

CITY OF NEWPORT BEACH

City Council Minutes

Regular meeting

November 26, 2013 -- 7:00 p.m.

I. STUDY SESSION - 4:00 p.m.

II. CLOSED SESSION - 6:07 p.m.

A. **CONFERENCE WITH REAL PROPERTY NEGOTIATORS (Government Code § 54956.8):**

Properties and Owners:

1. APN - 423-102-03: Lido Pacific, LLC
2. APN - 423-382-05: Lido Pacific, LLC
3. APN - 423-102-02: Terra Cotta Realty Fund, LLC

Agency Negotiator: Pat Thomas, Deputy Public Works Director

Negotiating Parties: Lido Pacific, LLC, and Terra Cotta Realty Fund, LLC

Under Negotiation: Instruction to negotiator will concern price and terms of payment.

Written Comments

B. **CONFERENCE WITH REAL PROPERTY NEGOTIATORS (Government Code § 54956.8):**

Property: 1516 W. Balboa Blvd, Lots 9 & 10, Block 115, Newport Beach, CA

Agency Negotiator: Dave Kiff, City Manager and David W. Webb, Director of Public Works

Negotiating Parties: Southern California Edison

Under Negotiation: Instruction to negotiator will concern price and terms of payment.

Written Comments

C. **CONFERENCE WITH LABOR NEGOTIATORS (Government Code § 54957.6):**

Agency Designated Representatives: Dave Kiff, City Manager and Terri Cassidy, Deputy City Manager; Negotiators

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); Lifeguard Management Association (NBLMA); Newport Beach Police Association (NBPA); Newport Beach Police Management Association (NBPMA); Newport Beach Professional and Technical Association (NBPTEA); and Part-Time Employees Association of Newport Beach (PTEANB).

III. RECESS

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

V. ROLL CALL

Present: Council Member Gardner, Council Member Petros, Mayor Pro Tem Hill, Mayor Curry, Council Member Selich, Council Member Henn
Excused: Council Member Daigle

VI. CLOSED SESSION REPORT

City Attorney Harp announced that there were no reportable actions.

VII. PLEDGE OF ALLEGIANCE - Council Member Selich

VIII. INVOCATION - Mayor Curry

IX. PRESENTATIONS

1/1 Marines Foundation

Krisztina Scheeff, 1/1 Marines Foundation Member, introduced other Foundation Members and Marines in attendance and reported that December 9, 2013 will mark the 10-year anniversary since the City adopted the 1st Battalion 1st Marines stationed at Camp Pendleton. She stated the mission of the Foundation and noted that 100% of the funds raised go directly to the Marines and their families. She highlighted events and the work of the Foundation and expressed appreciation to the City for its support, especially City staff member Clarivel Rodriguez.

Lieutenant Colonel Lance Jackola, Commanding Officer of the 1st Battalion 1st Marine, highlighted milestones, commented on the Purple Heart Project, and presented the City with a plaque in appreciation for its support and dedication to the 1st Battalion 1st Marine.

Mayor Curry expressed his appreciation on behalf of the City for their service.

Presentation by Corona del Mar High School Seniors Regarding a Newport Beach Senior Citizen Needs Survey

PowerPoint

Corona del Mar High School Seniors Charlotte Boyse and Robin Caston provided a presentation regarding the results of a Newport Beach Senior Citizen Needs Survey. They addressed the mission, survey topics, popular services, parking issues, senior beach passes, and transportation concerns.

Mayor Curry expressed his appreciation to them for sharing their findings.

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

Council Member Henn reported attending the grand opening celebration for Red O Restaurant in Fashion Island and commented positively on the event. He announced a Christmas Tree and Menorah Lighting Ceremony on Saturday, December 7, 2013, in Balboa Village at 5:00 p.m. He commented positively on the Balboa Village Merchants Association's efforts in expanding programming in the Village for events and activities throughout the holiday season.

Council Member Gardner announced that the Corona del Mar Christmas Walk will be held on December 8, 2013, from 11:00 a.m. to 5:00 p.m.

Council Member Petros reported attending the Villa Balboa Homeowners Association Board Meeting and noted that he was very impressed by the level of engagement and knowledge of the residents.

Mayor Curry reported participating in the Interfaith Council Helping Hands event and commented positively on the efforts of the organization in helping the needy. He commented on the generosity of spirit and entrepreneurship of the young people in the City. Additionally, he reported speaking with the Junior Statesman of America Chapter at Newport Harbor High School and commented positively on their drive towards public service. He reported speaking to the Sunrise Rotary Club and commented on their service to the community. Mayor Curry announced that he will be speaking at the Wake Up! Newport event on December 5, 2013, hosted by the Chamber of Commerce.

XII. PUBLIC COMMENTS ON CONSENT CALENDAR

Referencing Item 3 (Amendment to Newport Beach Municipal Code and Adoption of Resolution Related to Residential and Commercial Piers), Section 17.60.060(E), Council Member Gardner requested that staff bring back language regarding how the City would handle new commercial piers in the same situation.

Council Member Selich thanked Public Works staff for their efforts on Item 11 (Bayside Cove Walkway - Notice of Completion and Acceptance of Contract No. 5276).

Regarding Item 21 (Contract Amendment No. 3 between the City and HF&H Consultants, LLC for Residential Solid Waste Transition and Contract Management Services), Jim Mosher noted that City staff was supposed to retain oversight of the contract, but with the departure of Municipal Operations Director Harmon, the City is now proposing to outsource not only trash collection, but also the contract oversight function. He expressed concerns that the firm being proposed to perform these functions is the same firm that recommended outsourcing, wrote the Request For Proposal (RFP), evaluated the responses, helped pick the winning bid, and wrote the contract. He believed that it was not good public policy to entrust all of these functions to a single entity. He also requested information regarding the steps being taken to fill the Municipal Operations Director position and inquired on whether the new contract requires residents to use the new automated carts.

Council Member Petros took issue with Mr. Mosher's statements, emphasizing that Council, not HF&H, decided to go forward with outsourcing, made decisions regarding service levels, and listened to extensive public input to arrive at its decisions. He pointed out that this was an action done by the City of Newport Beach under Council's direction, administered by the City Manager, and undertaken by City staff.

Regarding Item 3, Patricia Newton noted that the City Attorney indicated that there is no gift of public funds if a mooring or residential pier permit is transferred or if the permittee is allowed to rent their pier to third parties for profit, but that this is a matter of Council Policy. She added that other issues raised at the Study Session were not answered and that tideland users using tidelands for boat

storage cannot be treated differently than others. She presented a chart referencing burdens placed on mooring permittees compared to residential pier permittees and believed that the use of the marina pier index for moorings is unreasonable. She addressed rates, benefits, and administration, and requested a reasonable solution to the issues she raised. She also requested that the marina index be scrapped in favor of the tidelands appraised value and implementation of the Harbor Commission ordinance prepared on January 14, 2009, as well as written answers to the inconsistencies pointed out and the rationale for such disparate treatment for mooring permittees.

Referencing Item 3, Chuck Hornsby took issue with the item and believed that Council has been bad stewards of wealth. He expressed the opinion that the City should rescind this and publicly apologize to boat and dock owners.

Brian Ouzounian referenced a letter he submitted and asked that the City share its rental revenue with permittees, noting that permittees pay all maintenance costs and are assessed fees in their utility bills.

XIII. CONSENT CALENDAR

Written Comments

A. READING OF MINUTES AND ORDINANCES

- 1. MINUTES FOR THE NOVEMBER 12, 2013 STUDY SESSION AND REGULAR MEETING. [100-2013]** Waive reading of subject minutes, approve as amended, and order filed.

Amended Minutes

Minutes

- 2. READING OF ORDINANCES.** Waive reading in full of all ordinances under consideration, and direct the City Clerk to read by title only.

B. ORDINANCES FOR INTRODUCTION

- 3. AMENDMENT TO NEWPORT BEACH MUNICIPAL CODE AND ADOPTION OF RESOLUTION RELATED TO RESIDENTIAL AND COMMERCIAL PIERS. [100-2013]** a) Introduce Ordinance No. 2013-27, *An Ordinance of the City Council of the City of Newport Beach Amending Chapter 17.60 and Subsection 17.35.020(B)(2) of the Newport Beach Municipal Code Regarding Residential and Commercial Piers Located Upon Tidelands,* and pass to a second reading on December 10, 2013; b) adopt Resolution No. 2013-88, *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, and Amending Resolution No. 2012-98 to Reclassify Certain Homeowner's Association (HOA) Slips from Commercial to Residential;* c) approve the reclassification of HOA slips to be retroactively applied beginning March 1, 2013, and approve refunds or credits for those affected HOAs; and d) direct staff to develop an administrative policy to use Harbor Patrol generated rental revenue collected from transient moorings for amenities in Newport Harbor that generally benefit all mooring permittees, to the extent that desirable projects are identified each year. ***Council Member Selich recused himself from this item since he owns a residential pier.***

Staff Report

Supplemental

PowerPoint

Public Comments

4. **REPEAL OF THE INCLUSIONARY HOUSING PROVISIONS CONTAINED IN THE NEWPORT BEACH MUNICIPAL CODE (PA2013-221). [100-2013]** Introduce Ordinance No. 2013-28, *An Ordinance of the City Council of the City of Newport Beach Repealing Chapter 19.54 (Inclusionary Housing) of Title 19 of the Newport Beach Municipal Code*, 1) finding that all significant environmental concerns for the proposed project have been addressed in the previously adopted Negative Declaration SCH No. 2011091088; and 2) approving Code Amendment No. CA2013-008 to repeal Chapter 19.54 of the Newport Beach Municipal Code, and pass to second reading on December 10, 2013. ***Council Member Gardner voted NO on this item.***

Staff Report

Correspondence

C. **ORDINANCES FOR ADOPTION**

5. **ADOPTION OF ORDINANCE NO. 2013-18 AMENDING NEWPORT BEACH MUNICIPAL CODE SECTION 3.36.030. [100-2013]** Conduct second reading and adopt Ordinance No. 2013-18, *An Ordinance of the City Council of the City of Newport Beach Amending Section 3.36.030 of the Newport Beach Municipal Code*. ***Mayor Pro Tem Hill and Council Member Henn recused themselves from this item since they were recused from voting on this item at the November 12, 2013 City Council meeting.***

Staff Report

6. **SECOND READING AND ADOPTION OF ORDINANCE NO. 2013-22 ESTABLISHING A PENALTY AMNESTY PROGRAM TO FORGIVE BUSINESSES THAT PAY CERTAIN DELINQUENT ASSESSMENTS FOR THE CORONA DEL MAR BUSINESS IMPROVEMENT DISTRICT FROM LIABILITY FOR PENALTIES. [100-2013]** Conduct second reading and adopt Ordinance No. 2013-22, *An Ordinance of the City Council of the City of Newport Beach, California, Establishing a Penalty Amnesty Program to Forgive Businesses that Pay Certain Delinquent Assessments for the Corona del Mar Business Improvement District from Liability for Penalties.*

Staff Report

7. **ADOPTION OF ORDINANCE NO. 2013-23 APPROVING CODE AMENDMENT NO. CA2012-008, WAIVING THE 10 ACRE MINIMUM SITE AREA AND ESTABLISHING A PLANNED COMMUNITY DEVELOPMENT PLAN (PC) ZONING DISTRICT (PA2012-146) FOR 3303 AND 3355 VIA LIDO. [100-2013]** Conduct second reading and adopt Ordinance No. 2013-23, *An Ordinance of the City Council of the City Of Newport Beach Approving Zoning Code Amendment No. CA2012-008 for the Lido Villas Project Located at 3303 and 3355 Via Lido (PA2012-146)*. ***Council Member Henn recused himself from this item due to the potential for a conflict of interest arising from a business relationship he has with a business in Via Lido Plaza.***

Staff Report

D. RESOLUTIONS FOR ADOPTION

8. **GENERAL FUND LOAN TO NEWPORT HARBOR CAPITAL FUND FOR MARINA PARK, MARINA DREDGING AND DOCK CONSTRUCTION. [100-2013]** a) Adopt Resolution No. 2013-84, *A Resolution of the City Council of the City of Newport Beach Memorializing the Existing Loan of \$9,676,658.50 from the General Fund to the Harbor Fund for the Dredging of Newport Harbor, Linda Isle and the Rhine Channel from 2011 to 2014*; b) adopt Resolution No. 2013-85, *A Resolution of the City Council of the City of Newport Beach Formalizing the City's Intent to Loan \$6,132,900.00 from the General Fund to the Harbor Fund for the Development of the Marina Portion of Marina Park*; and c) direct staff to request State Lands Commission (SLC) approval for the loan to the Harbor Fund for the development of the marina portion of Marina Park.

Staff Report

9. **ADOPT RESOLUTION TO APPROVE PROJECTS FOR THE 2015 FEDERAL TRANSPORTATION IMPROVEMENT PROGRAM UPDATE. [100-2013]** Adopt Resolution No. 2013-86, *A Resolution of the City Council of the City of Newport Beach Certifying that the City has the Resources to Fund the Projects Submitted for Inclusion in the 2015 Federal Transportation Improvement program within FY 2014/15-2019-20 and Affirms its Commitment to Implement all Projects in the Program*, affirming that the City intends to fund and allocate resources to implement the Bicycle Corridor Improvement Projects as part of the 2015 Federal Transportation Improvement Program.

Staff Report

10. **RESOLUTION NO. 2013-87 - A RESOLUTION OF INTENTION TO MODIFY THE MANAGEMENT DISTRICT PLAN OF THE NEWPORT BEACH TOURISM BUSINESS IMPROVEMENT DISTRICT. [100-2013]** a) Adopt amended Resolution No. 2013-87, *A Resolution of the City Council of the City of Newport Beach Declaring its Intention to Modify the Management District Plan of the Newport Beach Tourism Business Improvement District*; and b) direct the City Clerk to provide notice of the public meeting and public hearing, as required by the California Streets Highways Code.

Staff Report

Amended Resolution

E. CONTRACTS AND AGREEMENTS

11. **BAYSIDE COVE WALKWAY - NOTICE OF COMPLETION AND ACCEPTANCE OF CONTRACT NO. 5276. [38/100-2013]** 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.

Staff Report

12. **2012-2013 CITYWIDE SLURRY SEAL PROGRAM - NOTICE OF COMPLETION AND ACCEPTANCE OF CONTRACT NO. 5320. [38/100-2013]** 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.

Staff Report

13. **AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT WITH TETRA TECH, INC. FOR NEWPORT BOULEVARD WATER TRANSMISSION MAIN REPLACEMENT PROJECT (C-5546).** [38/100-2013] Approve Amendment No. 1 to the Professional Services Agreement with Tetra Tech, Inc. to provide final engineering services for the Newport Boulevard Water Transmission Main Replacement Project at a cost not to exceed \$152,400.00, and authorize the Mayor and City Clerk to execute Amendment No. 1 to the agreement.

Staff Report

14. **AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICES AGREEMENT WITH BASIN MARINE, INC. FOR BALBOA YACHT BASIN MANAGEMENT (C-4708).** [38/100-2013] Approve and authorize the Mayor and City Clerk to execute Amendment No. 1 to the Professional Services Agreement for Balboa Yacht Basin management with Basin Marine in an amount not to exceed \$151,996 to include a management fee of \$6,833 per month for twelve months and an allowance for additional work on a time and materials basis for a not to exceed amount of \$70,000 per year.

Staff Report

15. **LIFEGUARD HEADQUARTERS REHABILITATION PROJECT - AWARD OF CONTRACT C-4869.** [38/100-2013] a) Approve the project drawings and specifications; b) award Contract No. 4869 to Optima RPM for the total bid price of \$1,546,000.00 including acceptance of additive bid items A2, A3, A4, A5, A6 and A7 and authorize the Mayor and City Clerk to execute the contract; c) establish a contingency of \$154,000.00 (approximately 10 percent) to cover the cost of unforeseen work; and d) approve Budget Amendment No. 14BA-022 transferring \$596,000.00 from the Facilities Financing Fund to the Lifeguard Facilities Fund and appropriating \$596,000.00 from the Lifeguard Facilities Fund unappropriated fund balance to Account No. 7414-C1002037 (Lifeguard Headquarters Rehabilitation).

Staff Report

16. **2013-2014 ANNUAL SIDEWALK, CURB AND GUTTER REPLACEMENT PROJECT - AWARD OF CONTRACT NO. 5491.** [38/100-2013] a) Approve the project drawings and specifications; b) award Contract No. 5491 to Grigolla & Sons Construction Company, Inc. for the total bid price of \$639,950.00, and authorize the Mayor and the City Clerk to execute the contract; c) establish an amount of \$96,000.00 (15%) to cover the cost of unforeseen conditions as well as take advantage of opportunities to include additional needed concrete work not included in the original contract; and d) approve Budget Amendment No. 14BA-025 appropriating \$298,000.00 from unappropriated General Fund balance to Account No. 7013-C2001009 (Sidewalk, Curb and Gutter Replacement); and recognizing \$14,000.00 in revenue from a private contribution from Lido Isle Community Association to Account No. 9010-5901 and appropriating \$14,000.00 to 7013-C2001009.

Staff Report

17. **CITY'S ACQUISITION OF THE SOUTHERN CALIFORNIA EDISON (SCE) PROPERTY AT 1516 W. BALBOA AVENUE, ADJACENT TO MARINA PARK (C-4869).** [38/100-2013] a) Approve the Agreement for Acquisition and Sale of Real Property by and between the City of Newport Beach and SCE for a parcel of land located at 1516 W. Balboa Boulevard for a cash purchase price of \$600,000 which acknowledges a fair market value of \$1,500,000 for the parcel (as established in an appraisal dated May 24, 2012 from R.P. Laurain & Associates) and recognize that SCE will seek a charitable donation tax credit for the excess value of \$900,000; and b) direct the Mayor to execute and record the Agreement and delegate authority to the City Manager to execute all documents necessary to implement the terms of the Agreement to complete the City's acquisition of the parcel.

Staff Report - Part 1

Staff Report - Part 2

18. **AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT WITH ANDERSONPENNA PARTNERS, INC. FOR STAFF SUPPORT SERVICES (C-5463).** [38/100-2013] Approve Amendment No. 1 to Professional Services Agreement with AndersonPenna Partners, Inc. of Newport Beach, California, for staff support services increasing the total compensation by \$200,000.00, and authorize the Mayor and City Clerk to execute the Amendment.

Staff Report

19. **AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT WITH URBAN CROSSROADS FOR TRAFFIC IMPACT ANALYSIS SERVICES (C-3524).** [38/100-2013] a) Approve Amendment No.1 to the Professional Services Agreement with Urban Crossroads of Irvine, California at a cost not to exceed \$144,000.00, and authorize the Mayor and City Clerk to execute the Agreement; and b) approve Budget Amendment No. 14BA-024 appropriating \$20,000 from the unappropriated General Fund balance to CIP Account No. 7013-C3001003.

Staff Report

20. **AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH HINDERLITER, DE LLAMAS & ASSOCIATES (HDL) FOR SALES AND USE TAX ANALYSIS AND APPEALS (C-5274).** [38/100-2013] Approve Amendment No. 2 to the Professional Services Agreement with HdL which would 1) extend the term of the Agreement to September 30, 2018; and 2) increase the total compensation to HdL to \$472,000.

Staff Report

21. **CONTRACT AMENDMENT NO. THREE BETWEEN CITY AND HF&H CONSULTANTS, LLC (HF&H) FOR RESIDENTIAL SOLID WASTE TRANSITION AND CONTRACT MANAGEMENT SERVICES (C-5521).** [38/100-2013] Authorize the Mayor to sign the Contract Amendment between the City and HF&H for Residential Solid Waste Transition and Contract Management Services. *Council Member Selich voted NO on this item.*

Staff Report

22. **APPROVAL OF SIDE LETTER AMENDING THE 2012-2014 MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF NEWPORT BEACH AND THE**

NEWPORT BEACH POLICE ASSOCIATION (NBPA) (C-2056). [38/100-2013]
Approve the Side Letter Agreement with the NBPA to: 1) delay the previously agreed to salary adjustments and California Public Employees Retirement System (PERS) employee retirement contributions; and 2) include new employees (hired under the Tier III benefit formula) in the "cost-share agreement" to contribute the same total amount toward retirement as employees in Tiers I and II.

Staff Report

- 23. APPROVAL OF SIDE LETTER EXTENDING THE 2012-2014 MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF NEWPORT BEACH AND THE NEWPORT BEACH FIREFIGHTERS ASSOCIATION (NBFA) TO DECEMBER 31, 2014 AND APPROVAL OF SETTLEMENT AGREEMENT (C-2060). [38/100-2013]** Approve the Side Letter with the NBFA to extend the expiration date of the Memorandum of Understanding from June 30, 2014 to December 31, 2014; and b) approve the Settlement Agreement between the City and NBFA to settle all disputes regarding back payment of overtime for the period January 1, 2010 through December 31, 2011.

Staff Report

- 24. FIRST AMENDED & RESTATED EMPLOYMENT AGREEMENT FOR CITY ATTORNEY (C-4925). [38/100-2013]** Approve and authorize the Mayor and City Clerk to execute the First Amended and Restated Employment Agreement for the City Attorney.

Staff Report

F. MISCELLANEOUS

- 25. PLANNING COMMISSION AGENDA FOR NOVEMBER 21, 2013. [100-2013]**
Receive and file.

Planning Commission Action Report

Planning Commission Agenda

- 26. HUMAN SERVICES GRANTS FOR FISCAL YEAR 2013-2014. [100-2013]**
Pursuant to City Council Policy A-12, Discretionary Grants, find that the organizations listed below have worthy projects or programs that serve residents and are beneficial to resident's quality of life, and authorize the allocation of \$25,000 in Human Services Grants in the following manner: Youth Employment Services (Harbor Area): 4,000; Serving People in Need (SPIN): \$3,000; Orange County Council on Aging: \$4,000; Advocates for Grandparent-Grandchild Connection: \$3,000; Central Orange Coast YMCA: \$3,500; Newport Harbor High School: \$3,500; and Boys & Girls Club of the Harbor Area: \$4,000

Staff Report

- 27. 2014 BOWL CHAMPIONSHIP SERIES ("BCS") NATIONAL CHAMPIONSHIP BANNERS - APPROVAL OF ENCROACHMENT PERMIT N2013-0425. [100-2013]** a) Waive the provisions of Council Policy L-16 (Temporary Banners Extending Over the Public Right-of-Way) pertaining to the number of banners allowed, the requirement that the event is open to the public and free of charge, and that the event is co-sponsored by the City; b) conditionally approve the Pasadena Tournament of Roses

Association's request to install a maximum of 176 banners from Monday, December 16, 2013, to Tuesday, January 14, 2014, for the 2014 VIZIO Bowl Championship Series (BCS) National Championship (installation will be along MacArthur Boulevard from Campus Drive to Jamboree Road and along Jamboree Road from University Drive to East Coast Hwy); and c) authorize staff to record an expense of \$1,393.00 in the City Manager's budget account of 0340-8250, and credit revenue accounts to 5200-5016 by \$311.00, 5200-5033 by \$879.00, 5200-4626 by \$53.00, and 5100-5014 by \$150.00.

Staff Report

28. **ACCEPTANCE OF REIMBURSEMENT FROM U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT. [100-2013]** a) Approve Budget Amendment No. 14BA-023 to accept \$18,510.07 from the U.S. Immigration and Customs Enforcement and deposit into Revenue Account No. 1820-4931 for the Police Department; b) appropriate the funds to the Detective Overtime, Safety Account No. 1850-7041; and c) approve acceptance of future reimbursements.

Staff Report

29. **ANNUAL REPORTING ON DEVELOPMENT IMPACT FEES AND DEVELOPMENT AGREEMENTS. [100-2013]** Receive, review, and file the Annual Reports on Development Impact Fees and Development Agreements.

Staff Report

Motion by Mayor Pro Tem Hill, seconded by Council Member Selich to approve the Consent Calendar; noting the recusals of Mayor Pro Tem Hill on Item 5, Council Member Henn on Items 5 and 7, and Council Member Selich on Item 3; and noting oppositions by Council Member Gardner on Item 4 and Council Member Selich on Item 21.

The motion carried by the following roll call vote:

Ayes: Council Member Gardner, Council Member Petros, Mayor Pro Tem Hill, Mayor Curry, Council Member Selich, Council Member Henn

Absent: Council Member Daigle

XIV. ITEMS REMOVED FROM THE CONSENT CALENDAR - None

XV. PUBLIC COMMENTS ON NON-AGENDA ITEMS

Public Comments

Written Comments

Frank Peters, Member of the Bicycle Master Plan Oversight Committee, stated that some people have suggested that the Corona del Mar Halloween Costume Ride be an annual event. He announced a pre-Thanksgiving ride set for November 27, 2013, at 10:00 a.m. and noted that postcards were mailed to residents in Corona del Mar announcing the event. He encouraged Council and the public to join them on the ride.

Jim Mosher announced a vacancy on the Parks, Beaches and Recreation Commission. He also discussed the 2006 Greenlight Measure and noted that the meeting to discuss this Measure took place long before the public comment period was reduced from five minutes to three minutes. He expressed the opinion that it is disrespectful to stop speakers during their comments and believed this gives the impression that Council has no interest in what is being said. He hoped that Council would reconsider limiting public testimony to three minutes.

Jim Kerrigan commented on the proposed Corona del Mar High School athletic field expansion and expressed concerns that the project will be overseen by the State. He expressed concerns with increased parking requirements and the negative impacts of the expansion to the nearby community. He asked that Council protect residents relative to CEQA and the impacts of the project.

Dale Skiles expressed concerns regarding noise, increased traffic, and parking impacts related to the proposed field expansion. She believed that it is an unconstitutional taking without compensation. She addressed ingress and egress difficulties in the Bluffs area and negative impacts to property values. She asked that Council consider the matter carefully and recognize residents' concerns and act resolutely to prevent the permanent, negative impact to the community.

A resident commented positively regarding living in the Bluffs, but noted existing parking issues. She expressed concerns with the negative impacts of the proposed expansion of the Corona del Mar High School field, including increased traffic, parking problems, noise, and lights. She asked that Council consider the issue carefully.

Council Member Petros clarified that the City has no discretion over this action, however, the City has influence on the issue. He noted that the City has taken steps to make things better in the Bluffs neighborhood and the City continues to have a dialogue with the School District. He reported that there has to be a CEQA determination and Council has instructed City staff to intervene to ensure that certain topics are addressed. Additionally, Council has heard the public and is taking steps to ensure that the public's interests are addressed.

Irwin Trester stated that there is no educational value in expanding the Corona del Mar High School field and believed that it will create a circus environment and destroy the nature of the community. He expressed concerns with increased traffic, noise, and lights.

Colin Duffy, Newport Harbor High School student and Vice President of the Junior Statesman of America, thanked Mayor Curry for speaking at a recent club meeting and reported attending the Fall State Convention where they returned with four Best Speaker Awards.

XVI. ORAL REPORTS FROM CITY COUNCIL ON COMMITTEE ACTIVITIES

Council Member Henn reported on a Balboa Village Advisory Committee (BVAC) meeting held on November 13, 2013, where it considered the final ULI Technical Advisory Panel Report on revitalizing Balboa Village. He stated that the report was well-received, thoroughly discussed, and there was a lot of enthusiasm for many of the recommendations included in the report. He reported that it was concluded that the report should be included in consideration of the Committee's work plan for the upcoming year to see how the recommendations may be fully acted upon.

Council Member Henn reported that the Finance Committee met on November 18, 2013, and that items addressed included a review of the most recent Public Employee Retirement System (PERS) pension valuations. He reported that unfunded liabilities increased, but noted that the report was dated as of July, 2012 which was at a worst-case-scenario period of time. He stated that he expects things will get better going forward. He reported that there will be several changes that will be acted upon by the PERS Board that will have the impact of further increasing pension costs for all member agencies, including Newport Beach. He added that the pension cost forecast is not good and will cause the City to continue to take actions to mitigate those expenses, adding that the City has already taken substantial action in this regard. He stated that the Committee reviewed the Quarterly Financial Report and reported that the City recorded an operating surplus as of the fiscal year. Discussion also took place regarding the budget process and the road map for the budget going forward.

Council Member Selich announced a meeting of the Local Coastal Plan/General Plan Implementation Committee on November 27, 2013, from 12:30 p.m. to 2:30 p.m. in the Newport Coast Conference Room and a meeting of the Land Use Element Amendment Committee on December 3, 2013, from

3:30 p.m. to 5:00 p.m. in the Friend's Room in the Library.

XVII. PUBLIC HEARINGS

30. AWARD OF NON-EXCLUSIVE SOLID WASTE COLLECTION FRANCHISE WITH G. O. RODRIGUEZ TRUCKING, INC., A CALIFORNIA CORPORATION. [42/100-2013]

Staff Report

Deputy Director of Municipal Operations Pisani provided a staff report, including background and recommendations.

Council Member Gardner commented on the number of different solid waste collection providers in Corona del Mar and asked about the possibility of considering restricting the number of providers in an area in the future. Council Member Henn agreed with Council Member Gardner's comments.

Mayor Curry opened the public hearing. Hearing no testimony, Mayor Curry closed the public hearing.

Motion by Council Member Selich, seconded by Council Member Henn to conduct second reading and adopt Ordinance No. 2013-26, *An Ordinance of the City Council of the City of Newport Beach Granting a Non-Exclusive Commercial Solid Waste Franchise to G. O. Rodriguez Trucking, Inc., a California Corporation, to Provide Solid Waste Collection Services upon the City Streets and Within the City of Newport Beach.*

The motion carried by the following roll call vote:

Ayes: Council Member Gardner, Council Member Petros, Mayor Pro Tem Hill, Mayor Curry, Council Member Selich, Council Member Henn
Absent: Council Member Daigle

31. ADOPTION OF THE 2013 CALIFORNIA BUILDING CODES AND OTHER DESIGN AND CONSTRUCTION RELATED CODES. [100-2013]

Staff Report

City Manager Kiff noted that Council has received detailed information regarding the matter.

Mayor Curry opened the public hearing. Hearing no testimony, Mayor Curry closed the public hearing.

Motion by Council Member Petros, seconded by Council Member Selich to conduct second reading and adopt Ordinance No. 2013-24, *An Ordinance of the City of Newport Beach Amending Title 15 of the Newport Beach Municipal Code to Adopt Amendments to Chapter 1 Division II of the 2013 California Building Code Designated as the Newport Beach Administrative Code; to Adopt the 2012 International Property Maintenance Code; the 2013 California Historical Code; the 2013 California Existing Building Code; to Adopt with Local Amendments to the 2013 Edition of the California Building Code; the 2013 Edition of the California Residential Code; the 2013 California Electrical Code; the 2013 California Plumbing Code; the 2013 California Mechanical Code; the 2012 Uniform Swimming Pool, Spa and Hot Tub Code; the Excavation and Grading Code; and the 2013 California Green Building Standards Code (Title 24 of the California Code of Regulations).*

The motion carried by the following roll call vote:

Ayes: Council Member Gardner, Council Member Petros, Mayor Pro Tem Hill, Mayor Curry,

Council Member Selich, Council Member Henn
Absent: Council Member Daigle

32. SECOND READING - ORDINANCE NO. 2013-25 ADOPTING THE 2013 CALIFORNIA FIRE CODE (TITLE 24 OF THE CALIFORNIA CODE OF REGULATIONS) WITH LOCAL AMENDMENTS AND ADMINISTRATIVE PROVISIONS, INTO TITLE 9 OF THE NEWPORT BEACH MUNICIPAL CODE. [100-2013]

Staff Report

Written Comments

City Manager Kiff reported that Council has received detailed information regarding the matter and that staff is available to respond to questions.

Mayor Curry opened the public hearing.

Jim Mosher commented on modifications made to the Fire Code, but noted that the definition of "open burning" does not include recreational fires. However, the Fire Code does prohibit open burning fires when atmospheric conditions or local circumstances make such fires hazardous. He believed that Council should deliberate on the matter before deciding to change its past practices.

Hearing no further testimony, Mayor Curry closed the public hearing.

Motion by Council Member Henn, seconded by Council Member Selich to conduct second reading and adopt Ordinance No. 2013-25, *An Ordinance of the City of Newport Beach Amending Title 9 of the Newport Beach Municipal Code to Adopt the 2013 California Fire Code (Title 24, Part 9 of the California Code of Regulations) with Local Amendments as the Newport Beach Fire Code.*

The motion carried by the following roll call vote:

Ayes: Council Member Gardner, Council Member Petros, Mayor Pro Tem Hill, Mayor Curry,
Council Member Selich, Council Member Henn

Absent: Council Member Daigle

XVIII. CURRENT BUSINESS

33. BEACH BURNING/FIRE RINGS - COMPLIANCE WITH SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT (AQMD) RULE 444 (C-5666). [38/100-2013]

Staff Report

Correspondence

PowerPoint - Staff

Written Comments

City Manager Kiff provided a PowerPoint presentation addressing the background to the issue, results of AQMD's most recent study on fire rings, photos of conditions during busy days, existing conditions at Big Corona and Balboa Pier, AQMD's Rule 444, AQMD's Alternative Fuel Fire Ring Demonstration Project, examples of alternative fuel fire rings, and details of a proposed plan for Council's consideration for Big Corona and Balboa Pier. He addressed concerns relative to enforcement, safety of alternative fuel rings, maintenance and reliability of alternative fuel rings, and consideration by other agencies. City Manager Kiff addressed input

from Coastal Commission staff, including additional requirements and their opposition to AQMD's Rule 444 nuisance override. He referenced comments received from the AQMD with added requirements. He addressed contiguous beach areas, the 50-foot spacing requirement, and AQMD's statement that the City did not conduct appropriate measurements and that they may impose a penalty. He reported on next steps in the process and presented recommendations.

Discussion ensued regarding the execution of an agreement between the City and AQMD on the Alternative Fuel Demonstration Project and the Coastal Commission's involvement.

Mayor Curry indicated that this is a three-legged proposal and that all three of the legs need to be present relative to removal of a portion of the fire rings, conversion to clean fuel, and the use of alternative fuels in experimental rings.

City Manager Kiff thanked Randy Poulson for his help in the matter.

Council Member Gardner thanked staff because this has been a difficult issue and acknowledged that staff is trying to make the best out of a very difficult matter.

Mayor Curry commented on the City's efforts collectively to help make the City a healthy place to live. He noted that the City is confronted with significant health impacts due to wood smoke and referenced AQMD's findings regarding the impacts of wood-burning fire rings. He listed additional findings regarding the negative impacts of wood-burning fire rings and noted that they present evidence that the issue needs to be addressed. He acknowledged that beach fires are also part of the Southern California beach experience and addressed persuasive and non-persuasive arguments that have been made regarding the issue. He added that policies are designed to ensure the health of residents and visitors. He hoped that the issue will be approached as neighbors in order to protect the health of each other while accommodating residents and visitors who wish to continue to use the beach to enjoy the California lifestyle. He added that the approach will likely make nobody happy and stated that it is based on three prongs, including a reduction in the number of wood-burning fire rings by approximately 50%, use of clean-burning fuel in remaining fire rings, and the introduction of alternative fuel rings (natural gas) for use by large groups. He stated that he does not support expanding the profile of where fire rings can be placed on the beach.

Frank Peters thanked Mayor Curry for his remarks and commented on the importance of family and health. He addressed the health threats produced by wood-burning fire rings and noted that the campaign to raise awareness of the dangers of wood smoke has been challenging and frustrating, but also satisfying. He commented positively on the City Manager's testimony before the Coastal Commission and asked that Council send the City Manager back before the Coastal Commission with a resolute conviction that the City cares about the health and safety of its citizens and all those who visit, will not be placing a staff member or contractors at the beach to monitor the behavior of fire pit patrons because to do so will risk that person's health, and provide a mandate that the City will not allow any toxic fire pits on the City's beaches.

In response to Council Member Selich's question regarding collection of fuel charges relative to the alternative-fuel pits, City Manager Kiff presented possible options, but noted that staff is waiting for Council direction prior to fully investigating these systems.

Charles Farrell addressed particulate emissions from one beach bonfire, noting that it equals second-hand smoke from 800 cigarettes. He stated that harmful health effects from beach bonfires are unquestionable and that wood-smoke particulates are Class 1 carcinogens, the most dangerous carcinogens known to man. He believed that the City's neighborhoods are under siege, commented on the distance of fire pits from residences, and stated that the only solution is to remove all fire rings. He urged Council to ban this activity.

Roy Englebrecht, Parks, Beaches and Recreation Commissioner, commented positively on City Manager Kiff's report. He discussed Council's prior direction to the Parks, Beaches and Recreation Commission regarding the matter of fire rings and their subsequent action and consideration of possible alternatives to removing all of the rings. He indicated that he discussed the possibility of alternative fuel fire rings, but was booed for the suggestion. Mr. Englebrecht stated that the issue was not about smoke and health. He noted that he will be running for City Council in 2014 and stated that, if he is elected, he will do whatever it takes to ensure that the fire rings will be repaired, replaced, and returned so that the millions of people that have enjoyed the fire rings for 50 years will have a chance to enjoy them for another 50 years.

Dr. Edward O'Neil, retired Professor of Environmental Health at the UCLA School of Public Health, commented on the number of fire rings at Balboa Pier and stated that the health effects of these are unacceptable because they are unsafe and unhealthy. He urged Council to remember the importance of the people's health.

Kelly Oh stated that Council should be concerned over potential litigation due to smoke exposure. She addressed the number of people living on the Balboa Peninsula and wondered if Council is ready to face the financial impacts of lawsuits from people who have been constantly exposed to wood smoke. Ms. Oh stated that she and her family live with daily smoke in their apartment. She spoke in favor of removing the fire pits in front of the Balboa Pier and commented on challenges with enforcing the use of clean-burning fuels.

Joanna Oh presented testimony regarding smoke related to wood-burning fire pits. She urged Council to eliminate wood-burning fire pits, believing them to be a public safety issue.

Ian Mac Innes stated that he has not done enough research regarding the negative impacts of wood-burning fires, but took issue regarding the amount of trash burned and left on the beach. He commented on the possibility of using propane and Mayor Curry noted that it is not as safe as natural gas.

Randy Poulson commented on a safe idea he developed called "cleanflame." He encouraged the public to visit cleanflame.com to learn more about the product.

Ed O'Neil voiced support for eliminating the fire pits, believing that they are an incredible nuisance to nearby residents in addition to being harmful to public health.

Sean Torbelson, Long Beach, believed that the City should let the AQMD be the experts on the issue especially as it regards to health.

Barbara Peters noted that the recommendations rely on a spacing plan that the AQMD says does not meet regulations. Further, they believe that Newport Beach is a contiguous beach area. She stated that she has never had the impression that the AQMD is looking for the City to keep as many fire rings as possible and spread them out on the beach. She pointed out that the AQMD's initial proposal was to ban all fire rings within the district. She added that the only alternative to take the carcinogens off the beach is to declare the fire rings a public nuisance and remove them all. She noted that some Coastal Commission Members deferred to the AQMD at the public hearing last March. She added that the Commission asked AQMD for advice and they got it. If they do not like it, it should not be the City's responsibility to fix it. It is the City's responsibility however, to comply with Rule 444. Aside from removing them, she stated that the single best thing Council could do, would be to vote for 100-foot spacing to comply with the Rule and the next best thing would be to move forward with alternative fuels.

Elizabeth Shafer expressed support for the proposed alternative-fuel pilot project and suggested replacing all wood-burning fire rings with alternative fuels. She spoke about the serious health effects of wood-burning fire rings, including asthma. She urged Council to consider the health

of residents of the community.

Jim Mosher agreed with the City Manager regarding the contiguous beach area issue, noting that it is the law. He addressed the issue of alternative fuels, adding that it would require a modification of the law. He commented about the use of charcoal in fire pits and believed that the City is having a problem because there has been an absence of education and enforcement. He also addressed the lack of signage in languages other than English.

Doug Swardstrom, Friends of the Fire Rings, commented on a survey of Orange County and City residents. He indicated that the majority of residents do not believe that the fire rings should be removed and did not agree with Council's prior action to remove fire rings in City beaches or to replace them with gas-burning fire rings. In response to Mayor Curry's question, he believed that the studies regarding the effects of wood-burning fire rings are inconclusive and that Council should wait until the studies are finished.

Jason Pitken believed that everyone should be more involved in the matter and that Council should take into consideration how the citizens of Newport Beach feel about the issue. He stated that he was shocked that the opinion of the World Health Organization was quoted and commented on Council's claim of being environmentalists while, two weeks ago, it was against increasing recycling diversion rates. He discussed global-warming conspiracy theories and rising taxes on docks, and urged Council to listen to the people and not rush into judgments.

Mayor Pro Tem Hill noted that he has been involved in this matter for years and stated that he would not describe it as a rush.

Melinda Luthin, Attorney representing Friends of the Fire Rings, stated that they have requested judicial review of AQMD's rule regarding beach fire rings. She asked that, until the matter is fully adjudicated, Council refrain from attempting to remove or enforce in any way, the burn rules. She indicated that AQMD's decision was based on diesel fuel particulate matter which is incompatible with wood smoke.

Dr. Edward O'Neil noted that the World Health Organization was not responsible for the comment on Class 1 carcinogens, but rather the International Agency for Research on Cancer (IARC).

Dr. Jack Larson stated that he is interested in clean air and commented on the photo presented of Big Corona and the smoky conditions due to wood-burning fire pits. He reported that he is not concerned about what organization does what, but he is concerned about having clean air to breathe.

Dan Leonard, President of the Breakers Drive Homeowners Association, emphasized that the statement that residents are using this as an excuse to keep people away from the beach is false. He commented on the harmful effects of smoke from wood-burning fire pits and reported that many of his neighbors have contracted and have died of cancer. He urged Council to determine that fire pits are a public nuisance and that absent that, Council take all the steps necessary to implement Rule 444. He added that residents welcome the design implementation of alternative-fuel burning fire pits. He hoped that Council will adhere to the Rule, space the fire pits 100-feet apart, and make public health a priority in making its decision.

Council Member Gardner acknowledged the challenges involved in this issue and stated that Council and the AQMD has tried to come up with a compromise and provide a chance to experiment. She believed that the proposal addresses health aspects while still providing fire pits. She stated that she will support staff's recommendations.

Council Member Petros commented on Council's prior action to remove the fire rings and noted that it was done by a different Council. He stated that he is unconcerned about what the

AQMD or Coastal Commission will do, and stated that he believes in the fire rings and does not find the AQMD studies to be conclusive. However, he noted that this represents an earnest attempt at a compromise where traditions can be maintained while cleaning them up. He stressed the need to set aside the resources to enforce and educate the public, and indicated that he will be supporting staff's recommendations.

Council Member Henn commented on the number of fire rings to be removed, believing it is not significant and it will improve quality of life. He pointed out the number of fire rings in Huntington Beach and believed that the proposed compromise is reasonable.

Council Member Selich expressed concerns regarding the proposed location of the gas fire rings. City Manager Kiff hoped that Council will give the direction to allow the flexibility for staff to place fire rings in appropriate locations.

Council Member Selich preferred keeping the alternative-fuel fire rings within the footprint of existing fire rings. He wondered regarding the benefit of larger, group fire rings and stated that he would like to see a study regarding retrofitting existing fire rings to meet the requirements of the Demonstration Project.

Mayor Pro Tem Hill believed that this is a local issue and that the AQMD and Coastal Commission should stay out of it. He noted that the issue has been discussed for years, commented on the outlaw of wood-burning fireplaces, and stated that the health issues are real. He agreed with trying something new relative to alternative-fuel fire pits and believed that there is nothing wrong with experimenting. He indicated that he will support staff's recommendations.

Mayor Curry agreed that this has become a proxy fight and at the end of the day, Council is judged by how well it takes care of all of the citizens. He reiterated the elements of the three-part plan.

Council Member Henn suggested getting more information about including the plumbing into existing fire pits for the Demonstration Project to convert them into natural gas and the associated costs.

Motion by Mayor Curry, seconded by Council Member Henn to direct staff to take the necessary steps to follow the Air Quality Management District's (AQMD) Rule 444, including, but not limited to: 1) spacing wood-fueled rings at a minimum of 50' from each other while retaining the same overall footprint within which sixty (60) rings are located today; 2) limiting the type of material burned in wood-fueled rings to natural firewood and/or low-smoke burning logs, provided that the City staff reviews and approves the type of firewood or low-smoke burning logs; 3) authorizing the City staff or a vendor to provide for the sale of the natural firewood and/or low smoke burning logs in locations proximate to the remaining wood-fueled fire rings, along with appropriate enforcement and supervision; 4) in addition to the 27 natural wood burning rings, participating with the AQMD in reviewing, permitting, installing, and supervising any alternative-fuel fire ring demonstration project at the Balboa Pier area (Phase I) and/or the Corona del Mar State Beach area (Phase II), provided that safety concerns are addressed to the City's satisfaction; 5) authorizing the Mayor to enter into any agreement associated with the AQMD Demonstration Project; 6) providing for the appropriate rules, regulations, enforcement and supervision of Items #2 - #4 above; 7) seeking permit approval by the California Coastal Commission or any other agency (where applicable); and 8) taking any other action consistent with the above approach.

The motion carried by the following roll call vote:

Ayes: Council Member Gardner, Council Member Petros, Mayor Pro Tem Hill, Mayor Curry,
Council Member Selich, Council Member Henn
Absent: Council Member Daigle

XIX. MOTIONS FOR RECONSIDERATION - None

XX. ADJOURNMENT - Adjourned at 9:39 p.m. in memory of Lucille Kuehn

Recording Secretary

Mayor

City Clerk