

# January 7, 2014, LUEAAC Agenda Item Comments

Comments on the Newport Beach Land Use Element Amendment Advisory Committee agenda from:  
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## Item 2. Approval of Minutes (December 3 & 16, 2013, meetings)

In addition to the corrections recommended by Committee member Paul Watkins in his memo dated December 26, 2013, I would like to suggest the following extremely minor changes to page 2 of the draft minutes for December 16, 2013, as found on handwritten page 6 of the agenda packet:

1. Line 1 of paragraph 2 (continuing the “Mariners’ Mile” section from the previous page):  
“*The Committee and members of the public discussed how to ...*”
2. Next to last paragraph under “Public Comments” (the first change already having been suggested by Mr. Watkins): “*Additional comments on Mariners’ Mile we were made including incorporation of the new Bicycle Master Plan, addressing public safety concerns and address addressing incongruent uses.*”

I have the following general comments about the minutes:

Large sections of these “minutes,” particularly those for December 03, 2013, seem more in the nature of notes for minutes, rather than actual minutes comprehensible to someone who did not personally attend the meeting or listen to the recording. As such, they seem to serve mostly as a guide or index to what can be found in the recordings, including what appear to be a number of collective decisions or directions to staff given by the Committee.

There are two problems with this. First, the Brown Act was modified effective January 1, 2014, by California Senate Bill 751, which prohibits this vague style of reporting for future minutes. Second, despite the motions to “*to approve minutes as augmented by the audiotape,*” there is no guarantee the audio recordings will be preserved by City. Indeed there is every indication staff will be destroying the recordings as soon as the minutes based on them are approved.

SB 751, which was unanimously adopted by both houses of the Legislature, augmented the existing prohibition against action by secret ballot with the following language in the California Government Code: “*Section 54953(c)(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action*” (with the LUEAAC being a “legislative body” in the peculiar language of the Brown Act). According to the bill’s legislative history, its author, State Senator Leland Yee, was particularly concerned about minutes that “*report that a motion received 27 ayes and 5 nays, without listing the votes of individual members.*”

Under this new rule, such statements as the one in Section II of the December 3, 2013, LUEAAC minutes: “*Motion (Watkins) to approve minutes as augmented by the November 5th audiotape with minor corrections submitted by Jim Mosher, and Paul Watkins. **Approved as amended***” [emphasis added] will no longer be acceptable. The minutes will need to clearly state if there were any dissenting votes or abstentions.

Likewise, but perhaps more arguably, I believe both minutes record a long series of directions to staff on various issues, which would seem to be “actions taken” under the definition of that term in the Brown Act. Although it is not clear from the minutes, I also believe there was *not* unanimous support for all of these actions. To comply with SB 751, future minutes will presumably need to more clearly spell out exactly what the action (in this case a direction to staff) was, and exactly which members of the Committee supported, and did not support, that decision.

Regarding the second point about approval of minutes “*as augmented by the audiotape*,” in “Public Comment on Non Agenda Items” at the end of the December 16, 2013, meeting I mentioned what I thought was the temporary and inadvertent disappearance from the City website of links to the LUEAAC audio recordings. I have since learned that the removal was *not* inadvertent, but rather quite intentional.

It appears someone on the City staff has adopted a new policy of strict enforcement of the City's Records Retention Schedule which was prepared by an outside consultant, Gladwell Governmental Services Inc., and last approved by the City Council with Resolution 2011-18, which also gave certain members of City staff (City Manager, City Clerk and City Attorney, and possibly their deputies) the authority to change the Schedule without further City Council intervention. Although the original schedule is ostensibly copyrighted by Gladwell, and cannot be reproduced without their permission, a copy of the page relevant to audio recordings of LUEAAC meetings was provided to me this morning (with Gladwell's permission?) in response to a Public Records Act request. It states that recordings such as those of LUEAAC are to be kept for a “Total Retention” time of “*30 days or after Minutes are approved (whichever is longer)*.” The comment appended is “*City preference; State law only requires for 30 days; Council Policy A-11 allows destruction after 30 days; GC §54953.5(b)*.”

As I understand it, the Schedule is now interpreted as turning the Council's “*allows destruction*” policy into mandatory destruction of records the moment the Total Retention time exceeds that stated in the Schedule.

In addition, although not strictly part of the Schedule, it appears that City staff has unilaterally adopted a new policy of not providing publicly accessible internet links to the recordings of public meetings (other than those of the City Council) even during the brief period of their existence. Instead, those who missed an LUEAAC meeting, or merely want to verify what was said, will have to make an individual Public Records Act request to listen to them prior to their destruction.

Since these new policies do not seem to be driven by any physical or cost impediment to storing digital records prepared at taxpayer expense, nor to providing future access to them, these seem to me to be terrible public policies.

I hope the LUEAAC will agendize for discussion the way in which it wants the records of its meetings to be preserved, and will advocate for the City Council to retake public control of our records retention policy.