

**CITY OF FOUNTAIN VALLEY
REGULAR COUNCIL MEETING**

October 21, 2008

Minutes

CALL TO ORDER

Mayor Collins called the City Council Meeting of October 21, 2008 at 7:00 p.m.

CLOSED SESSION REPORT

Mayor Collins announced that pursuant to Government Code Section 54956.8, the City Council met in closed session regarding real property located at 11360 Warner Avenue, Fountain Valley and that there was nothing to disclose at this time.

INVOCATION

Arvin Gowens of Seabreeze Church gave the invocation.

SALUTE TO THE FLAG

Council Member Gus Ayer led the salute to the flag of the United States of America.

ROLL CALL

Council Members Present: Ayer, Carrozzo, Collins, Brothers

Council Members Absent: Crandall

Mayor Collins noted that Council Member Crandall's absence was excused.

Also Present: City Manager Raymond Kromer, City Attorney Alan Burns, Planning Director Andy Perea, Senior Civil Engineer Temo Galvez, Personnel Manager Jean Hirai, Police Chief Paul Sorrell, Police Captain Kevin Childe, Community Services Manager Mark Nix, Sergeant Sara Long, Management Analyst Matt Mogensen, Deputy City Clerk Kathy Heard

APPROVAL OF MINUTES

- **Motion by Council Member Brothers, second by Mayor Pro Tem Carrozzo, to approve the minutes of the City Council meeting held on October 7, 2008 as corrected.**

Ayes: Ayer, Carrozzo, Brothers, Collins

Noes: None

Absent: Crandall

Motion Carried

PRESENTATIONS

- A presentation of a Proclamation for Red Ribbon Week was presented to Police Chief Paul Sorrell
- A presentation of a Proclamation for Buddy Poppy Month, November 2008, was presented to Larry Kirkham, Senior Vice Commander of VFW Post 9557

READING OF ORDINANCES

- **Motion by Mayor Pro Tem Carrozzo, second by Council Member Ayer, to direct the Mayor to waive the reading in full of all ordinances under consideration and direct the Mayor to read by title only**

Ayes: Ayer, Carrozzo, Brothers, Collins

Noes: None

Absent: Crandall

Motion Carried

PUBLIC HEARING

1. Public Hearing Regarding a Notice of Intention of the City Council of the City of Fountain Valley to Revoke/Modify Conditional Use Permit Number 500MD (Sam's Smoke, Liquor & Mart Located at 17951 and 17955 Magnolia Street) Planning Commission Resolution No. 01-64

Resolution No. 9187 A Resolution of the City Council of the City of Fountain Valley Revoking conditional Use Permit No. 500MD Planning Commission Resolution No. 01-64 (Sam's Smoke Liquor and Mart) on Property Located at 17951 Magnolia Street, Fountain Valley

City Attorney Alan Burns advised the Mayor on procedural matters concerning the proposed revocation of the CUP for Sam's Smoke Liquor and Mart including advising the Mayor to request the owner's representative to make a showing as to why there is good cause for a continuance. He also advised the Mayor that should a continuance be granted, that a firm date for the hearing be determined so all parties can be prepared.

Attorney Scott Wellman representing Sam's Smoke Liquor and Mart stated that he believes a continuance of the Public Hearing is appropriate as the current City ordinance is constitutionally infirm and does not provide for rudimentary and fundamental due process pursuant to the California State Constitution. He then referenced current case law, where matters of vested property interests are sought to be revoked, provides for unlimited cross-examination and an impartial hearing officer, noting that he does not feel that Council qualifies impartial. Mr. Wellman further stated that evidence has been withheld with respect to recorded audio tapes. He then requested for a proper continuance, that he be provided with the required evidence and given time to discuss the matter further with all parties.

City Attorney Alan Burns noted that he did not hear a statement regarding late delivery of documents by the City or other reasons regarding counsel not having time to be properly prepared for the hearing.

Mr. Wellman commented that he was retained as the attorney for this matter five days prior to the public hearing, which does not allow the appropriate time to prepare for a hearing of this magnitude.

Mayor Collins inquired if Mr. Wellman is available on November 12, 2008 should Council decide to continue the public hearing.

Mr. Wellman stated that he would be out of the country on this date. He then requested that the City Attorney consider an impartial hired judge rather than City Council as the hearing officer.

After discussion regarding potential future dates and times for a continued public hearing on the matter, all parties including present Council Members, Mr. Wellman, Mr. Burns, and Police Chief Paul Sorrell, confirmed their ability to meet at 4:30 p.m. on November 18, 2008.

City Attorney Alan Burns stated that the case which Mr. Wellman referenced was very recent and that he would review the matter and advise Council if it presents any changes to case law. He further noted that Council is the appropriate body to hear this matter should they desire, and questioned if the police department can provide the requested evidence.

Mr. Sorrell stated the police department would promptly provide the evidence requested absent any information that might identify minors.

- **Motion by Mayor Collins, second by Council Member Brothers, to continue the Public Hearing to Tuesday, November 18, 2008 at 4:30 p.m. in City Council Chambers.**

Ayes: Ayer, Carrozzo, Brothers, Collins

Noes: None

Absent: Crandall

Motion Carried

2. Public Hearing and Introduction of an Ordinance to Consider Code Amendment No. 08-02 to Allow Artificial Turf as an Acceptable Landscape Treatment as Specified and Passage to a Second Reading for Adoption

Planning Director Andy Perea provided a PowerPoint presentation summarizing information provided in the staff report included in the agenda packet noting both the positive and negative aspects of artificial turf.

Mayor Collins opened the public hearing.

John Marmon, a resident of Dana Point, California, spoke in opposition of the use of artificial turf as an alternative to natural grass.

Skip Marshall, a resident of Fountain Valley, voiced his concerns of the use of artificial turf as alternative to natural grass.

Mayor Collins then closed the public hearing.

- **Motion by Mayor Collins to pass Ordinance 1424 authorizing the use of artificial turf as a landscape treatment; there was no second to this motion.**

Motion Failed

- **Motion by Mayor Collins, second by Mayor Pro Tem Carrozzo, to move the Public Hearing and introduction of the ordinance to consider Code Amendment No. 08-02 to allow artificial turf as an acceptable landscape treatment to an undetermined future Council meeting.**

Ayes: Carrozzo, Brothers, Collins

Noes: Ayer

Absent: Crandall

Motion Carried

ORDINANCE FOR INTRODUCTION

3. Introduction of a Shopping Cart Ordinance and a Resolution Establishing an Appeal Fee For Denied or Revoked Cart Containment Plans and Passage to a Second Reading for Adoption

Ordinance No. 1425 An Ordinance of the City Council of the City of Fountain Valley Adding Chapter 8.51 to the Fountain Valley Municipal Code Relating to the Regulation and Containment of Shopping Carts

Planning Director Andy Perea and Management Analyst Matt Mogensen provided a PowerPoint presentation summarizing information provided in the staff report included in the agenda packet noting other cities with similar ordinances and the key elements of the proposed ordinance.

Ruth Rosewitz, a resident of Fountain Valley, spoke in opposition to the proposed shopping cart ordinance and resolution.

- **Motion by Mayor Collins, second by Council Member Ayer, to approve the introduction of the shopping cart ordinance establishing an appeal fee for denied or revoked cart containment plans and passage to a second reading for adoption.**

Ayes: Ayer, Carrozzo, Brothers, Collins
Noes: None
Absent: Crandall
Motion Carried

Resolution No. 9188 A Resolution of the City Council of the City of Fountain Valley Establishing an Appeal Fee for Denied or Revoked Cart Containment Plans

- **Motion by Mayor Collins, second by Council Member Brothers, to approve Resolution No. 9188, a resolution of the City Council of the City of Fountain Valley establishing an appeal fee for denied or revoked cart containment plans.**

Ayes: Ayer, Carrozzo, Brothers, Collins
Noes: None
Absent: Crandall
Motion Carried

CONSENT CALENDAR

Mayor Pro Tem Carrozzo requested Item #9 be pulled from the consent Calendar for further discussion.

Council Member Brothers requested Item #10 be pulled from the Consent Calendar for further discussion.

4. A Resolution of the City Council of the City of Fountain Valley Concerning an Agreement Between Fountain Valley and the California Integrated Waste Management Board (CIWMB) for the Utilization of CIWMB Grants for Rubberized Asphalt Concrete (RAC) to be Used in Roadway Paving Projects

Resolution No. 9189 A Resolution of the City Council of the City of Fountain Valley Concerning an Agreement Between Fountain Valley and the California Integrated Waste Management Board (CIWMB) for the Utilization of CIWMB Grants for Rubberized Asphalt Concrete to be Used in Roadway Paving Projects

5. 1) Acceptance of Bids and Award of Contract to RJ Nobel Company for Construction; 2) Acceptance of Proposal and Award of a Professional Services Contract to Civil Source for Inspection Services; and 3) Amendment of the Fountain Valley Agency for Community Development (FVACD) Budget for FY 2008-2009 in the Amount of \$625,000 for the Industrial Street Rehabilitation Project, Project No. TI 159

6. Annual Report of the Fountain Valley Planning Commission and the Planning Department Activities for Fiscal Year 2007-2008
7. Approval to Waive Bidding Requirements Per FVMC 2.36.120 par (5) and Issue a Purchase Order to Golf Ventures West in the Amount of \$74,331 for the Purchase of a Jacobsen Rotary Mower Through an Existing Contract with the State of California Held by Golf Ventures West and Authorization to Amend the 10 Year Replacement Schedule to Include the Increased Cost for this Equipment
8. Approval to Accept Agency Fund Allotment From State 911 Telecommunications Program and Authorize the Use of These Funds to Purchase the 911 Pallas System, PYXIS Audio Recorder and Netclock From Verizon, Inc. and Waive Bidding Requirements per FVMC 2.36.120
11. Award of Contract to Chris Ketz to Provide Environmental Services for the Warner/Newhope Specific Plan Amendment for an Amount not to Exceed \$50,700
 - **Motion by Council Member Brothers, second by Mayor Pro Tem Carrozzo, to approve Consent Items 4,5,6,7, 8 and 11.**

Ayes: Ayer, Carrozzo, Brothers, Collins

Noes: None

Absent: Crandall

Motion Carried

9. Approval to Award a Purchase Order to D'Angelo Co. in the Amount of \$206,557 for the Purchase of 270 Fire Hydrants

Mayor Pro Tem Carrozzo inquired on the disposal of the old hydrants, how they were to be recycled, and how to determine what hydrants need replacement.

- **Motion by Mayor Pro Tem Carrozzo, second by Council Member Brothers, to approve Consent Item # 9.**

Ayes: Ayer, Carrozzo, Brothers, Collins

Noes: None

Absent: Crandall

Motion Carried

10. Approval to Issue a Purchase Order to Environmental Specialty Products in the Amount of \$56,574.61 for the Purchase of Waste Receptacles and Benches for the Fountain Valley Recreation Center

Council Member Brothers had suggestions on the types of receptacles and benches that might be purchased for the Recreation Center and then provided pictures of those she felt would be acceptable.

- **Motion by Council Member Brothers, second by Mayor Collins, to approve Consent Item # 10.**

Ayes: Ayer, Carrozzo, Brothers, Collins

Noes: None

Absent: Crandall

Motion Carried

ADMINISTRATIVE ITEMS

There were no administrative items scheduled for this meeting.

PRESENTATION OF DEMANDS

- (1) Ratification of Payroll: 264467 – 264473 and Direct Deposit Vouchers as listed in the reports

- **Motion by Council Member Ayer, second by Mayor Pro Tem Carrozzo, to ratify the payroll including the vouchers as listed in the reports by the following roll call vote:**

Ayes: Ayer, Carrozzo, Brothers, Collins

Noes: None

Absent: Crandall

Motion Carried

- (2) Consideration of Register of Demands: 167871 – 168121 and ACH Vendor Payments, and electronic transfers as listed in the report

- **Motion by Mayor Pro Tem Carrozzo, second by Council Member Ayer, to approve payment of the Register of Demands, ACH vendor payments, and electronic transfers as listed in the report by the following roll call vote:**

Ayes: Ayer, Carrozzo, Brothers, Collins

Noes: None

Absent: Crandall

Motion Carried

RECESS

Mayor Collins recessed the regular Council meeting at 8:10 p.m. to a meeting of the Fountain Valley Agency for Community Development.

RECONVENE

Mayor Collins reconvened the regular Council meeting at 8:12 p.m. with all Council Members present, with the exception of Council Member Crandall.

PUBLIC APPEARANCES -- ORAL COMMUNICATIONS (Unscheduled Matters Only)

There were no requests to speak on unscheduled matters.


COUNCIL COMMENTS (Outside Committee Activities, AB1234 Reporting and General Comments)

Council Member Ayer commented on the activities of the Fountain Valley Community Foundation noting that the Foundation is working towards making grants available by the end of January 2009.

Council Member Brothers reported on her attendance at the Public Cable Television Authority meeting stating that they had authorized the purchase of four video cameras to use to record videos for local access Channel 3.

ADJOURNMENT

Mayor Collins adjourned the City of Fountain Valley Council meeting to the next scheduled meeting on Tuesday, November 18, 2008.



John J. Collins, Mayor
City of Fountain Valley

ATTEST:



Kathy Heard, Deputy City Clerk