development area, planning areas, and recommendations.

*Mayor Selich opened the public hearing.*

Jim Mosher referenced his written comments and suggested that this item be continued to a future meeting. He noted that the report was due last September, addressed Measure Y, and stated that he is interested in learning the truth about Newport Coast. He commented on the entire annexation area, including Newport Ridge, and indicated there has never been a report on what is happening in Newport Ridge. Additionally, he commented on the idea that the public was facing a trade-off between development at Newport Center or the addition of 356 pre-approved homes and three hotels in Newport Coast. He stated that the report seems to contradict that. He believed that additional information is needed and that Council cannot make the finding it is supposed to make at this time.

*Hearing no further testimony, Mayor Selich closed the public hearing.*

**Motion by Council Member Curry, seconded by Council Member Muldoon,** to a) find that the action is exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15321 (Enforcement Actions by Regulatory Agencies) of the CEQA Guidelines; b) find that the applicant has demonstrated good faith compliance with the terms of the Development Agreement; and c) receive and file the 2013 Annual Monitoring Report of the Annexation and Development Agreement.

The motion carried by the following roll call vote:

Ayes: Council Member Peotter, Council Member Petros, Council Member Curry, Council Member Duffield, Council Member Muldoon, Mayor Pro Tem Dixon, Mayor Selich

**XX. CURRENT BUSINESS**

**13. Approval of Agreement with Ferguson Waterworks Meter & Automation Group for As-Needed Water Meter Installation and Replacement Services (C-6041) [100-2015]**

Motion by Council Member Curry, seconded by Mayor Pro Tem Dixon, to approve the agreement with Ferguson Enterprises, Inc. DBA Ferguson Waterworks Meter & Automation Group for as-needed installation and replacement services for a five year term at a total amount not to exceed \$920,000, and authorize the Mayor and City Clerk to execute the agreement.

The motion carried by the following roll call vote:

Ayes: Council Member Peotter, Council Member Petros, Council Member Curry, Council Member Duffield, Council Member Muldoon, Mayor Pro Tem Dixon, Mayor Selich

**14. Marina Park Project - Marina Docks (Bid Package 4) - Award of Contract No. 3897-D (CAP09-0070) [38/100-2015]**

City Manager Kiff reported this is Phase 4 of the Marina Park project.

Motion by Council Member Duffield, seconded by Council Member Peotter, to reconsider the design and materials for the dock.

Council Member Duffield believed that the proposed design is overbuilt for the application and location. He added that the chosen contractor is a builder of large, commercial marinas, not small marinas like this one. He addressed increased costs and noted that local builders were not considered for this project. He stated his belief that the docks could be reengineered to fit the application better, which could save up to 30% in costs. He added that a new construction method could be considered without causing a delay to the opening of the marina.

Council Member Peotter believed that this recommendation will not affect the critical path of the project and noted his desire to have staff return with a design/build option using other material besides concrete. He believed that the savings could be substantial.

In response to Council Member Curry's questions, Public Works Director Webb reported that a change of this type will have some impact on the timeline and addressed the decision to use concrete. He confirmed that the project would need to go to bid again. He indicated that, if the City proceeded as proposed, the project would be completed the first of October and the park opening would take place in December. He stated that he is unsure of any cost savings as it was suggested that wood would be more expensive and commented on it being a big system for fiberglass docks.

Council Member Curry added that this project would still be under construction after opening the park. Public Works Director Webb noted that use of the sailing center would also be delayed. Council Member Curry stated that there is a time and place to deal with these issues and there are other times when it would create challenges to the project. He indicated that he appreciates Council Member Duffield's expertise and opportunities for improvement, but the

time to do that is not when the item is being presented for final action, but rather in the design process.

In response to Council Member Peotter's question regarding problems with putting this out as a design/build project, Public Works Director Webb stated that some time could be saved if it had started as a design/build bid. He reported that the City already has permits and that, at this point, the schedule will not be met. He indicated that he is unsure whether the City will save money and that the bid process and bids received were good, but the engineers were off on the estimates. He added that there are times when design/build can be just as expensive, if not more.

Council Member Peotter believed that the project was overdesigned and the City is paying too much for what it needs. Public Works Director Webb reported there was a design committee on this project that chose to have a high-build, visitor-serving dock with specific amenities and custom features. Council Member Peotter indicated he is not suggesting scaling down the project, but alternative designs and use of other materials besides concrete.

Council Member Duffield reported that he spoke with local builders who believed that the dock is overbuilt. He indicated that he was also told that the project could be done for less money and on time. He took issue that concrete cannot ever be repaired, but would need to be removed and replaced. Further, docks move, but concrete does not.

Council Member Petros stated that he appreciates Council Member Duffield's expertise, but expressed concerns regarding the timing.

**Substitute motion by Council Member Petros, seconded by Council Member Curry,** to a) approve the project drawings and specifications; b) award Contract No. 3897-D (Marina Park Project – "Marina Docks") to Bellingham Marine Industries, Inc. of Dixon, California, for the total bid price of \$2,937,661.00, and authorize the Mayor and the City Clerk to execute the contract; c) establish a contingency of \$293,739.00 (approximately ten percent) to cover the cost of unforeseen work; and d) approve Budget Amendment No. 15BA-029 appropriating \$1,676,400.00 from the unappropriated Tidelands Harbor Capital Fund to Account No. 7241-C4002002 for Marina Park.

Denys Oberman expressed concern regarding the lack of diligent evaluation of projects and expenditures, noted the need to be fiscally responsible, and suggested that Council move forward as an entity.

Michael Glenn stated that this would be a good time to address dredging and fix problem areas in the Harbor.

Jim Mosher acknowledged Council Member Duffield's expertise; however, expressed concern that the Coastal Commission may consider such a change to be significant and would need to reevaluate the project. He commented on transparency, referenced a three-Council Member working group to consider Marina Park and wondered whether that group still exists, who it is, and how it is authorized.

Council Member Curry summarized that staff has indicated that a change would delay the project and that there would not be much of a cost savings. He added that it is wrong for Council to change the entire public process at this point and believed that staff needs to be trusted, that the project needs to be kept on schedule, and noted the importance of keeping promises to residents.



Mayor Selich expressed his support for the substitute motion. He added that he talked to staff about concrete docks and that all public marinas now are being constructed with concrete, including the docks in Marina del Rey and Alamitos Bay. Additionally, he noted that the consultant indicated that there would be no cost savings with the use of wooden docks.

The substitute motion carried by the following roll call vote:

Ayes: Council Member Petros, Council Member Curry, Mayor Pro Tem Dixon, Mayor Selich  
Noes: Council Member Peotter, Council Member Duffield, Council Member Muldoon

**15. Bay Avenue Pavement Reconstruction – Award of Contract No. 5580 (CAP15-0010) [38/100-2015]**

**Motion by Council Member Curry, seconded by Council Member Muldoon,** to a) approve the project plans and specifications; b) award Contract No. 5580 to Nobest, Inc. for the total bid price of \$826,000.00, and authorize the Mayor and City Clerk to execute the contract; c) establish a contingency of \$82,600.00 (approximately 10%) to cover the cost of unforeseen work not included in the original contract; and d) approve Budget Amendment No. 15BA-033 appropriating \$40,000 from Account No. 7282-C200247 (Measure M2 Fair Share project savings) to Account No. 7282-C2002044 (Bay Avenue Pavement Reconstruction project); transferring \$80,000 from 7181-C2001012 (Gas Tax project savings) to Account No. 7181-C2002044 (Bay Avenue Pavement Reconstruction project); appropriating \$80,000 from the unappropriated Gas Tax Fund balance to Account No. 7181-C2002044 (Bay Avenue Pavement Reconstruction project); and recognizing a contribution of \$18,925 from a private party and appropriating \$18,925 to Account No. 7251-C2002044 (Bay Avenue Pavement Reconstruction project).

The motion carried by the following roll call vote:

Ayes: Council Member Peotter, Council Member Petros, Council Member Curry, Council Member Duffield, Council Member Muldoon, Mayor Pro Tem Dixon, Mayor Selich

**16. Residential Piers: Adjusting the Rental Calculation and Approving a Revised Model Permit Template [100-2015]**

*Mayor Selich recused himself from this item because he owns a residential pier; and Council Member Duffield recused himself because he leases a marina.*

Harbor Resources Manager Miller utilized a PowerPoint presentation to address the location of residential piers, the current pier permit, proposed changes to the pier permit, the residential pier footprint, u-shaped piers, important residential pier statistics, examples of shared piers, and various rate scenarios for u-shaped and single-finger piers.

In response to Council Member Muldoon's questions, Assistant City Attorney Torres addressed governing legislation that covers the Land Use Commission's duties to the Harbor, including the Beacon Bay Bill and the Newport Beach Municipal Code. He added that the Beacon Bay Bill includes Council's duties and addressed the State Land Commission's revocation process. He indicated that the Commission desires that the City charge for the u-shaped dock, but the decision to charge for it is ultimately the City Council's decision. He reported that the 50¢ in the report came from an appraisal, Council administers the grant, and the City of Oceanside does not charge for the interior of the u-shaped dock. Harbor Resource Manager Miller added that, currently, there is no charge for finger docks of water around the footprint. He added that there are 309 u-shaped docks.

Council Member Muldoon noted that the City cannot exclude someone from the public use of the waterways. He added that there is no right to exclude even if the dock owner is paying for the water. He believed that this is unfair and creates a disproportionate large amount of water that one cannot have exclusive use for.

In response to Council Member Muldoon's question regarding complaints about lines or kayaks in the center of the u-shaped dock, Harbor Resource Manager Miller stated that he has received complaints about people using the tidelands, but cannot recall whether it involved u-shaped docks or not.

Sara Abraham stated that she would appreciate a reduction in the u-shaped docks.

Michael Glenn commented on Proposition 13 which prevents people from taxing property value and commented on the difference between a tax and a fee. He stated that, according to the Orange County Assessor, this is a tax on a dock that goes to the General Harbor Fund and believed this is a violation of Proposition 13.

City Attorney Harp stated that in his opinion, this is not a tax, but rent. He added that Proposition 13 has no relevance on this issue, that the dock is occupying tidelands, and that what is being paid is space on the tidelands.

George Schroeder questioned why bayfront property owners would pay for water inside the u-shaped dock and suggested that, if the City will charge for that water, it should charge for the water outside of the finger dock.

Bob McCaffrey believed that this is a dock tax and urged Council to preserve property owners' rights. He added that residents already pay layers of taxes that should be used to repair the Harbor.

Brad Avery expressed concerns about not charging for the inside of the u-shaped docks. He added that the main reason to have a u-shaped dock is to hold the boat in the middle of the "u". He noted that this is public tideland and that it is harder for owners to protect their space if they do not pay for the "u".

Lee Sutherland questioned excluding the u-shape as that is where the boat is placed.

Council Member Muldoon stated that no one can exclude and own water because it belongs to the people. However, owners can have exclusive rights to a dock that is above water. He believed that the City cannot charge for something that the payer has no exclusive right to.

Council Member Petros thanked Council Member Muldoon for his comments, reported that the public can enjoy the water as a member of the public, and stated that he will support the recommendation.

Council Member Curry suggested following the money, referenced a slide from a previous meeting showing the residential pier fees approved by the previous Council, and noted that the process affects 884 people. He addressed annual fees categorized by square footage and average savings realized by 75% of the people if the recommended action is approved. He commented on the small amount of people who will benefit disproportionately by using this new strategy and questioned whether residents would want a policy that would allow people to drive in and out of private residential docks because the City deemed that it is public. He urged residents to remember that these are public funds which the City will use for the benefit

of all of the citizens of the community and not just a privileged few who, through their campaign contributions, believe they can dictate policy.

Council Member Peotter took issue with Council Member Curry's statement that people are buying votes and reported that public funds will not be coming in until 2017. He added that the present Council is correcting an error that he and the previous Council made.

**Motion by Council Member Muldoon, seconded by Council Member Petros**, to adopt Resolution No. 2015-10, *A Resolution of the City Council of the City of Newport Beach Adjusting the Rental Calculation and Approving a Revised Model Permit Template for Residential Piers Located Upon Tidelands*, which revises the residential pier permit to protect residential piers from unlawful seizure, acknowledges the settlement agreement, adjusts the rental fee to reflect a revised fair market value of \$0.50/SF, and reduces the pier footprint to exclude the interior u-shape of a slip.

Council Member Curry referenced a full-page ad during the election that was taken out by Mr. McCaffrey, referenced Council Member Peotter's tax claim, and discussed Council Member Peotter's actions since being elected to the City Council.

The motion carried by the following roll call vote:


Ayes: Council Member Peotter, Council Member Petros, Council Member Muldoon, Mayor Pro Tem Dixon  
Noes: Council Member Curry  
Recused: Council Member Duffield, Mayor Selich

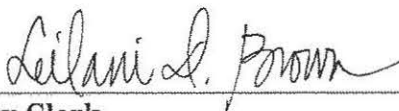
**XXI. MOTION FOR RECONSIDERATION - None**

**XXII. ADJOURNMENT - 9:25 p.m.**

The agenda for the Regular Meeting 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 5, 2015, at 4:00 p.m.

  
\_\_\_\_\_  
Recording Secretary

  
\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
City Clerk

