

NEWPORT BEACH CITY COUNCIL AGENDA  
COUNCIL CHAMBERS – 3300 NEWPORT BOULEVARD  
September 8, 2009

I. STUDY SESSION – 3:00 p.m.

1. CLARIFICATION OF ITEMS ON THE CONSENT CALENDAR. (3:00 P.M.)
2. SYNTHETIC TURF PRESENTATION. (3:10 P.M.)
3. REVIEW OF MEMORANDUM OF AGREEMENT REGARDING ORANGE COAST RIVER PARK. (3:30 P.M.)
4. PAVEMENT MANAGEMENT PROGRAM UPDATE. (4:00 P.M.)
5. WATER MASTER PLAN – EXECUTIVE SUMMARY AND UPDATED RECOMMENDED CAPITAL IMPROVEMENT PROGRAM. (4:25 P.M.)

II. CLOSED SESSION – After Study Session - Council Chambers Conference Room

A. Conference with Legal Counsel – Existing Litigation (Government Code § 54956.9(a)): Seven matters:

- *Harvey v. City of Newport Beach*, Orange County Superior Court Case No. 07CC05400; Court of Appeals, Fourth Appellate District, Case No. G042257.
- *IBC Litigation Matters*: Four matters, all arising out of the IBC Litigation against the City of Irvine:
  1. *Newport Beach/Tustin v. City of Irvine (Martin Street)*, Orange County Superior Court Case No. 07CC01264.
  2. *Newport Beach/Tustin v. City of Irvine (2851 Alton)*, Orange County Superior Court Case No. 07CC01265.
  3. *Newport Beach/Tustin v. City of Irvine (HCG)*, Orange County Superior Court Case No. 30-2008-0022885-CU-WM-CXC.
  4. *Newport Beach/Tustin v. City of Irvine (Accessory Retail Business Regulations)*, Orange County Superior Court Case No. 30-2009-00264696.
- *Lundquist v. City of Newport Beach*, Orange County Superior Court Case No. 30-2009 00123544.

Testimony given before the City Council is recorded.

Yellow light indicates that the speaker has one minute for summation;  
and the red light will signify when the speaker's time limit is up.

Any writings or documents provided to a majority of the City Council regarding any item on this agenda  
will be made available for public inspection in the Office of the City Clerk  
located at 3300 Newport Boulevard during normal business hours.  
In addition, such writings and documents will be posted on the City's website at [www.newportbeachca.gov](http://www.newportbeachca.gov).

- *Save Irreplaceable Land Forms Coalition v. City of Newport Beach*, Orange County Superior Court Case No. 30-2009 002983006.

**B. Conference with Legal Counsel – Anticipated Litigation – Exposure to Litigation (Government Code § 54956.9(b)): One matter:**

1. Potential litigation regarding the claim of discrimination filed by Brett Smith.

**C. Consider the Appointment, Employment, Evaluation of Performance, Discipline, or Dismissal of Public Employee (Government Code § 54957(b)(1)):**

The City Council will meet in closed session to consider the appointment, employment, evaluation of performance, discipline, or dismissal of one public employee.

1. *Title*: City Attorney

**III. RECESS**

**IV. RECONVENE AT 7:00 P.M. FOR REGULAR MEETING**

**V. ROLL CALL**

**VI. CLOSED SESSION REPORT (if applicable)**

**VII. PLEDGE OF ALLEGIANCE**

**VIII. INVOCATION – Reverend Robert Jordan Ross, Newport Universalist Society**

**IX. PRESENTATIONS**

**Life Saving Award Presentation.**

**Presentation of Insurance Services Offices (ISO) Award.**

**Proclamation Recognizing International Literacy Day.**

**Proclamation for City Manager Homer Bludau.**

**X. NOTICE TO THE PUBLIC**

*The City provides a yellow sign-in card to assist in the preparation of the minutes. The completion of the card is not required in order to address the Council. Speakers must limit comments to five (5) minutes on agenda items. The Council has the discretion to extend or shorten the time limit on agenda or non-agenda items. As a courtesy, please turn cell phones and pagers off or set them in the silent mode.*

**XI. CITY COUNCIL ANNOUNCEMENTS OR MATTERS WHICH COUNCIL MEMBERS WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION OR REPORT (NON-DISCUSSION ITEM)**

**XII. CONSENT CALENDAR**

*All matters listed under **CONSENT CALENDAR (1 – 19)** are considered by the Council to be routine and will all be enacted by one motion in the form listed below. The City Council Members have received detailed staff reports on each of the items recommending an action. There will be no separate discussion of these items prior to the time the Council votes on the motion unless members of the Council, staff or the public request specific items to be discussed and/or removed from the Consent Calendar for separate action.*

*Members of the public who wish to discuss a Consent Calendar item should come forward to the lectern upon invitation by the Mayor, and state their name and item number. If the optional sign-in card has been completed, it should be placed in the box provided at the podium.*

**A. READING OF MINUTES/ORDINANCES AND RESOLUTIONS**

1. **MINUTES OF THE REGULAR MEETING AND ADJOURNED REGULAR MEETING OF AUGUST 11, 2009, AND THE SPECIAL MEETING OF AUGUST 18, 2009.** Waive reading of subject minutes, approve as written and order filed.
2. **READING OF ORDINANCES AND RESOLUTIONS.** Waive reading in full of all ordinances and resolutions under consideration, and direct City Clerk to read by title only.

**B. ORDINANCE FOR ADOPTION**

3. **TRANSIENT OCCUPANCY TAX (TOT)/VISITOR SERVICE FEE ORDINANCE UPDATE RE: THE PAYMENT OF TAX AND FEES PRIOR TO SEEKING JUDICIAL REVIEW.** Adopt Ordinance No. 2009-17 amending Chapters 3.16 and 3.28 of the Newport Beach Municipal Code relating to the payment of Uniform Transient Occupancy Taxes (UTOTs) and Visitor Service Fees (VSFs) prior to seeking judicial review.

**C. ORDINANCE FOR INTRODUCTION**

4. **CHANGES TO NBMC 11.08.010 (OBSTRUCTION ON PUBLIC BEACHES PROHIBITED) AND NBMC 11.08.020 (USE OF CONCEALING UMBRELLAS PROHIBITED).** Introduce Ordinance No. 2009 \_\_\_ amending Sections 11.08.010 and 11.08.020 of Chapter 11.08, City of the Newport Beach Municipal Code, to further regulate the use of shade coverings on ocean beaches, bay beaches, and tidelands, and pass to second reading on September 22, 2009.
5. **FILM ORDINANCE AMENDMENTS TO CODIFY FILM LIAISON POSITION, REQUIRE PERMITS FOR COMMERCIAL FILMING AT PRIVATE RESIDENTIAL PROPERTY, AND AMENDING APPEAL PROVISIONS.** Introduce Ordinance No. \_\_\_ updating Chapter 5.46, regulating commercial film production, and pass to second reading on September 22, 2009.

**D. CONTRACTS AND AGREEMENTS**

6. **LITTLE CORONA RESTROOM REHABILITATION – COMPLETION AND ACCEPTANCE (C- 3913).** a) Accept the completed work; b) authorize the City Clerk to file a Notice of Completion; c) authorize the City Clerk to release the Labor and Materials Bond 35 days after the Notice of Completion has been recorded in

accordance with applicable portions of the Civil Code; and d) release the Faithful Performance Bond one year after Council acceptance.

7. **MESA-BIRCH PARK – COMPLETION AND ACCEPTANCE OF CONTRACT (C-3787).** a) Accept the completed work; b) authorize the City Clerk to file a Notice of Completion; c) authorize the City Clerk to release the Labor and Materials Bond 35 days after the Notice of Completion has been recorded in accordance with applicable portions of the Civil Code; and d) release the Faithful Performance Bond one year after Council acceptance.
  
8. **APPROVAL OF AMENDMENT NO. 3 TO PROFESSIONAL SERVICES AGREEMENT WITH DOTY BROS. CONSTRUCTION COMPANY, APPROVAL OF AMENMENT NO. 3 WITH GCI CONSTRUCTION, INC., AND APPROVAL OF AMENDMENT NO. 2 WITH VALVERDE CONSTRUCTION, INC. FOR ON-CALL UNDERGROUND UTILITY REPAIRS.** a) Approve Amendment No. 3 to Professional Services Agreement with Doty Brothers Construction Company for on-call underground utility repair services, and authorize the Mayor and City Clerk to execute the amendment; b) approve Amendment No. 3 to Professional Services Agreement with GCI Construction, Inc. for on-call underground utility repair services and authorize the Mayor and City Clerk to execute the amendment; and c) approve Amendment No. 2 to Professional Services Agreement with Valverde Construction, Inc. for on-call underground utility repair services, and authorize the Mayor and City Clerk to execute the amendment.
  
9. **REIMBURSEMENT AGREEMENT WITH HOAG MEMORIAL HOSPITAL PRESBYTERIAN FOR SUPERIOR AVENUE MEDIAN IMPROVEMENTS.** a) Approve the Public Improvement Funding Reimbursement Agreement with Hoag Memorial Hospital Presbyterian for the Superior Avenue Median Improvements; and b) approve a budget amendment (10BA-010) to appropriate \$52,802.94 from the General Fund reserve account to reimburse Hoag for the City’s fair share cost for the Superior Avenue median extension.
  
10. **ENERGY EFFICIENT STREETLIGHT IMPROVEMENT PROJECT – APPROVAL OF PROFESSIONAL SERVICES AGREEMENT WITH WILLDAN ENGINEERING FOR DESIGN SERVICES.** a) Approve a Professional Services Agreement with Willdan Engineering of Anaheim, California, for design services at a not-to-exceed fee of \$71,755.00, and authorize the Mayor and City Clerk to execute the Agreement.
  
11. **APPROVAL OF AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT WITH POUK & STEINLE, INC. FOR ON-CALL ELECTRICAL SERVICES.** Approve Amendment No. 1 to Professional Services Agreement with Pouk & Steinle, Inc. for on-call electrical services, and authorize the Mayor and City Clerk to execute the amendment.
  
12. **ACCEPTANCE OF THE 2008 URBAN AREAS SECURITY INITIATIVE (UASI) GRANT TRANSFER ALLOCATION.** a) Accept the 2008 UASI Grant Fund Training Allocation in the amount of \$49,358.17 to be utilized for reimbursement training costs associated with approved Department of Homeland Security (DHS) courses for emergency response personnel; and b) approve a budget amendment (10BA-009) increasing revenue estimates by \$49,358.17 in 1820-486A,

UASI Grant, and increasing expenditure appropriations by \$49,358.17 in 7014-C8002016.

13. **PENINSULA POINT WATER AND SEWER IMPROVEMENTS – AWARD OF CONTRACT (C-4066).** a) Approve the project plans and specifications; b) award the contract (C-4066) to Paulus Engineering, Inc. for the Total Bid Price of \$1,415,079, and authorize the Mayor and the City Clerk to execute the contract; and c) establish an amount of \$141,000 to cover the cost of unforeseen work.
14. **NEWPORT BEACH CIVIC CENTER PROJECT – APPROVAL OF AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT WITH RBF CONSULTING FOR TRAFFIC ENGINEERING SERVICES.** Approve Amendment No. 1 to the Professional Services Agreement with RBF Consulting, of Irvine, California, to provide supplemental traffic engineering services at a not to exceed price of \$217,790, and authorize the Mayor and City Clerk to execute the agreement.
15. **NEWPORT BEACH CIVIC CENTER PROJECT – APPROVAL OF AMENDMENT NO. 3 TO PROFESSIONAL SERVICES AGREEMENT WITH LEIGHTON CONSULTING, INC. FOR GEOTECHNICAL SERVICES.** Approve Amendment No. 3 to the Professional Services Agreement with Leighton Consulting, Inc., of Irvine, California, to provide supplemental geotechnical exploration and consulting services at a not to exceed price of \$99,640, and authorize the Mayor and City Clerk to execute the agreement.
16. **JUSTICE ASSISTANCE GRANT.** Approve Agreement to transfer funds for Fiscal Year 2009, Justice Assistance Grant (JAG), and authorize the City Manager to execute the Agreement.

**E. MISCELLANEOUS**

17. **RESPONSE TO GRAND JURY ON “PAPER WATER – DOES ORANGE COUNTY HAVE A RELIABLE FUTURE?”.** Approve the response letter to the Grand Jury report on “Paper Water – Does Orange County Have a Reliable Future?” and authorize the Mayor to submit the report to the Presiding Judge of the Superior Court pursuant to Penal Code 933.05 (a) and (b).
18. **UNSCHEDULED VACANCY ON THE BUILDING AND FIRE BOARD OF APPEALS.** Confirm the nominations of William Dildine and Stephen Sandland as presented by the Ad Hoc Appointments Committee to fill the unscheduled vacancy on the Building and Fire Board of Appeals as a result of the resignation of Paul Larry Root.
19. **REVISION OF TWO-HOUR PARKING LIMIT ON A PORTION OF SNUG HARBOR ROAD.** a) Adopt Resolution No. 2009-\_\_\_ limiting the parking of vehicles on certain streets to two hours and rescinding Resolution No. 2001-88; and b) introduce Ordinance No. 2009-\_\_\_ approving revisions to the Preferential Parking Zone “2” – Newport Heights and Cliff Haven, and pass to second reading on September 22, 2009.

**ACTION: MOVE AFFIRMATIVE ACTION OF THE CONSENT CALENDAR, EXCEPT FOR THOSE ITEMS REMOVED.**

**XIII. ITEMS REMOVED FROM THE CONSENT CALENDAR**

**XIV. ORAL REPORTS FROM CITY COUNCIL ON COMMITTEE ACTIVITIES**

**XV. PUBLIC HEARINGS**

**20. ANNUAL REVIEW OF FLETCHER JONES DEVELOPMENT AGREEMENT (PA2009-052).**

**Action:** a) Conduct a public hearing; and b) find that Fletcher Jones Motorcars is in good faith compliance with Development Agreement No. 9.

**21. COST RECOVERY ORDINANCE - CHAPTER 3.36, FEE RESOLUTION AND MASTER FEE SCHEDULE.**

**Action:** a) Conduct a public hearing; b) introduce Cost Recovery Ordinance No. 2009\_\_\_, amending Exhibit A to Chapter 3.36 of the Newport Beach Municipal Code, and pass to second reading on September 22, 2009; and c) adopt Resolution No. 2009-\_\_\_ with Master Fee Schedule.

**XVI. PUBLIC COMMENTS**

*Public comments are invited on non-agenda items generally considered to be within the subject matter jurisdiction of the Council. Speakers must limit comments to three (3) minutes. Before speaking, please state your name for the record.*

**XVII. PLANNING COMMISSION AGENDA AND ORAL STATUS REPORT**

**22. PLANNING COMMISSION AGENDA FOR AUGUST 20, 2009.**

**Action:** a) Receive oral report on the most recent Planning Commission actions; b) Council Member appeal of Planning Commission, Modification Committee or Planning Director approvals subject to appeal; and c) receive and file written report.

**XVIII. CURRENT BUSINESS**

**23. CITY COUNCIL ACCEPTANCE OF THE FINAL REPORT FROM ICMA CONSULTANTS REGARDING THE ESTABLISHMENT OF PERFORMANCE MEASURES AND BENCHMARKS, IN ORDER TO CONTINUOUSLY IMPROVE AS AN ORGANIZATION.**

**Action:** Accept the report and provide direction to staff as desired.

**24. SALE OF BONDS FOR ASSESSMENT DISTRICT NO.103.**

**Action:** a) Adopt Change Proceedings Resolution No. 2009\_\_\_ which 1) reduces the assessment to reflect the deletion of capitalized interest and 2) determines the remaining unpaid assessments; and b) adopt Bond Issuance Resolution No. 2009\_\_\_ which 1) authorizes the sale of 1915 Act Assessment bonds not to exceed \$3,429,200 for Assessment District No. 103, 2) authorizes the execution and delivery of an indenture in substantially the form presented, 3) approves the form of a Preliminary Official Statement and authorizes the execution and delivery of a final Official Statement, 4) authorizes the execution and delivery of a Disclosure Dissemination Agent Agreement in

substantially the form presented, 5) authorizes the execution and delivery of a Bond Purchase Contract in substantially the form presented, and 6) authorizes staff to take the necessary steps to provide for the sale and issuance of the bonds.

**25. WATER UTILITY FINANCIAL PLAN AND WATER RATE INCREASES.**

**Action:** a) Approve the Water Utility Financial Plan; b) set the public hearing on water rate increase for November 10, 2009; and c) direct staff to send rate increase notices as required by Proposition 218 with the rates proposed in the Financial Plan.

**XIX. MOTION FOR RECONSIDERATION**

*A motion to reconsider the vote on any action taken by the City Council at either this meeting or the previous meeting may be made only by one of the Council Members who voted with the prevailing side.*

**XX. ADJOURNMENT**