

CITY OF NEWPORT BEACH

City Council Minutes
Regular Meeting
May 8, 2007 – 7:00 p.m.

- I. STUDY SESSION - 4:00 p.m.
- II. CLOSED SESSION - 6:00 p.m.
- III. RECESS
- IV. RECONVENE AT 7:00 P.M. FOR REGULAR MEETING
- V. ROLL CALL

Present: Council Member Henn, Council Member Curry, Mayor Pro Tem Selich, Mayor Rosansky, Council Member Webb, Council Member Daigle, Council Member Gardner

- VI. CLOSED SESSION REPORT - None
- VII. PLEDGE OF ALLEGIANCE - Council Member Webb
- VIII. INVOCATION - Reverend Dr. Dennis Short, Harbor Christian Church
- IX. PRESENTATIONS

Peggy Fort recognized Dan Marcheano, owner of Arches Restaurant, outgoing President and founder of Restaurant Week in Newport Beach; and, introduced incoming President, Sheri Drewry, Wilma's Patio; and thanked the City of Newport Beach for its ongoing support.

Joyce Linich, Second Vice President, Newport Beach American Legion Auxiliary, announced that the week of May 13th is Poppy Week and introduced Miss Poppy Rachel Heideman. Mayor Rosansky presented a Proclamation proclaiming the week of May 13th as Poppy Week.

Dan Sereno, Parks and Tree Superintendent, was present to receive two awards from the California Department of Forestry and Fire Protection, the 2006 Tree City USA and the Growth Award. He thanked John Conway, Urban Forester for his ongoing support and introduced Lynette Short, Urban Forester-Southern Region, California Department of Forestry and Fire Protection who as a representative of National Arbor Day Foundation presented the Mayor, Council and citizens of Newport Beach with the 2006 Tree City USA Award.

- X. NOTICE TO THE PUBLIC
- XI. CITY COUNCIL ANNOUNCEMENTS OR MATTERS WHICH COUNCIL MEMBERS WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION OR REPORT (NON-DISCUSSION ITEM):

Council Member Henn announced that the police department competes annually in a 120-mile 15-hour run from Baker to Las Vegas. He congratulated the Newport Beach Police Department for placing first for the fifth time in the competition.

Council Member Curry congratulated City staff and The Irvine Company for the timely reopening of Pelican Hills Road South. This morning he attended a brunch for Women's Cancer Research Foundation. Peggy Fleming spoke and Mayor Rosansky was honored for proclaiming Women's Cancer Research Foundation's Day. He also attended a fundraising-planning meeting for OASIS. A year ago Council authorized a Marine's Memorial and yesterday the commission issued the solicitation for the artwork in the park location.

Mayor Pro Tem Selich stated that on Saturday, May 12th there is a meeting at the Balboa Island Fire Station to let residents know what is happening on the island. On May 20th the Balboa Art Walk will take place with live music from 12:00 noon to 5:00 p.m. Merchants on Marine Avenue will be open for the event.

Council Member Gardner announced that the Electronic Waste Drive would be held on May 19th from 9:00 a.m. to 1:00 p.m. at Surterre Properties, 1400 Newport Center Drive, Suite 100.

Council Member Daigle thanked Reverend Dennis Short from Harbor Christian Church for his kind invocation. On Sunday, April 29th she and the Mayor attended the groundbreaking ceremonies for Our Lady Queen of Angels K through 8-grade expansion project.

Mayor Rosansky stated that two weeks ago he traveled to Sacramento to speak to the Health Services Committee of the California Senate in support of SB100 (Harman). However, the bill failed in committee. He attended the Mayor's Reception and dinner for officials from Ensenada, Mexico and the City received a gift that will be properly displayed. This past weekend he attended openings for the American Legion and for the Newport Harbor Yacht Clubs. He announced the Relay for Life would be held on May 19-20th at Newport Harbor High School.

XII. CONSENT CALENDAR

A. READING OF MINUTES/ORDINANCES AND RESOLUTIONS

- 1. MINUTES OF THE SPECIAL MEETING OF APRIL 24, 2007 AND THE REGULAR MEETING OF APRIL 24, 2007 [100-2007].** Waive reading of subject minutes, approve as written and order filed.
- 2. READING OF ORDINANCES AND RESOLUTIONS.** Waive reading in full of all ordinances and resolutions under consideration, and direct City Clerk to read by title only.

B. ORDINANCE FOR INTRODUCTION

- 3. ADDING CHAPTER 5.43 TO TITLE 5 OF THE NEWPORT BEACH MUNICIPAL CODE PERTAINING TO STATE VIDEO FRANCHISES WHICH IMPLEMENTS THE DIGITAL INFRASTRUCTURE AND VIDEO COMPETITION ACT OF 2006 [100-2007].** Introduce Ordinance No. 2007-9 and pass to second reading on May 22, 2007.

C. RESOLUTIONS FOR ADOPTION

4. **PROPOSED ASSESSMENT DISTRICT NO. 99 - BALBOA BOULEVARD ALLEY FROM MCFADDEN SQUARE TO 14TH STREET AND 19TH, 20TH AND 21ST STREETS NORTH OF BALBOA BOULEVARD FOR UNDERGROUNDING UTILITIES AND DESIGNATION AS AN UNDERGROUND UTILITIES DISTRICT [89/100-2007].** a) Adopt the following resolutions: (1) Resolution No. 2007-25 making finding on a petition for, adopting a map showing the proposed boundaries of, and making appointments for proposed Assessment District No. 99; (2) Resolution No. 2007-26 declaring intention to order the construction of certain improvements in proposed Assessment District No. 99; declaring the improvements to be of special benefit; describing the district to be assessed to pay the costs and expenses thereof; providing for the issuance of bonds; and designating the area an underground utilities district; (3) Resolution No. 2007-27 giving preliminary approval to the report of the assessment engineer, setting the time and place for a public hearing as June 26, 2007; and ordering the intention of assessment ballot procedure for Assessment District No. 99; and (4) Resolution No. 2007-28 approving contracts for utility improvements for Assessment District No. 99; b) approve the Bond Counsel Agreement with Robert Hessel (C-3933) and authorize the Mayor and City Clerk to execute the Agreement; and c) approve contract Amendment No. 1 for Harris & Associates (C-3595) and authorize the Mayor and City Clerk to execute the Amendment.

5. **RESOLUTION AUTHORIZING THE APPLICATION FOR GRANT FUNDS FROM THE CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD [100-2007].** Adopt Resolution No. 2007-28 authorizing the city to apply for grant funds from the California Integrated Waste Management Board for all available grants under the California Oil Recycling Enhancement Act and all available Household Hazardous Waste grants for the period of 4 years, through Fiscal Year 2010/11.

D. CONTRACTS AND AGREEMENTS

6. **RADIO COMMUNICATION TOWER: LEASE AGREEMENT, REIMBURSEMENT AGREEMENT, BUDGET AMENDMENT (contd. from 4/10/07 & 5/8/07) [38/100-2007].** Continue indefinitely.

7. **SURVEY ON-CALL SERVICES - APPROVAL OF AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENTS WITH COAST SURVEY (C-3673(c)) AND ADVANCED SURVEY CONCEPTS (C-3673 (e)) AND APPROVAL OF PROFESSIONAL SERVICES AGREEMENT WITH BUSH AND ASSOCIATES (C-3934) [38/100-2007].** a) Approve Amendment No. 1 to Professional Services Agreement with Coast Survey, Inc. and Amendment No. 1 to Professional Services Agreement with Advanced Survey Concept for on-call survey services and authorize the Mayor and City Clerk to execute the Amendments; and b) approve a Professional Services Agreement with Bush and Associates for on-call survey services and authorize the Mayor and City Clerk to execute the Agreement.

8. **GEOTECHNICAL ON-CALL SERVICES - APPROVAL OF AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENTS [38/100-2007].** Approve Amendment No. 1 to Professional Services Agreement with Harrington Geotechnical (C-3673(a)) and Amendment No. 1 to Professional Services Agreement with Leighton and Associates (C-3673(b)) for on-call geotechnical services and authorize the Mayor and City Clerk to execute the Amendments.
9. **HARBOR AREA MANAGEMENT PLAN - APPROVAL OF PROFESSIONAL SERVICES AGREEMENT WITH WESTON SOLUTIONS (C-3935) [38/100-2007].** a) Approve a Professional Services Agreement with Weston Solutions of Carlsbad for preparation of a Harbor Area Management Plan (HAMP) at a not to exceed price of \$345,800 and authorize the Mayor and City Clerk to execute the Agreement; and b) approve a budget amendment (07BA-070) transferring \$48,800 from Account No. 7231-C5100890 (ASBS-Implementation) to Account No. 7231-C0310929.
10. **BRISTOL STREET NORTH REHABILITATION FROM CAMPUS DRIVE TO JAMBOREE ROAD - COMPLETION AND ACCEPTANCE OF CONTRACT (C-3815) [38/100-2007].** a) Accept the work; b) authorize the City Clerk to release the Labor and Materials Bond 35 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 (1) year after Council acceptance.
11. **INDUSTRIAL WAY 36-INCH WATER MAIN REPLACEMENT - AWARD OF CONTRACT (C-3728) [38/100-2007].** a) Approve the plans and specifications; b) award the contract (C-3728) to SJ&B Group, Inc. for the total bid price of \$990,285 and authorize the Mayor and the City Clerk to execute the contract; and c) establish an amount of \$80,000 to cover the cost of unforeseen work.

E. MISCELLANEOUS

12. **BUDGET AMENDMENT TO ACCEPT A CHECK FROM THE NEWPORT BEACH LIBRARY FOUNDATION AND APPROPRIATE FUNDS FOR MAINTENANCE AND OPERATIONS BUDGET FOR FY 2006/07 [100-2007].** Approve a budget amendment (07BA-068) to increase revenue estimates by \$166,000 in Account No. 4090-5893 (NBPL Foundation Donations) and increase expenditure estimates by the same amount in Division 4090, Foundation.
13. **RECOMMENDATION FROM ECONOMIC DEVELOPMENT COMMITTEE TO FILL ECONOMIC DEVELOPMENT COMMITTEE (EDC) VACANCY [100-2007].** Fill current EDC vacancy by appointing Mr. Charles Unsworth to an at-large representative position replacing Ms. Jeannette Thomas who has resigned.
14. **BUS SHELTER CONTRACT(S): REQUEST FOR PROPOSALS [100-2007].** a) Direct staff to issue a Request for Proposals (RFP) for a bus shelter contractor; and b) direct staff to convene a Stakeholder Group with specific neighborhood (CDM, Newport Coast, Mariner's Mile, Newport Center, etc.) representation to assist in the evaluation of responses to the

RFP.

Motion by Council Member Curry to approve the Consent Calendar.

The motion carried by the following roll call vote:

Ayes: Council Member Henn, Council Member Curry, Mayor Pro Tem Selich, Mayor Rosansky, Council Member Webb, Council Member Daigle, Council Member Gardner

XIII. ITEMS REMOVED FROM THE CONSENT CALENDAR -- None

XIV. PUBLIC HEARING

15. IN-LIEU PARK DEDICATION FEE ADJUSTMENT - APPRAISAL OF EASTBLUFF AND BOB HENRY PARK (contd. from 2/27/07, 3/13/07, 3/27/07, 4/10/07 & 4/24/07) [100-2007].

Associate Planner Brandon Nichols explained the Quimby Act and in-lieu park dedication fees. The property in question was recently appraised at \$3 million and \$3.5 million for an average per acre value of \$3,250,000. The study indicated that the appraisals resulted in an over-inflated value. Based on the information, the appraisals were updated to a per-acre value of \$2,500,000 resulting in an in-lieu fee of \$26,125 per unit.

City Attorney Clauson stated that after the staff report was prepared the City received a letter from a law firm representing adjacent property owners. She asked Planning Director Lepo to respond to the letter included in Council Member packets.

Planning Director Lepo responded to Mr. Muller's letter by stating that there was a difference of opinion on the appraised value. The subject property was ready for entitlement and the comparables were valued on an un-entitled basis. Certain assumptions were made for the appraisal and those assumptions were indicated in the response to Mr. Muller in anticipation of comments received from Mr. Muller that there were assumptions made about reasonable relationships between the land being appraised for park purposes and the residential uses that would benefit from the parkland. Mr. Muller spoke about Sunset Ridge Park and Planning Director Lepo explained it was not an arms-length transaction and could not be used as a true comparable. In fact, the property was zoned "open space" which generally typifies publicly owned land. In addition, restrictions were placed on the use of that property. He spoke about the Quimby Act, which he said was misrepresented by Mr. Muller. Contrary to Mr. Muller's statement, parkland is often suitable for residential, commercial and industrial use. Sports fields are built in parks and not on steep and inaccessible land.

Council Member Daigle asked if affordable housing was exempt from the Quimby Act and City Attorney Clauson responded that the Quimby Act does not contain exemptions, however, the City's General Plan has policies that discuss Council's ability to waive fees to encourage affordable housing.

Mayor Rosansky opened the public hearing.

Michael Waldron, real estate appraiser, retained by the Building Industry

Association (BIA) of Orange County to provide consulting services with respect to the in-lieu fee issue, said his primary task was to review two City prepared appraisals. It is not unusual for an appraiser to take on assumptions and he concluded that the appraisals were inflated. He asked Council to look at the second amended appraisal response which in his opinion, contained inconsistent adjustments that resulted in inappropriate upward adjustments.

Bryan Starr representing the Building Association of Orange County gave a slide presentation and stated that the BIA was strongly opposed to the proposed in-lieu fee increase and asked that the Council adopt an appropriate in-lieu fee of \$18,497 per unit.

Tom Muller, O'Melveny and Meyers, Los Angeles, asked that the Council consider revising its formula for assessing in-lieu fees.

Carol McDermott, BIA member, said that she and her clients agree that Newport Beach needs to increase its in-lieu fees. However, the park fees that are being considered need to be reasonable and appropriate and her clients would support a fee in the neighborhood of \$20,000 per unit.

Phillip Bettencourt, former President of the BIA, spoke in support of lower fees as supported by the lower appraisal.

Mayor Rosansky closed the public hearing.

Planning Director Lepo offered additional support of staff's assumptions in arriving at an appropriate in-lieu fee.

Mayor Pro Tem Selich said he supported staff's recommendation even though he felt it was low and took exception to the BIA chart comparing Newport Beach to other cities. When the City adopted its General Plan it specified parks, recreation and open space goals and the City is short 38 to 39-acres based upon its current population. These fees are not meant to make up the deficit.

Council Member Henn asked City Attorney Clauson if the City used an appraisal methodology acceptable under the Quimby Act to which City Attorney Clauson responded "yes."

Motion by Mayor Pro Tem Selich to adopt Resolution No. 2007-30 adjusting the fair market land value and per-acre amount to be used in assessing In-Lieu Park Dedication Fees.

Substitute motion by Council Member Curry to adopt Resolution No. 2007-30 adjusting the fair market land value and per acre value of \$23,200 to be used in assessing In-Lieu Park Dedication Fees. The substitute motion was amended to include a high range of \$23,512 for Eastbluff Park.

The substitute motion failed by the following roll call vote:

Ayes: Council Member Curry, Council Member Daigle

Noes: Council Member Henn, Mayor Pro Tem Selich, Mayor Rosansky, Council Member Webb, Council Member Gardner

The motion carried by the following roll call vote:

Ayes: Council Member Henn, Council Member Curry, Mayor Pro Tem Selich, Mayor Rosansky, Council Member Webb, Council Member Daigle, Council Member Gardner

16. PROPOSED ASSESSMENT DISTRICT NO. 94 - PACIFIC DRIVE - CORONA DEL MAR FOR UNDERGROUNDING UTILITIES AND DESIGNATION AS AN UNDERGROUND UTILITIES DISTRICT [89/100-2007].

Mayor Rosansky explained that the process for this item would be to decide whether the City would move forward with Assessment District No. 94. He read the rules of procedure for the legal voting process and stated that when the votes are tabulated the results will be announced.

Habib Isaac and Dave Hunt, Muni Financial, explained the process for the hearing as well as the method and formula used and also explained the balloting and assessment procedure.

Mayor Rosansky opened the public hearing.

Patricia Bell, representing her mother Janet Bell and her mother's neighbor, explained that there would be no benefit to them and protested the implementation of Assessment District No. 94 that benefited only two blocks and involved a total of only five poles. She said the Begonia houses should never have been included in the assessment district.

Gerald Ostrowsky presented Council with handouts and asked that the assessment district be disbanded due to the cost. The assessment district should be expanded to include the entire village of Corona del Mar. He cited what he said were incorrect and misleading assessments and voting procedures.

Paul Moses said he favored the assessment district because it would enhance the aesthetics of the neighborhood and he believed the resulting increase in property values would offset the costs. He also felt there were safety concerns that could be addressed by the district. He referred to a letter that said the Mayor was against this proposal and that older residents would be forced to sell their homes if the assessment district were implemented.

Debbie Cruttenden stated that she and her husband are opposed to the assessment district because it would not benefit her unless the poles on Bayside were taken out.

Elizabeth Delamater opposed the assessment district because it would be very costly, some poles would not be removed and there would be no benefit for her.

Susan Ostrowsky commented on the letter her husband sent out that indicated Mayor Rosansky opposed the assessment district.

Mayor Rosansky indicated that he had made the statement that he would prefer to see the cost spread over a larger number of homes.

Barbara Dawkins spoke about being asked to sign what she thought was a misleading document regarding the assessment district. The assessment should

include more homes to have any real aesthetic value to the community and an additional benefit would be a lower cost to the residents if more homes were included.

Mayor Rosansky asked if anyone had not yet presented a ballot or would like to change their vote prior to close of the public hearing.

Mayor Rosansky closed the public hearing.

XVIX. CURRENT BUSINESS

19. RESOLUTION OPPOSING THE USE OF ANY PORTION OF THE NEWPORT BEACH GOLF COURSE FOR JOHN WAYNE AIRPORT (JWA) PARKING PURPOSES.

City Manager Bludau stated that this is a matter that the County staff is looking into as an alternative to determine how this property would best serve the long-term needs of the County.

Council Member Daigle explained that the front 9 is in her district and why she and her constituents wished to preserve the back for the residents.

Council Member Curry concurred with Council Member Daigle that the proposal to cover over the back 9 with a parking lot should never see the light of day.

Mayor Rosansky took a straw vote and there was unanimous support for the resolution opposing the use of any portion of the Newport Beach Golf Course for John Wayne Airport (JWA) parking purposes.

Mayor Rosansky encouraged concerned residents to speak to the Orange County Supervisors and Council Member Webb encouraged residents to voice their opinions with the airport manager.

Professor Mario Mainero, Chief of Staff for Supervisor John Moorlach, acknowledged emails he and other supervisors received regarding this matter. The 32-acre parcel is owned by the County and is part of the Runway Protection Zone. The original lease expired on January 31, 2007. Nothing has been brought to the Board of Supervisors on this matter. The airport director who initiated the review has not completed his review and there is no proposal for a parking lot. In fact, the County is looking at alternate sights for the parking structure. The supervisor would not support anything other than a golf course for the site.

Keith Wyrick, Newport Beach Golf Course, said he hopes the supervisors do not consider anything else for the golf course.

Nancy Alston, AirFair, said that AirFair is opposed to any expansion of the John Wayne Airport.

Charles Griffin said he spoke to the Board of Supervisors this morning and recommended that the Council stay within the terms of the settlement agreement.

Motion by Council Member Daigle to adopt Resolution No. 2007-31 opposing the concept of turning any portion of the Newport Beach Golf Course into parking for

JWA purposes.

The motion carried by the following roll call vote:

Ayes: Council Member Henn, Council Member Curry, Mayor Pro Tem Selich, Mayor Rosansky, Council Member Webb, Council Member Daigle, Council Member Gardner

20. THIS ITEM LEFT BLANK INTENTIONALLY.

XIV. PUBLIC HEARING

16. PROPOSED ASSESSMENT DISTRICT NO. 94 - PACIFIC DRIVE - CORONA DEL MAR FOR UNDERGROUNDING UTILITIES AND DESIGNATION AS AN UNDERGROUND UTILITIES DISTRICT [89/100-2007].

Public Works Director Badum stated that this was a citizen-driven democratic matter and not a matter initiated by the City.

City Clerk Harkless announced that the vote was as follows: 29 parcels submitted ballots for a total assessment of \$662,734.75 with 42 percent voting "yes" for a total assessment of \$278,142.56 and 58 percent voting "no" for a total assessment of \$384,592.18. [NOTE: Verification of the ballots concluded that one ballot was unsigned, therefore there were a total of 28 ballots cast, with the following breakdown: 43.8% voting "yes" for a total assessment of \$278,142.56; and 56.2% voting "no" for a total assessment of \$357, 121.31.]

There were more "no" votes than "yes" votes indicating that the Assessment District failed. No further action was required.

XV. PUBLIC COMMENTS

Charles Griffin spoke about the John Wayne Airport Settlement Agreement and the affects of global warming.

XVI. ORAL REPORTS FROM CITY COUNCIL ON COMMITTEE ACTIVITIES

Council Member Gardner reported that the Newport Coast Watershed Management Committee met recently to discuss runoff studies and affects to public access, runoff and adverse affects to public beaches. The State Waters Board official stated she was very impressed with the City's efforts toward water quality.

Council Member Daigle reported that the SCAG Regional Council completed RHNA. She announced that Council Member Gardner was appointed to the Environment and Energy Committee.

Mayor Pro Tem Selich announced that tomorrow afternoon there would be another meeting of the General Plan Implementation Committee. The meeting is open to the public and will involve discussion of setting grading height limits.

Council Member Curry stated that the Newport Coast Advisory Committee met yesterday. He encouraged everyone to set aside September 15th for the grand opening of the community center.

XVII. PLANNING COMMISSION AGENDA AND ORAL STATUS REPORT

17. PLANNING COMMISSION AGENDA FOR MAY 3, 2007 [100-2007].

Planning Director David Lepo reported on the following two items: 1) Use Permit, Environmental Nature Center, 1601 16th Street (PA2007-030); and 2) appeal of Lot Line Adjustment No. LA2007-002 (PA2007-039), 1499 and 1505 Monrovia Avenue.

XVIII. CONTINUED BUSINESS

18. SUNSET RIDGE PARK STATUS REPORT [100-2007].

Public Works Director Badum asked for Council direction on prioritization of the Sunset Ridge Park and management of other park projects including Newport Center Park and Marina Park.

Mayor Pro Tem Selich felt there was no reason to hold up Newport Center Park.

Council Member Curry said he would place all three parks on an equal basis.

Council Member Gardner asked if it took staff time to oversee development of plans. Public Works Director Badum said the amount of time was relatively more involved for construction plans. Marina Park and Sunset Ridge Park are conceptual plans and Sunset Ridge Park is comparable to the Marina Park process. It places additional burden on an already short-handed staff.

Council Member Gardner supported moving forward with Sunset Ridge Park.

Mayor Pro Tem Selich felt staff should move forward with the parks.

Council Member Henn said he would support moving forward with all three parks on an equal basis.

Council Member Daigle said that a member of Little League was excited about the Newport Center Park.

Council Member Webb felt that active parks should be a priority and staff should move forward. If asked, he would place the Sunset Ridge Park at the top of the priority list.

Mayor Rosansky said he concurred with Council Member Webb's comment about active parts and that all three parks should move forward.

Louise Fundenburg, President, Central Newport Beach Community Association, spoke in support of active parks having priority over passive parks and said she would not want Marina Park to be lost in the discussion.

Craig Warsett, representing *Protect Our Parks* felt that Sunset Ridge Park should be the number one priority for the City. However, Marina Park must also be a number one priority. In fact, all active parks should have top priority and the Council should provide additional staff support.

Steve Ray, Santa Ana River Watershed Alliance, said his organization looked at

connectivity and Sunset Ridge Park is a designated portion of the future Orange Coast River Park. In his opinion, it is important to move forward with planning to prepare for construction funding.

Mike Johnson, West Newport Beach Association, concurred that Sunset Ridge Park is an anchor for the Orange Coast River Park and therefore, Sunset Ridge Park should be the City's number one priority.

Motion by Council Member Curry to direct staff to release the \$70,000 for the Professional Services Agreement for the conceptual development of Sunset Ridge Park and treat all parks as equal.

Substitute motion by Council Member Daigle to direct staff to release the \$70,000 for the Professional Services Agreement for the conceptual development of Sunset Ridge Park and remain silent on prioritization; and, direct staff to be mindful of comments made regarding the priority for the parks.

The substitute motion carried by the following roll call vote:

Ayes: Mayor Rosansky, Council Member Webb, Council Member Daigle, Council Member Gardner

Noes: Council Member Henn, Council Member Curry, Mayor Pro Tem Selich

City Manager Bludau emphasized that there are staff shortages and that directing consultants requires a considerable amount of staff time.

Mayor Pro Tem Selich felt it was staff's job to tell the City Council how it could get the job done.

Council Member Henn felt the problem extended way beyond getting three parks completed.

S24. COUNCIL RESPONSE TO LAFCO STAFF'S RECOMMENDATIONS REGARDING ANNEXATION ISSUES AFFECTING WEST SANTA ANA HEIGHTS, THE COUNTRY CLUB, THE MESA DRIVE AREA AND THE SANTA ANA COUNTRY CLUB [100-2007].

Motion by Mayor Rosansky to request LAFCO to continue this item for one month to allow further discussion.

Supervisor John Moorlach spoke in support of the Mayor's motion for an extension.

Charles Griffin spoke about annexation of certain areas to Newport Beach and felt it was appropriate for West Santa Ana Heights to become part of Newport Beach.

Steve Ray, Santa Ana River Watershed Alliance, spoke on behalf of the Banning Ranch Task Force. Both entities take no position on what entity should include Banning Ranch in its sphere of influence, only that the 420 acres should be preserved as open space and remain part of the park.

The motion carried by the following roll call vote:

Ayes: Council Member Henn, Council Member Curry, Mayor Pro Tem Selich, Mayor Rosansky, Council Member Webb, Council Member Daigle, Council Member

Gardner

21. **FORMATION OF AN AD HOC COMMITTEE FOR NEGOTIATING THE NEWPORT BEACH COUNTRY CLUB DEVELOPMENT AGREEMENT [100-2007].**
22. **FORMATION OF AN AD HOC COMMITTEE FOR NEGOTIATING THE NEWPORT CENTER DEVELOPMENT AGREEMENT [100-2007].**

Motion by Council Member Webb to a) adopt Resolution No. 2007-32 forming the City Council Newport Beach Country Club Ad Hoc Development Agreement Committee and Resolution No. 2007-33 forming the City Council Newport Center Ad Hoc Development Agreement Committee; and b) confirm the Mayor's appointment of Mayor Rosansky and Mayor Pro Tem Selich to both committees.

The motion carried by the following roll call vote:

Ayes: Council Member Henn, Council Member Curry, Mayor Pro Tem Selich, Mayor Rosansky, Council Member Webb, Council Member Daigle, Council Member Gardner

- S23. **CONTRACT AWARD TO CR&R INC. FOR NEWPORT COAST FULLY AUTOMATED RESIDENTIAL REFUSE COLLECTION SERVICES [38/100-2007].**

General Services Director Mark Harmon gave a PowerPoint presentation and provided information regarding the Request for Proposals for maintaining the current level of service. Staff's recommendation is to contract with CR&R to provide fully automated collection.

General Services Director Harmon responded to Council Member Henn that the contract to provide seven (7) days notice of termination to a waste hauler could put the City in disarray unless there was another waste hauler in the wings.

City Attorney Clauson responded to Council Member Curry that the recommendation was for the waste hauler to provide a Performance Bond and cost basis analysis and that the Council would have the ability to deal with lack of performance. General Services Director Harmon felt it would be risky to award a contract based on low cost only.

Council Member Henn said that all of the trucks were to be fully automated. Implicitly Ware is representing that they will have another fully automated truck and in fact will have two fully automated trucks.

Mayor Pro Tem Selich asked why the RFP was set up to provide an additional schedule for additional containers and wondered if the wide spread in cost was because it was an open ended contract. He also asked why would the City not just ask for a single bid for all services. General Services Director Harmon explained that there is a cost for additional containers throughout the industry and a percentage would tend to limit the number of additional containers.

Council Member Gardner asked why there would be a limit of 30% set when the recycling requirement is 50%. General Services Director Harmon responded that

currently the City is diverting about 57%. A lot of recycling comes from commercial and construction waste and it is more difficult to attain a high diversion rate on residential waste.

Council Member Henn asked if it was typical to include a 13% CPI. City Attorney Clauson said that over the years the Council has placed a percentage on the CPI adjustment. Council Member Henn believed there should be 4% ceiling on all CPIs.

David Fahrion, President, Solid Waste Division, CR&R talked about his company's services and saw this as an opportunity to expand the company's services. He stated that his company serves most of the communities in Southern California and 200,000 residences with fully automated trucks.

Patrick Munoz, a Newport Beach resident speaking on behalf of Ware Disposal, pointed out that Ware Disposal offered favorable options for consideration - price, vehicles, experience and recycling. Other areas of concern to the Council should include yearly increases and additional equipment charges. Mr. Munoz explained to Mayor Rosansky that Ware would agree to a provision to limit the supply of additional containers to encourage more recycling which would result in a dramatic savings over time. Ware has always agreed to provide fully automated AQMD compliant vehicles. Ware has one vehicle and provided the City with copies of invoices for two additional compliant vehicles that it will receive in the near future. He showed examples and explained the difference between fully automated and semi-automated vehicles. Mr. Munoz further explained that the third fully automated AQMD compliant vehicle is due to arrive in September. It is a smaller vehicle that can more easily traverse the residential routes. Recycling is an important issue that was not adequately addressed in the RFP. Ware's facility in Santa Ana will provide the same MERF benefits with a diversion percentage of 43.

Mayor Pro Tem Selich asked if Ware were awarded a contract would it guarantee a 43% diversion rate.

Council Member Webb said he was confused because the proposal was supposed to have listed the equipment. Mr. Munoz said that the intent of Ware's proposal was always to provide AQMD compliant trucks.

Council Member Henn asked how Ware intended to maintain the trucks in order to keep them operational. Mr. Munoz responded that Ware has mechanics that are capable of working on these trucks with the exception of the fuel system and the trucks will be serviced under warranty as it relates to the fuel system.

Mayor Pro Tem Selich said when he first looked at the proposal he saw a base rate that was substantially lower than that of other bidders. He asked what assurance Ware would give that they would not request a rate increase in a year or two. Mr. Munoz stated that Ware would not ask the City for an increase. The rate proposed is not an abnormally low rate and it is a fair rate for the work proposed.

Council Member Gardner liked the fact that the homeowner would be given an extra recycling container if needed. Mr. Munoz stated that in his professional experience he believed the number proposed by staff was high.

Mayor Rosansky stated that the CC&R contract does not provide for additional

recycling bins. General Services Manager Harmon said to his knowledge the extra recycling container was not free with CC&R. City Attorney Clauson explained to Mayor Rosansky that this was not a "low bid" situation but a contract negotiation and often staff can go back and negotiate certain points. The decision the Council needs to make should be based on the response to proposal and it would be unfair to not allow other bidders to meet the requirements. If the Council wanted to change the terms of the RFP it should go back out for bid again. City Attorney Clausen suggested the Council ask CC&R whether it could guarantee 43% diversion since CC&R is the recommended hauler.

Council Member Curry asked if the Council could select a carrier and negotiate with that carrier. City Attorney Clausen responded that the Council would need to give the selected carrier an opportunity to renegotiate the contract with the selected bidder.

Steven Schrey, Nixon Peabody LLP, attorney representing CR&R said that this is a contract proposal. What is happening here is that CC&R in a timely fashion met the City's RFP requirements and staff is recommending that the Council accept staff's recommendation.

Council Member Henn said he was very uncomfortable negotiating on the fly and would rather make a decision based on the proposals.

Jay Ware, General Manager, Ware Disposal, reiterated Mr. Munoz's statements and noted that the Ware family and business reside in Newport Beach and that the company has drivers and vehicles that can immediately step in to provide service to Newport Beach. The proposal stands and if there is a need to change the diversion rate for recycling, Ware would agree to 43% or provide free containers.

Mr. Ware responded to Mayor Rosansky that within the RFP there was no container amount and he felt 141 containers was too much. If someone needs an additional container they need to know how to recycle and Ware is committed to working with the City to teach residents how to recycle.

Motion by Council Member Curry to authorize a ten-year agreement with Ware Disposal through June 30, 2017 to provide fully automated residential refuse collection services in the Newport Coast area with additions and changes to the contract to include the following: the hauler will provide free additional recycling bins; guarantee a diversion rate of 40%; provide all reports; provide vehicle citation reports to the City Council; and, provide liability insurance to the City in the amount of \$5 million.

The motion carried by the following roll call vote:

Ayes: Council Member Henn, Council Member Curry, Mayor Pro Tem Selich, Mayor Rosansky, Council Member Daigle, Council Member Gardner
Noes: Council Member Webb

XX. MOTION FOR RECONSIDERATION – None

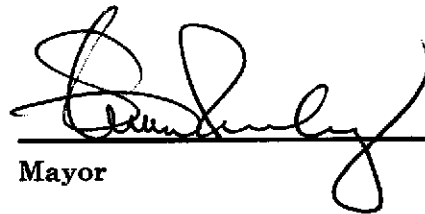
XXI. ADJOURNMENT - 12:08 a.m. in memory of Betty Larson and Gil Ferguson

**City of Newport Beach
City Council Minutes
May 8, 2007**

The agenda for the Regular Meeting was posted on May 2, 2007, at 2:00 p.m. on the City Hall Bulletin Board located outside of the City of Newport Beach Administration Building. The supplemental agenda for the Regular Meeting was posted on May 4, 2007, at 2:30 p.m. on the City Hall Bulletin Board located outside of the City of Newport Beach Administration Building.



Recording Secretary



Mayor



City Clerk

