

**MINUTES
CITY COUNCIL
REGULAR MEETING
November 13, 2007
City Council Chamber
One Civic Center Plaza**

CALL TO ORDER

A regular meeting of the Irvine City Council was called to order at 4:02 p.m., on November 13, 2007, in the City Council Chamber, Irvine Civic Center, One Civic Center Plaza, Irvine, California; Mayor Krom presiding.

ROLL CALL

Present:	5	Councilmember:	Steven Choi
		Councilmember:	Sukhee Kang
		Councilmember:	Christina Shea
		Mayor Pro Tem:	Larry Agran
		Mayor:	Beth Krom

1. CLOSED SESSION

City Attorney Phil Kohn noted two items will be considered by the City Council in Closed Session as follows:

Anticipated Litigation pursuant to Government Code §54956.9, Subdivision b, in which there is a significant exposure to litigation. In general terms, the matter relates to a difference of opinion between the staff and the Maguire Properties organization, with respect to the application of affordable housing requirements of a certain development; and

The second item is a matter of existing litigation pursuant to Government Code §54956.9, Subdivision a, for the lawsuit entitled Newpath Networks, LLC vs. the City of Irvine.

The City Council convened in Closed Session at 4:02 p.m.

- 1.1 CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION - Government Code § 54956.9(b); significant exposure to litigation (one potential case)**
- 1.2 CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION (Pursuant to Government Code Section 54956.9(a)) Newpath Networks, LLC v. City of Irvine, U.S. District Court Case No. SACV06-550-JVS.**

RECONVENE

Mayor Krom reconvened the meeting at 5:30 p.m.

City Attorney Phil Kohn offered the following comments with respect to Item No. 1.1, relating to the Maguire Properties matter:

“There was no reportable action taken during the Closed Session, however, it should be noted that Councilmembers Shea and Choi excused themselves from that Closed Session without elaboration indicating their belief that there was not a proper basis for a Closed Session. For the benefit of the members of the community, as well as the remaining members of the City Council, I would like to say that the City Attorney's Office is of the firm unequivocal and confident position that the Closed Session was properly conducted. The announcement of the Closed Session made reference to Subdivision (b) of Government Code Section 54956.9 which authorizes a Closed Session where, and I quote, ‘A point has been reached where in the opinion of the Legislative body of the local agency, on the advise of it's legal counsel and based on existing facts and circumstances that there is a significant exposure to litigation against the local agency.’ In this particular instance, there has been such advice given by the City Attorney's Office. There was such an opinion formed by the City Council that in fact there were facts and circumstances that created a significant exposure to litigation against the City. And, I would close by also noting that legal counsel for Maguire Properties fully concurs with that assessment.”

In addition, City Attorney Phil Kohn noted the following action was taken during Closed Session on Item No 1.2, Newpath Network's litigation:

“The item relating to Newpath Networks application currently scheduled for November 27, before the City Council is cancelled. There will be no public hearing conducted by the City Council on that evening, and instead the matter will be first heard by the City's Planning Commission on December 6, preceded by all appropriate notices to be given. It is the expectation that there will be a subsequent hearing conducted by the City Council at a date later to be determined in January, 2008.”

Councilmember Shea read the following statement into the record: "After careful review of the discussion in Closed Session, in reviewing all the documentation, I have concluded that the discussion item no. 1.1 between the City and Maguire Properties in Closed Session is improper, it's inappropriate and it's illegal, and I will not participate in this matter again."

Councilmember Choi made the following remarks relative to Item No. 1.1: "Based upon my study, I have also grave concern about the legitimacy of that Closed Session dealing with Maguire. Three "I's" Councilmember Shea has indicated, it could be improper, inappropriate or even illegal upon my judgment. Also, I did not attend that Closed Session. Clearly there is some difference of opinion between me and the City Attorney."

PLEDGE OF ALLEGIANCE

Mayor Krom led the Pledge of Allegiance.

MOMENT OF SILENCE

Mayor Krom requested a moment of silence.

MUSICAL PRESENTATION

Mayor Krom introduced Kelsy Paulsen, Brittney Wheeler, Christie Foos, and Brooke Fronke of Concordia University's Acclaim; who performed "God Bless Our Native Land" and "Swing Down Chariot."

2. PRESENTATIONS

The following presentation was made:

3. PRESENTATIONS

2.1 Recognition of Irvine Global Village Festival Sponsors; and

Special recognition by City Manager, Sean Joyce, to Toni Pang, Community Services Superintendent of Cultural Arts & Activities; and Libby Cowan, Community Services Manager; and Paula Burrier-Lund, Director of Community Services for a job well done coordinating the efforts of the festival.

City Manager Joyce presented Mya Sanders, Community Services Supervisor - Cultural Arts, with a token of appreciation for her outstanding work related to the coordination of the festival.

INTRODUCTIONS

City Manager, Sean Joyce introduced Gina Park, Assistant to the City Manager.

Councilmember Kang introduced Sid Khanijou, Council Executive Assistant.

CITY MANAGER'S REPORT

There was no City Manager's Report.

ANNOUNCEMENTS/COMMITTEE REPORTS/COUNCIL REPORTS

The following announcements were made:

- Mayor Krom reported she represented the City of Irvine at the U.S. Conference of Mayors Summit on Climate Change in Seattle, Washington, the week of November 5;
- The Irvine Multicultural Association and Orange County Turkish American Association presents IMA Film Series on Wednesday, November 14, from 6:00 – 9:00 p.m., at Irvine Civic Center, One Civic Center Plaza;
- Healthy Living Expo 2007 will be held on Friday, November 16, from 9:00 a.m. - 12:30 p.m., at the Lakeview Senior Center, located at 20 Lake Road;
- Joyful Jingles will be held on Saturday, December 1, at 3:00 p.m. at Irvine Civic Center, One Civic Center Plaza; and
- Many residents attended the Veteran's Day event held on Sunday, November 11, 2007, at Bill Barber Memorial Park.

ADDITIONS AND DELETIONS

There were no additions or deletions to the agenda.

4. CONSENT CALENDAR

ACTION: Moved by Councilmember Choi, seconded by Councilmember Kang, and unanimously carried to approve Consent Calendar Item Nos. 3.1 through 3.11, with the exception of Item No. 3.10, as noted below:

3.10 Participation in the County of Supervisors Association of California Excess Insurance Authority Health Program

3.1 MINUTES

ACTION:

- 1) Approved the minutes of a regular City Council meeting held on October 23, 2007.

- 2) Approved the minutes of an adjourned regular City Council meeting held on October 23, 2007.

3.2 PROCLAMATION

ACTION: Proclaimed November 14, 2007 as "World Diabetes Day."

3.3 WARRANT AND WIRE TRANSFER RESOLUTION - AT&T

ACTION: Adopted RESOLUTION NO. 07-135 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRVINE ALLOWING CERTAIN CLAIMS AND DEMANDS OF AT&T AND SPECIFYING THE FUNDS OUT OF WHICH THE SAME ARE TO BE PAID

Mayor Krom abstained.

3.4 WARRANT AND WIRE TRANSFER RESOLUTION - BANK OF AMERICA

ACTION: Adopted RESOLUTION NO. 07 -136- A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRVINE ALLOWING CERTAIN CLAIMS AND DEMANDS OF BANK OF AMERICA AND SPECIFYING THE FUNDS OUT OF WHICH THE SAME ARE TO BE PAID

Mayor Pro Tempore Agran abstained.

3.5 WARRANT AND WIRE TRANSFER RESOLUTION

ACTION: Adopted RESOLUTION NO. 07-137 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRVINE ALLOWING CERTAIN CLAIMS AND DEMANDS AND SPECIFYING THE FUNDS OUT OF WHICH THE SAME ARE TO BE PAID

3.6 LAND SWAP BETWEEN THE CITY OF IRVINE AND THE IRVINE COMPANY; STONEGATE AND OAKCREEK (PLANNING AREAS 9B AND 12)

ACTION:

- 1) Authorized the Mayor to execute an Agreement between the City of Irvine and The Irvine Company for the exchange of property. **(Contract No. 5801)**
- 2) Authorized the Mayor to execute a Quitclaim Deed for a portion of former Bee Canyon Landfill Access Road to be transferred to The Irvine Company. **(Deed No. 1132)**

3.7 FINAL TRACT MAPS -- NOTICE OF REVIEW OF TRACT MAP NOS. 17217 AND 17179

ACTION: Received and filed.

3.8 AVALON JAMBOREE VILLAGE DENSITY BONUS HOUSING AGREEMENT

ACTION: Approved Density Bonus Housing Agreement with AvalonBay Communities, Inc., a Maryland corporation. **(Contract No. 5799)**

3.9 JOINT POWERS AGREEMENT – CALIFORNIA INSURANCE POOL AUTHORITY

ACTION: Adopted RESOLUTION NO. 07-138 – A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRVINE ADOPTING THE AMENDED CALIFORNIA INSURANCE POOL AUTHORITY (CIPA) JOINT POWERS AGREEMENT

3.10 PARTICIPATION IN THE COUNTY OF SUPERVISORS ASSOCIATION OF CALIFORNIA EXCESS INSURANCE AUTHORITY HEALTH PROGRAM

This item was removed from the Consent Calendar at the request of Councilmember Shea who requested clarification on the annual process and cost program to which Tom Bokosky, Risk Management Administrator responded.

ACTION: Moved by Councilmember Shea, seconded by Councilmember Kang, and unanimously carried to:

- 1) Adopt RESOLUTION NO. 07-139 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRVINE AUTHORIZING PARTICIPATION IN THE COUNTY OF SUPERVISORS ASSOCIATION OF CALIFORNIA (CSAC) EXCESS INSURANCE AUTHORITY HEALTH PROGRAM (EIAHEALTH)
- 2) Authorize the City Manager or his designee to sign the CSAC Joint Powers Agreement and EIAHEALTH Memorandum of Understanding. **(Contract No. 5800 and 5808)**

3.11 CONTINUATION OF EXISTENCE OF LOCAL EMERGENCY

ACTION: Adopted RESOLUTION NO. 07-140 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRVINE PROCLAIMING THE

CONTINUATION OF THE LOCAL EMERGENCY RESULTING FROM
THE SANTIAGO CANYON WILDFIRE

END OF CONSENT CALENDAR

5. PUBLIC HEARINGS

4.1 BUILDING AND FIRE CODE ADOPTION

Mayor Krom declared the public hearing open at 6:17 p.m.

Eric Tolles, Deputy Director of Community Development/Chief Building Official; Laura Blaul, Fire Marshall and Vahid Toossi, Fire Protection Engineer with the Orange County Fire Authority, were available to answer questions.

There was no public testimony.

ACTION: Moved by Councilmember Kang, seconded by Councilmember Shea, and unanimously carried to close the public hearing at 6:28 p.m.

ACTION: Moved by Councilmember Choi, seconded by Councilmember Shea, and unanimously carried to:

Approve second reading, read by title only, and adopt ORDINANCE NO. 07-17 - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRVINE, CALIFORNIA, AMENDING CHAPTERS 1, 2, 3, AND 4 OF DIVISION 9 OF SECTION 5 OF THE IRVINE MUNICIPAL CODE PERTAINING TO BUILDING AND FIRE CODE REGULATIONS

4.2 CONSTRUCTION AND DEMOLITION RECYCLING ORDINANCE

Mayor Krom declared the public hearing open at 6:29 p.m.

Marcia Beckett-Klosterman, Fiscal and Environmental Program Administrator; and Mike Byrne, Senior Management Analyst, presented the staff report.

Richard Ludt, Interior Removal Specialist, Inc., spoke in support of the ordinance, however, noted exception of section 6-7-902 within the ordinance, which does not specifically spell out "recycling facility."

Bryan Starr, Building Industry Association (BIA) of Orange County, spoke in support of the ordinance.

Mike Le Blanc, The Irvine Company, clarified the applicant is not responsible for recycling the material once it is delivered to the facility.

City Council discussion included: Reference to “recycling facility” in section 6-7-902; clarification that ordinance is more restrictive to unauthorized haulers; clarification that a list of haulers is provided to developers at time permits are taken out; mechanism the City uses to determine that debris delivered to material recovery facilities is being recycled; clarification of how ordinance will be enforced; clarification of concrete and asphalt construction and demolition process; and dust control standards at project locations.

ACTION: Moved by Mayor Pro Tempore Agran, seconded by Councilmember Kang, and unanimously carried to close the public hearing at 7:04 p.m.

ACTION: Moved by Mayor Pro Tempore Agran, seconded by Councilmember Kang, and unanimously carried to:

Introduce for first reading and read by title only ORDINANCE NO. 07-18 - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRVINE ADDING TITLE 6, DIVISION 7, CHAPTER 9 RELATING TO THE DIVERSION OF CONSTRUCTION AND DEMOLITION WASTE TO THE MUNICIPAL CODE, AND AMENDING TITLE 6, DIVISION 7, CHAPTER 2 OF THE MUNICIPAL CODE BY ADDING SECTION 6-7-204 RELATING TO UNAUTHORIZED BINS

As amended to incorporate reference to recycling facility in Section 6-7-902.

6. COUNCIL BUSINESS

5.1 RECOMMENDATIONS OF THE ENVIRONMENTAL TASK FORCE

Brian Fisk, Manager of Planning and Redevelopment, presented the staff report.

City Council discussion included: How Sustainability Element relates to the zoning code; clarification of inclusion of IBC shuttle in Element; letter to U.S. Conference of Mayor's accepting Climate Protection Agreement; development of Energy Plan; cost associated with implementation; and staff to return with estimated cost in moving forward with implementation of the program and with an explanation of the Task Force directive, including purpose and goals.

ACTION: Moved by Mayor Krom, seconded by Mayor Pro Tempore Agran, and unanimously carried to:

- 1) Direct staff to include a Sustainability Element in the next update of the City's General Plan, projected for 2010.
- 2) Direct staff to ensure that all efforts are being made to support the integration of effort on environmental stewardship and sustainability initiatives throughout the municipal organization.
- 3) Direct staff to develop written policies on best management practices for sustainable community activities as part of the City's municipal operations (i.e. pest management program, use of water-based paints, and sustainable landscape guidelines).
- 4) Direct staff to develop print and electronic material for the promotion of the City's environmental management activities to help educate and inform the community and engage active participation in environmental conservation efforts.
- 5) Direct staff, in consultation with the City Manager, to establish an Environmental Committee comprised of members of the public associated with major organizations or institutions in town to be appointed by Councilmembers for the purpose of creating an additional framework for participation in the City's efforts to advance environmental initiatives and the proposed structure of the committee to be brought back to the City Council for approval.

5.2 SECOND AMENDMENT OF NONEXCLUSIVE FRANCHISE AGREEMENT FOR COMMERCIAL SOLID WASTE COLLECTION

Marcia Beckett-Klosterman, Fiscal and Environmental Program Administrator; and Mike Byrne, Senior Management Analyst presented the staff report.

Jason Rush, on behalf of Brad Timmons, Waste Disposal, Inc. spoke in support of this item.

David Ross, Waste Management of Orange County, spoke in support of the proposed ordinance.

City Council discussion included: Concern with offering an incentive to haulers who purchase new clean fuel vehicles for collection; concern with proposal in IBC with respect to mixed use of bins in residential areas; increasing recycling facilities at commercial shopping centers; concern with mixed use of residential and non-exclusive haulers within the IBC; and concern with language on shared solid waste bins.

ACTION: Moved by Mayor Krom, seconded by Councilmember Choi, and unanimously carried to:

- 1) Approve Amended Nonexclusive Franchise Agreement for Commercial Solid Waste Collection.
- 2) Introduce for first reading and read by title only ORDINANCE NO. – 07-19 - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRVINE AMENDING THE NONEXCLUSIVE FRANCHISE AGREEMENT FOR COMMERCIAL SOLID WASTE COLLECTION

END OF COUNCIL BUSINESS

PUBLIC COMMENTS

There were none.

ADJOURNMENT

Moved by Councilmember Choi, seconded by Councilmember Shea, and unanimously carried to adjourn at 9:11 p.m.



MAYOR OF THE CITY OF IRVINE



CITY CLERK OF THE CITY OF IRVINE

November 27, 2007