

CITY OF SANTA MONICA

CITY COUNCIL MINUTES

APRIL 18, 2017

A special meeting of the Santa Monica City Council was called to order by Mayor Winterer at 4:32 p.m., on Tuesday, April 18, 2017, at City Council Chambers, 1685 Main Street.

Roll Call: Present: Mayor Ted Winterer
Mayor Pro Tem Glean Davis
Councilmember Sue Himmelrich
Councilmember Kevin McKeown
Councilmember Pam O'Connor (*arrived at 4:38 p.m.*)
Councilmember Terry O'Day (*arrived at 4:50 p.m.*)
Councilmember Tony Vazquez (*arrived at 7:30 p.m.*)

Also Present: City Manager Rick Cole
Interim City Attorney Joseph Lawrence
City Clerk Denise Anderson-Warren

CONVENE/PLEDGE

On order of the Mayor, the City Council convened at 4:32 p.m., with all members present except Councilmembers Vazquez, O'Connor, and O'Day. Assistant City Manager Elaine Polachek led the assemblage in the Pledge of Allegiance.

CLOSED SESSIONS

Member of the public Denise Barton (time donated by Lily Vickson) commented on closed sessions.

*Councilmember O'Connor
arrived at 4:38 p.m.*

On order of the Mayor, the City Council recessed at 4:37 p.m., to consider closed sessions and returned at 7:04 p.m., with Councilmember Vazquez absent, to report the following:

*Councilmember O'Day
arrived at 4:50 p.m.*

**1.A. Public Employee Evaluation:
Title: City Manager**

The Interim City Attorney advised this matter was heard with no reportable action taken.

**1.B. Conference with Legal Counsel – Existing Litigation –
Litigation has been initiated formally pursuant to Government Code
Section 54956.9(d)(1): City of Santa Monica v. United States of
America, U. S. District Court Case Number CV 13-08046**

The Interim City Attorney advised this matter was heard with no reportable action taken.

1.C. Conference with Legal Counsel – Existing Litigation – Litigation has been initiated formally pursuant to Government Code Section 54956.9(d)(1): National Business Aviation, Inc., et al, v. Michael P. Huerta, Federal Aviation Administrator, U. S. Court of Appeals, District of Columbia Circuit Case No. 17-1054

The Interim City Attorney advised this matter was heard with no reportable action taken.

1.D. Conference with Legal Counsel – Existing Litigation – Litigation has been initiated formally pursuant to Government Code Section 54956.9(d)(1): Ketron v. City of Santa Monica, Jailer Greer and Jailer Dimas, U. S. District Court Los Angeles Case Number 2:16-cv-01478 MWF

The Interim City Attorney reported this was a civil rights claim, which alleges the use of excessive force by Police Department Jailers when someone was taken in for booking. Ms. Ketron was hit by one of the Police Department employees and suffered significant facial fractures, and requested approval of a Settlement in the amount of \$212,500.

Motion by Councilmember McKeown, seconded by Mayor Pro Tem Davis, to approve Settlement Agreement No. 10447 (CCS) in the amount of \$212,500. The motion was approved by the following vote:

AYES: Councilmembers O’Connor, O’Day, Himmelrich, McKeown,
Mayor Pro Tem Davis, Mayor Winterer

NOES: None

ABSENT: Councilmember Vazquez

1.E. Conference with Labor Negotiator-City Negotiator: Donna C. Peter, Director of Human Resources and Liebert, Cassidy and Whitmore Legal Counsel-Bargaining Units: Administrative Team Associates (ATA), California Teamsters Local 911 (Teamsters), Management Team Associates (MTA), Public Attorneys Union (PAU), Supervisory Team Associates (STA), Municipal Employees Assoc (MEA), Firefighters Local 1109 IAFF (Local 1109), Fire Executive Mgmt Assoc (FEMA), Police Officer Assoc (POA), SMART-TD

The Interim City Attorney advised this matter was heard with no reportable action taken.

1.F. Conference with Legal Counsel – Potential Litigation: Consideration of whether to initiate litigation pursuant to Government Code Section 54956.9(d)(4): 1 case – 401 Ocean Avenue

The Interim City Attorney advised this matter relates to 401 Ocean Avenue. The property was conveyed to Santa Monica College with the contingent interest to the City of Santa Monica, and another contingent interest to the State of California. There is a dispute between the current property owners and the City of Santa Monica regarding the value of the City's interest in the property. The parties have reached a settlement which calls for a 50/50 split of the net proceeds of the sale of the property. The property is in escrow with a purchase price of \$9 million, with the projected closing cost, the City and the current owners splitting the net proceeds 50/50 will each receive approximately \$4,246,000. The exact amount could change slightly depending on the final closing cost.

Motion by Councilmember McKeown, seconded by Councilmember Himmelrich, to approve Settlement Agreement No. 10448 (CCS), to accept over \$4.2 for the sale of the property located at 401 Ocean Avenue. The motion was approved by the following vote:

- AYES: Councilmembers O'Connor, O'Day, Himmelrich, McKeown,
Mayor Pro Tem Davis, Mayor Winterer
NOES: None
ABSENT: Councilmember Vazquez

1.G. Conference with Legal Counsel – Existing Litigation – Litigation has been initiated formally pursuant to Government Code Section 54956.9(d)(1): Pico Neighborhood Association, Maria Loya and Advocates for Malibu Public Schools v. City of Santa Monica, Los Angeles Superior Court Case Number BC 616 804

The Interim City Attorney advised this matter was heard with no reportable action taken.

1.H. Conference with Legal Counsel – Existing Litigation – Litigation has been initiated formally pursuant to Government Code Section 54956.9(d)(1): City of Santa Monica v. Gharib, et al., Santa Monica Superior Court Case Number SC 123 770

The Interim City Attorney advised this is a proposed settlement in a tenant harassment matter. A tenant was subjected to unlawful tenant harassment in violation of City law, which included a series of unlawful detainer actions, a failure to accept rent and then claim that rent had not been provided. It was recommended that the City Council accept a settlement from Mr. Gharib in the amount of \$30,000.

Motion by Mayor Pro Tem Davis, seconded by Councilmember Himmelrich, to approve Settlement Agreement No. 10449 (CCS) to accept the amount of \$30,000. The motion was approved by the following vote:

- AYES: Councilmembers McKeown, Himmelrich, O'Day, O'Connor,
Mayor Pro Tem Davis, Mayor Winterer
NOES: None
ABSENT: Councilmember Vazquez

REPORT ON COUNCIL TRAVEL

There was nothing to report on Council travel.

CONSENT CALENDAR:

All items were considered and approved in one motion unless removed by a Councilmember for discussion.

The City Clerk announced that there was a revised Oaks form for Item 3-H, 3-D, and revised resolutions on Item 3-D.

There were no members of the public present to comment on the Consent Calendar.

Motion by Councilmember Himmelrich, seconded by Councilmember McKeown, to approve the Consent Calendar, reading resolutions by title only and waiving further reading thereof. The motion was approved by the following vote:

- AYES: Councilmembers O'Connor, O'Day, Himmelrich, McKeown,
Mayor Pro Tem Davis, Mayor Winterer
NOES: None
ABSENT: Councilmember Vazquez

MINUTES

3.A. Minutes for the City Council - Regular Meeting - Feb 14, 2017, were approved.

MINUTES

3.B. Minutes for the City Council - Regular and Special Joint Meeting - Feb 28, 2017, were approved.

MINUTES

3.C. Approval of Minutes for the City Council - Special Meeting - Mar 25, 2017, were approved.

**STREETLIGHT
ASSESSMENT**

3.D. Accept Streetlight Assessment Petitions and Set a Public Hearing, was approved and adopted.

Recommended Action

Staff recommends that the City Council:

1. Accept the signed petitions for each Assessment District;
2. Approve the Preliminary Engineer's Reports for each Assessment District; and
3. Approve Resolution Nos. 11035 (CCS), 11036 (CCS), and 11037(CCS) of intent, setting the public hearings on July 25, 2017 for the formation of the following street light assessment districts:
District "A" - 10th Street between Carlyle Ave. and Marguerita Ave.
District "B" - 25th Street between Idaho Ave. and Washington Ave.
District "C" - 27th Street between Pico Blvd. and Pearl Street.
4. Authorizing the City's 50% contribution to the assessments in the event that the assessment districts are formed after counting ballots.

**PURCHASE ELECTRIC
VEHICLES**

3.E. Bid Award for the Purchase of 17 Good Earth FireFly Electric Vehicles, was approved.

Recommended Action

Staff recommends that the City Council:

1. Award Bid #4259 to ev Transportation Services, Inc., a Massachusetts-based company, for the purchase and delivery of 17 Good Earth FireFly Electric Vehicles;
2. Authorize the Purchasing Services Manager to issue a purchase order with ev Transportation Services, Inc. for the purchase and delivery of 17 Good Earth FireFly Electric Vehicles in an amount not to exceed \$837,747 for one year.

**1329 CALIFORNIA
AVENUE**

3.F. Resolution No. 11038 (CCS) entitled "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA MONICA ACCEPTING AND APPROVING THE FINAL SUBDIVISION MAP FOR PARCEL NO. 72225 TO SUBDIVIDE A PROPERTY AT 1329 CALIFORNIA AVENUE", was approved.

Recommended Action

Staff recommends that the City Council adopt the attached resolution approving Final Tract Map No. 72225.

**AIRPORT AND BEACH
PARKING LOT PAVING**

3.G. Award Professional Services Agreement to provide Engineering Design Services for Airport and Beach Parking Lot Paving, was approved.

Recommended Action

Staff recommends that the City Council:

1. Award RFP# 2492 to Anderson-Penna Partners (APP), a California-based company, to provide pavement design and engineering services for airport and beach parking lot paving;
2. Authorize the City Manager to negotiate and execute Agreement No. 10446 (CCS) with Anderson-Penna Partners (APP), in an amount not to exceed \$91,080 for one year, with two additional 1-year renewal options in the amount of \$91,080 on the same terms and conditions for a total amount not to exceed \$273,240 over a 3-year period, with future year funding contingent on Council budget approval.

SWEEPER VEHICLES

3.H. Purchase of Three Compressed Natural Gas Regenerative Air Street Sweeper Vehicles, was approved.

Recommended Action

Staff recommends that the City Council authorize the Purchasing Services Manager to issue a purchase order to Mar-Co Equipment Company, a California-based company, for the purchase and delivery of three Compressed Natural Gas Truck Mounted Regenerative Air Street Sweepers. This recommended award is made as an exception to the competitive bidding process pursuant to Section 2.24.080 (b) and is for a total amount not to exceed \$956,389.

**ADMIN. PROCEEDINGS:
1530 2ND STREET**

6.A. Appeal (17ENT-0016) of the Planning Commission's Approval of a Conditional Use Permit (16ENT-0128) to Allow a Type 47 alcohol license in conjunction with a new full-service, 3,306 square foot 102 seat restaurant (Avery) comprised of 92 indoor dining seats (12 bar seats) and 10 outdoor seats located within a ground floor space of the Shore Hotel located at 1530 2nd Street, was presented.

Recommended Action

Staff recommends that the City Council deny the appeal and uphold the decision of the Planning Commission to approve a Conditional Use Permit to allow a Type 47 alcohol use in conjunction with a full service restaurant on a property located at 1530 2nd Street, based on the findings and subject to the conditions of approval attached to the report.

Ex-Parti Communication:

Councilmember McKeown read emails, had conversations with the appellant, spoke to Francis Engler, had a brief conversation with Danielle Wilson, and tried to reach Peter Trinh, but did not hear back from him before the Council meeting.

Councilmember Himmelrich spoke to Danielle Wilson, received emails from Chamber of Commerce, and emails from CLUE.

Mayor Pro Tem Davis had no individual contacts, but did received emails that were sent to the Council.

Councilmember O'Day met with Derrick Smith, Danielle Wilson of Unite HERE Local 11, and spoke to Chris Harding of Harding & Larmore.

Councilmember O'Connor did not speak with anyone, received emails as part of the public record.

Mayor Winterer read all of the emails as part of the public record, had a conversation with Eric Engler, Kevin Kozal and Tom Larmore, Elena Christopoulos of the Downtown Neighborhood Association, Denny Zane, Co-Chair of Santa Monica for Renters Rights, and spoke with Danielle Wilson who is part of the appellant team, and an email from Kevin Kozal on behalf of the applicant team, where questions were asked and answered about the alcohol license.

Councilmember Vazquez received emails, and met with HERE Union member Danielle Wilson and Derek Smith.

Councilmember Vazquez arrived at 7:30 p.m.

Questions were asked of staff including but not limited to: the purpose of a door leading to the alley; whether or not there are any Conditional Use Permit violations against the applicant or hotel owner, why is there a requirement for valet parking requirement, and could the city set a minimum charge for valet; why such early hours for alcohol at a restaurant.

Danielle Wilson and Francis Engler spoke for the Appellant and Kevin Kozal represented the Applicant.

Members of the public Nicole Phillis, Rabbi Neil Comess-Daniels, Tom Peters, Vivian Rothstein, Gabriella Rosco, and Shawn Landres spoke generally in support of the appeal.

Members of the public Denise Barton, Kristina Gong, Gauri Brienda-Ramnath, Daniel Hogan, Kyle Lewis, Elena Christopoulos, Richard Brand, Alex Caves, Mia Chang, Feisser Stone, George Ruiz, Wellington Moreno, Sherman L. Stacey, Brian Derro, Eli Kestenbaum, Carl Hansen, Jerry Rubin, and, Nabil Romero spoke generally in opposition of the appeal.

Considerable discussion ensued on topics including, but not limited to: whether or not there will be in-room dining, room service or delivery provided; whether or not a Conditional Use Permit (CUP) stays with the land or the restaurant; are all of the entities involved separate entities; does the CUP terminate automatically if the applicant does not continue; the legal issues surrounding the Coastal Commission and the Shore Hotel; concerns about issuing permits to a lessee when there is so much uncertainty with the lessor; this space on Second Street has been vacant for

a long period of time, so it makes sense to move forward; the automatic termination condition and what that means; and, the extended hours for alcohol, food delivery should only happen through the front of the hotel, like other deliveries to the hotel.

Motion by Councilmember McKeown, seconded by Councilmember Vazquez, to uphold the appeal. The motion failed by the following vote:

AYES: Councilmembers McKeown, Vazquez, Himmelrich
NOES: Councilmembers O'Day, O'Connor, Mayor Pro Tem Davis,
Mayor Winterer
ABSENT: None

Motion by Mayor Pro Tem Davis, seconded by Councilmember O'Connor, to deny the appeal, and pursuant to the Municipal Code, make the following findings:

- (a) The proposed use is one conditionally permitted within the subject district and complies with all of the applicable provisions of the "City of Santa Monica Comprehensive Land Use and Zoning Ordinance".
- (b) The proposed use would not impair the integrity and character of the district in which it is to be established or located.
- (c) The subject parcel is physically suitable for the type of land use being proposed.
- (d) The proposed use is compatible with any of the land uses presently on the subject parcel if the present land uses are to remain.
- (e) The proposed use would be compatible with existing and permissible land uses within the district and the general area in which the proposed use is to be located.
- (f) There are adequate provisions for water, sanitation, and public utilities and services to ensure that the proposed use would not be detrimental to public health and safety.
- (g) Public access to the proposed use shall be adequate.
- (h) The physical location or placement of the use on the site is compatible with and relates harmoniously to the surrounding neighborhood.
- (i) The proposed use is consistent with the goals, objectives, and policies of the General Plan.
- (j) The proposed use would not be detrimental to the public interest, health, safety, convenience, or general welfare.
- (k) The proposed use conforms precisely to the applicable performance standards contained in Subchapter 9.04.12, Section 9.04.12.010 and special conditions outlined in Subchapter 9.04.14, Section 9.04.14.010.
- (l) The proposed use will not result in an over concentration of such uses in the immediate vicinity,

And that the approval be conditioned on all of the findings and conditions that were imposed by the Planning Commission. They were the findings incorporated into the Staff Report, and with the two conditions: (1) any

deliveries would have to come through the front door of the Shore Hotel and (2) the rear door would not be available for public ingress and egress, and finally, (3) the hours for alcohol service on Weekends and Holidays 7 am – 2 am, and on Weekdays limited from 10 am – 2 am.

Mayor Winterer proposed the following friendly amendment: if given the condition that was imposed by the Planning Commission about if Full Flavor should vacate the premises, that it would be up to the Planning Director to make the determination whether a new restaurant operator was an independent third party, but instead of having the Planning Director make that determination, have the Planning Commission make the determination so that there is a Public Hearing and opportunity for people to voice any concerns they have. The amendment was considered friendly by maker and seconder, with the condition that there could also be an appeal to the City Council.

Mayor Winterer proposed an additional friendly amendment that no discounts or special deals on food not otherwise available to the public be offered to the guest of the Shore Hotel. The amendment was considered friendly by the maker and seconder.

The maker of the motion added an amendment to require that so long as the valet parking is required, that it be at a market rate for the Downtown Santa Monica area. The amendment was considered friendly by the seconder.

Councilmember McKeown made a friendly amendment to not allow this Conditional Use Permit to take effect until 30 days after the Coastal Commission is scheduled this summer. The motion was not considered friendly by the maker.

Motion by Councilmember McKeown to make an amendment to the motion, seconded by Councilmember Himmelrich, to not allow this CUP to take effect until 30 days after the Coastal Commission is scheduled this summer. The amendment to the motion failed by the following vote:

AYES: Councilmembers McKeown, Vazquez, Himmelrich
NOES: Councilmembers O'Connor, O'Day, Mayor Pro Tem Davis,
Mayor Winterer
ABSENT: None

Motion by Mayor Pro Tem Davis, seconded by Councilmember O'Connor, to deny the appeal with findings and the amendments. The motion was approved by the following votes:

AYES: Councilmembers O'Connor, O'Day, Mayor Pro Tem Davis,
Mayor Winterer

NOES: Councilmembers Himmelrich, Vazquez, McKeown
ABSENT: None

ORDINANCES:
LOBBYING
REGULATIONS

7.A. Introduction and First Reading of an Ordinance Amending the Lobbying Regulations, was presented.

Recommended Action

Staff recommends that the City Council introduce for first reading an ordinance amending Santa Monica Municipal Code Section 4.85 to update the current lobbyist regulations.

Members of the public Nancy Coleman, Zina Josephs, Mary Marlow, and Ellen Brennan spoke on the recommended action.

Motion by Councilmember McKeown, seconded by Mayor Pro Tem Davis, to introduce and hold first reading of the ordinance reading by title only and waiving further reading thereof, with the addition of changing the definition section (a) to Member of the City Council, and (d) Any person who is required to file a Statement of Economic Interest. The motion was approved by the following vote:

AYES: Councilmembers O'Connor, O'Day, Himmelrich, Vazquez, McKeown, Mayor Pro Tem Davis, Mayor Winterer
NOES: None
ABSENT: None

STAFF
ADMINISTRATIVE
ITEMS:
CITY BOARD POLICIES

8.A. Policies for City Boards, Commissions, Committees, Task Forces and Regional Advisory Boards, was presented.

Recommended Action

Staff recommends that the City Council adopt Resolution No. 11034 (CCS) entitled, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA MONICA ESTABLISHING POLICIES FOR CITY BOARDS, COMMISSIONS, COMMITTEES, TASK FORCES, AND REGIONAL ADVISORY BOARDS, AND REPEALING RESOLUTION NUMBERS 6751 (CCS), 9088 (CCS) and 10920 (CCS)".

Members of the public Denise Barton, Shawn Landres, and Mary Marlow, spoke on the recommended action.

Questions were asked and answered of staff including but not limited to: issuing city emails to boards and commissioners, removing board members because of absences and attendance issues, receiving recommendations for appointments from boards and commissions, exceptions to term limits, and adding Compliance with the Form 700 requirements should be included with the Ethics Training requirement.

Considerable discussion ensued on the topic of boards and commissions making recommendations to Council, with proposed language to Section 1(D) to read as follows: Boards, Commissions, Committees, or Task Forces shall not take any official action to recommend any specific appointees to the City Council, although individual members may make recommendations as individuals.

Motion by Councilmember McKeown, seconded by Councilmember Himmelrich, to adopt the staff recommendation with the change in language in Section 1(D).

Mayor Winterer proposed a friendly amendment to incorporate requiring Reports on Form 700 compliance along with the Ethics Training requirement. The motion was considered friendly by the maker and seconder.

The motion to approve the staff recommendation, with amendments was approved by the following vote:

AYES: Councilmembers McKeown, Vazquez, Himmelrich, O'Day, O'Connor, Mayor Pro Tem Davis, Mayor Winterer
NOES: None
ABSENT: None

COUNCILMEMBER
DISCUSSION ITEMS:
AUDIT SUBCOMMITTEE

13.A. Recommendation to accept Nimish Patel's resignation from the Audit Subcommittee and authorize the City Clerk to publish the vacancy, was presented.


There were no members of public present to comment on this item.


Motion by Councilmember Himmelrich, seconded by Councilmember McKeown, to accept the resignation with regret.

The motion was approved by a unanimous voice vote, with all members present.

ADJOURNMENT

On order of the Mayor, the City Council meeting was adjourned at 11:18 p.m.

ATTEST:

Denise Anderson-Warren
City Clerk

APPROVED:

Ted Winterer
Mayor