

"Approved by the City Council/Redevelopment Agency Board on June 11, 2008"

**CITY COUNCIL/REDEVELOPMENT AGENCY
MINUTES OF A REGULAR MEETING**

**WESTMINSTER, CALIFORNIA
April 30, 2008**

The City Council/Agency Board of the City of Westminster, California convened on April 30, 2008 at 7:07 p.m. in an Adjourned Regular Meeting in the Council Chambers, 8200 Westminster Boulevard, Westminster, California.

7:00 P.M.

CONVENE CITY COUNCIL/REDEVELOPMENT AGENCY MEETING

ROLL CALL

PRESENT: RICE, QUACH, FRY, MARSH (Arrived at 7:10 p.m.), TA
ABSENT: NONE

SALUTE TO FLAG: Council Member Ta

INVOCATION: Mayor Pro Tem Quach

SPECIAL PRESENTATIONS:

- A. Each student that participated in Youth in Government Day activities introduced themselves and their counterpart.
- B. Grad Night Checks were presented to representatives from Westminster High School, La Quinta High School and Ocean View High School.
- C. Recognition of Community Services & Recreation Commissioner, Leo Lopez. (continued to the May 14, 2008 meeting)

REPORT FROM CITY CLERK ON LATE COMMUNICATION ITEMS

The City Clerk announced Late Communications regarding agenda items that had been received in the City Clerk's office following the distribution of the agenda packet.

Matters from City Manager

Agenda Item No. 6.1 Appeal of Police Permit Revocation for Beach Girls Bar located at 15549 Beach Boulevard. (805-06)

A letter from John Cogorno representing Beach Girls Bar and the owners Eric Lakey and Terry Bryant dated April 30, 2008.

1. CONSENT CALENDAR**APPROVAL OF MINUTES**

- 1.1 (City Council/Redevelopment Agency) Minutes of the Regular Meeting of the City Council/Redevelopment Agency of March 26, 2008; Minutes of the Special Meeting of the City Council/Redevelopment Agency/Public Financing Authority of April 16, 2008; and Minutes of the Regular Meeting of the City Council/Redevelopment Agency of April 23, 2008.**

ACTION: Approved.

ROUTINE MATTERS

- 1.2 Proclamation declaring May, 2008 as ALS Awareness Month (Lou Gehrig's disease) in the City of Westminster. (115-00) (08)**

ACTION: Approved.

- 1.3 General Plan Annual Progress Report. (204-01)**

ACTION: The Mayor and City Council received and filed the report.

- 1.4 Computer Replacement Program – Desktop Computers. (106-00) (08)**

ACTION: The Mayor and City Council authorized a purchase order in the amount of \$81,000 to Hewlett-Packard for the purchase of 61 desktop computers.

- 1.5 Award of Contract for Replacement of Police Vehicle Mobile Data Computers. (502-18)**

ACTION: The Mayor and City Council approved a purchase order in an amount not to exceed \$211,280.00 to RoboVu, LLC for the purchase of 34 Mobile Data Computers for police patrol vehicles.

- 1.6 Acceptance of Final Parcel Map No. 2006-255 for 6312 California Avenue. (201-02) (402-03)**

ACTION: The Mayor and City Council accepted Final Parcel Map No. 2006-255 and authorized the City Clerk to sign and seal the map.

- 1.7 Award of Contract for Women's Employee Restroom Remodel at City Hall Building – Project No. 75502-087503. (502-20)**

ACTION: The Mayor and City Council awarded a contract to the low qualified and responsive bidder, Thomco Construction, Inc. in the amount of \$ 29,772.00;

rejected all other bids; and authorized the City Manager to execute the contract on behalf of the City.

ORDINANCES (SECOND READING)/RESOLUTIONS

(ITEM REMOVED AND HEARD SEPARATELY)

- 1.8 **Ordinance No. 2430 (2nd Reading) - An Ordinance of the Mayor and City Council of the City of Westminster to amend Sections 9.38.010 through 9.38.090 of Title 9 (Public Peace, Morals and Welfare) of the Westminster Municipal Code, relating to Graffiti. (615-01)**

Darrell Nolta, Westminster resident, stated that he believed that the City Council at their meeting of April 9, 2008 gave direction to staff to modify the ordinance to address the concern that children going to school may be criminalized for carrying felt tip markers. He expressed support for the changes to the graffiti reward program, but wants assurance that the children are protected.

Council Member Marsh agreed that the exemption in Section 9.38.040(B) Anti Vandalism Provision of the proposed ordinance needs to be broader. However, he stated that he believed that the understanding at the April 9th meeting, in order not to slow down the process, was to approve the first reading of the ordinance and amend later in order to broaden the exemption.

Motion was made by Council Member Marsh, seconded by Mayor Pro Tem Marsh to adopt Ordinance No. 2430, eliminating Section 9.38.040(B), in such to be able to include the enhanced rewards which we want to put into effect.

It was the consensus of the Council to direct staff to amend the ordinance to address concerns with Section 9.38.040(B) as it relates to children. The City Attorney's office was instructed to clarify the possession by minor's statutes.

Council Member Marsh suggested staff bring back the ordinance within 30 days with proposed language regarding possession by minors.

Judy Ahrens, Westminster resident, urged the Mayor and City Council to move with caution so as not to create a negative effect on innocent kids.

A substitute motion was made by Council Member Fry, seconded by Council Member Ta to continue the item to the next meeting.

Council Member Marsh expressed that a two week continuance does not provide an adequate amount of time to adjust the language regarding possession by minors. He supported the continuance to the May 28, 2008 meeting. The maker and second to the motion agreed to the continuance of this item to the May 28, 2008 meeting.

The motion carried by a 5-0 vote.

ADMINISTRATIVE ITEMS

- 1.9 Special Event Permit application from the American Cancer Society to hold the Westminster American Cancer Society Relay for Life event beginning August 8, 2008 through August 10, 2008 (includes set up and clean up times). The event will take place in the Civic Center Sunken Gardens, 8200 Westminster Boulevard. Applicant estimates the attendance will be 500 people throughout the event. (213-02) (AM)**

ACTION: The Mayor and City Council waived the \$100 Special Event Permit fee and approved the Special Event Permit application subject to the conditions attached to the staff report.

- 1.10 Special Event Permit application from Circus Vargas to hold a circus beginning May 13, 2008 through May 27, 2008 (includes set up and clean up days). The Circus will be open to the public May 15, 2008 through May 26, 2008. The Circus will take place at the Westminster Mall parking lot between Macy's and JC Penney's. Applicant estimates the attendance will be 500 people per performance. (213-02) (CI)**

ACTION: The Mayor and City Council approved the Special Event Permit application subject to the conditions attached to the staff report.

(ITEM REMOVED AND HEARD SEPARATELY)

- 1.11 Special Event Permit application from the South Vietnamese Marines Association to hold a Memorial Ceremony on Saturday, June 21, 2008 between the hours of 4:00 p.m. and 9:30 p.m. (includes set up and clean up times). The event will take place at Sid Goldstein Freedom Park, 14180 All American Way. Applicant estimates the attendance will be 500 people. (213-02) (SO)**

Darrell Nolta, Westminster resident, spoke about the importance of referring to the park as Sid Goldstein Freedom Park. He expressed opposition to the South Vietnamese banner (which he feels is no longer a flag) being posted on SCE poles on public streets. He is opposed to the banner of South Vietnam and United States flag being at the same height in a public park. He requested that it be put into the public record that there is at least one person in Westminster who is opposed to having any banner of any country for whatever reason at the same height as a flag pole adjacent to the flag of the United States of America.

Vivian Kirkpatrick Pilger, Westminster resident, said to make that two people.

Motion was made by Council Member Ta, seconded by Mayor Pro Tem Quach to approve the Special Event Permit application subject to the conditions attached to the staff report. The motion carried by a 5-0 vote.

WARRANT REGISTER

- 1.12 (City Council/Redevelopment Agency) Warrant Register dated April 2 through April 22, 2008. (105-09) (08)**

ACTION: Approved.

INFORMATION AND REPORTS

- 1.13 Minutes of the Youth Committee meeting held on January 9, 2008. (104-17)**

ACTION: Received and filed.

- 1.14 Minutes of the Cultural Arts Commission meeting held on March 6, 2008. (104-06)**

ACTION: Received and filed.

- 1.15 Minutes of the Planning Commission meeting held March 19, 2008. (104-11)**

ACTION: Received and filed.

- 1.16 Community Development Monthly Activity Report – March 2008. (216-01) (08)**

ACTION: Received and filed.

Motion was made by Council/Agency Member Ta, seconded by Council/Agency Member Marsh to approve the Consent Calendar, with the exception of Items Nos. 1.8 and 1.11, that were removed for separate consideration. The motion carried by a 5-0 vote.

END OF CONSENT CALENDAR

2. ORAL COMMUNICATIONS

Phil Hodgetts, Westminster resident and Energy Committee Member, spoke regarding enhancements for cleaning the air.

Judy Ahrens, Westminster resident, commented on Council Member Marsh's response to the question, "What Do You Think of the Living Constitution?" She commented that unfortunately at the last Westminster School District meeting, there was no vote, nor discussion regarding the motto "In God We Trust". She invited the Council to come to hear the founder of the Pacific Justice Institute

speak the following evening about the current status of the "In God We Trust" motto and other topics.

Vivian Kirkpatrick-Pilger, Westminster resident, spoke in regards to the formation of the California Republican Assembly (CRA) in the City of Westminster in 2002 by a small group called the Orange County American Vietnamese Republican Assembly. She spoke regarding a small group of people in Westminster that wanted to form a Westminster Republication Assembly, whose charter was approved and then rescinded, as a result of a dispute filed by the Orange County American Vietnamese CRA Unit. The name of the Orange County American Vietnamese CRA has been changed to the Westminster CRA. She noted that she is now a member of the Anaheim CRA.

Darrell Nolta, Westminster resident, spoke regarding the escalating price of gasoline and its impact on the economy. He spoke regarding Edison's installation of time-of-use electric meters, technology that will allow Edison to charge its customers real time pricing. Mr. Nolta said that Jeff Brody wrote an extremely inflammatory article in the OC Register yesterday regarding anti-communist hardliners falsely accusing a newspaper of pro-Hanoi meetings. He also spoke to the power of the Board of Supervisors who will begin the process next week of selecting a new sheriff.

Sergio Contreras, Westminster resident, congratulated the Mayor and Council on the Youth in Government program and acknowledged the students that participated. He thanked the Mayor and Council for the flowers he received for his grandmother that passed away. Mr. Contreras also thanked Mayor Rice and Council Member Ta for their support on the American Dream Essay Contest.

3. COMMISSION/COMMITTEE ITEMS SUBJECT TO REVIEW

3.1 The actions of the Planning Commission meeting held on April 16, 2008.

The Community Development Director reviewed the actions of the Planning Commission meeting of April 16, 2008.

- 1) Case 2007-80 Variance, Site Plan Review, and Design Review. Development of a 7,500 square foot, two-story commercial building at 8201 Westminster Boulevard.
- 2) Case 2008-09 Design Review. Exterior architectural modifications to an existing Kentucky Fried Chicken (KFC) restaurant at the Westhaven Shopping Center at 15553 Brookhurst Street.
- 3) Case 2008-21 General Plan Conformity regarding the sale of abandoned will sites at 9031 and 9021 Oasis Avenue.
- 4) Case 2008-23 General Plan Conformity regarding improvements to the Westminster Channel (C04) by Orange County Flood Control District.

- 5) Case 2008-07 Zoning Review involving the placement of two temporary trailer buildings for classrooms at the 1st Presbyterian Church of Orange County located at 8500 Bolsa Avenue.

Darrell Nolta, Westminster resident, spoke regarding Item No. 4. He noted that he has learned since the Planning Commission meeting that the work being done by Orange County Flood Control District (the stretch of the channel from Beach along Hazard to Hoover) has less than a 10 year capacity. He noted that the flood control channel passes by the City's new water tanks, and is concerned that the channel had not been brought up to full capacity in 100 years. The Orange County Flood Control District is going to put a box underneath Hazard to achieve the capacity, and the City needs to be careful in watching them do the work. He said that the construction will take one year.

4. PUBLIC HEARINGS – None.

5. MATTERS FROM COUNCIL/AGENCY/AUTHORITY MEMBERS

5.1 Council/Agency Member Items

Mayor Pro Tem Quach commented that it was 33 years ago today that the nation of South Vietnam fell to the north, which is the reason that he is an American. In regards to opinions expressed at tonight's meeting by speakers regarding the flag of South Vietnam, or the banner, or former flag as they called it. Regardless of whether he agrees with their opinion, he thinks of himself as an American. He wore the military uniform of the United States Navy to defend this country, and stated that he would do so again. He said that he felt like the comments made to the Council may be viewed as an attempt to continue to divide the community. The Mayor and City Council works together for everyone in Westminster.

Council Member Fry commented that over the weekend the City Council received a trophy in appreciation of the Westminster City Council for supporting the installation of the Vietnamese Boat People Monument Project at Westminster Memorial Park.

Council Member Ta said that he truly appreciated the comments made by Mayor Pro Tem Quach, as he feels the same, especially today. He spoke regarding the Relay for Life event he attended at Cal State Fullerton on Saturday, April 26th. He spoke about several other events that he attended on Saturday.

Council Member Marsh spoke about the tremendous performance that the Council saw introducing them to the Boat People Memorial. He thanked the Honorable Judge John Nguyen and his wife and the other members of the committee who put on an outstanding presentation.

Mayor Rice said she truly enjoyed Youth in Government Day with the students today. She mentioned that she, Council Member Fry and Mayor Pro Tem Quach attended a ceremony at Sid Goldstein Freedom Park on Sunday.

5.2 AB 1234 Reports – None.

URGENT CLOSED SESSION ITEM

Assistant City Attorney Christian Bettenhausen noted that at this time, the Council will recess to a Closed Session as the need for a closed session relates to a letter received today from John R. Cogorno, attorney representing Beach Girls Bar. This matter relates to Item No. 6.1 on the agenda – Appeal of Police Permit Revocation for Beach Girls Bar located at 15549 Beach Boulevard.

Motion was made by Council Member Fry, seconded by Council Member Marsh to bring the following item on to the agenda.

Conference with Legal Counsel pursuant to Government Code Section 54956.9 Anticipated Litigation (one potential case) regarding Beach Girls Bar, 15549 Beach Boulevard (appeal of police permit revocation); Location: 15549 Beach Boulevard; Property Owners: Eric Lakey and Terry Bryant.

Mr. Cogorno, the attorney representing Beach Girls Bar, stated that he has no objection to the discussion of this matter in Closed Session.

The motion carried by a 5-0 vote to bring the urgent closed session item on to the agenda.

Motion was made by Mayor Pro Tem Quach, seconded by Council Member Fry and carried by a 5-0 vote to take the matter into closed session to discuss the anticipated litigation.

RECESS: The Mayor/Chair and City Council/Agency Board recessed to Closed Session in the Council Conference Room, 8200 Westminster Boulevard, Westminster, CA at 8:30 p.m.

RECONVENE: The Mayor/Chair and City Council/Agency Board reconvened in open session in the Council Chambers, 8200 Westminster Boulevard, Westminster, CA at 9:05 p.m. All members of Council were present.

Mayor Rice requested that Item No. 7.2 be brought forward at this time.

Motion was made by Council Member Marsh, seconded by Council Member Fry to bring forward Item No. 7.2 on the agenda at this time. The motion carried by a 5-0 vote.

- 7.2 Request from Westminster Relay for Life to “paint the town purple” on Thursday, May 1st. The request is that a purple ribbon be tied on each tree and posting of a Relay For Life poster on every other tree on the north and south side of Westminster Boulevard in front of the Civic Center and the east and west side of All American Way, including the light towers in front of the Rose Center. The purpose is to celebrate cancer survivorship and bring attention to the Westminster Relay for Life Event to be held at the City Hall Sunken Gardens on August 9 and 10, 2008. (213-02) (AM)**

Motion was made by Council Member Marsh, seconded by Council Member Ta to approve the request.

In response to Mayor Rice, Jeanneen Wright, American Cancer Society Relay for Life, assured the Mayor and City Council that the posters would be taken down.

The motion carried by a 5-0 vote.

6. MATTERS FROM CITY MANAGER/EXECUTIVE DIRECTOR

- 6.1 Appeal of Police Permit Revocation for Beach Girls Bar Located at 15549 Beach Boulevard. (Continued from the April 9, 2008 meeting). (805-06)**

MAYOR RICE OPENED THE HEARING.

OPENING STATEMENT – CITY PROSECUTOR

City Prosecutor, Elena Gerli stated that the grounds for the Chief of Police to revoke this permit are found in Westminster Municipal Code (WMC) Section 5.24.150. Specifically, Subsections E, F, G which Ms. Gerli read into the record.

Subsection E - The activity is being conducted in an illegal, improper or disorderly manner

Subsection F – Conduct of the activity is or will be contrary to the public interest, peace, welfare, or convenience of the community.

Section G - For any reason for which the permit could have been refused. This refers to WMC Section 5.24.110 Subsection H which reads, “The conduct of the business or activity will be contrary to state law or to the ordinances of the city or will interfere with the preservation of the public peace, health, safety and welfare of the city or its inhabitants”.

Ms. Gerli stated that the basis for these findings was the very high number and severity of offenses committed at Beach Girls or generated at Beach Girls Bar and into the neighborhood.

Utilizing the PowerPoint presentation, Ms. Gerli gave an overview of the following:

- Appeal
- Police Permit Authority
- Procedural History

Ms. Gerli introduced Detective Tim Walker, Special Investigations Unit, to summarize the evidence that the revocation is based on. She noted that all of this information is summarized in the Investigative Overviews dated February 18, 2008 and March 13, 2008.

CITY'S WITNESSES

The City Clerk swore in **Detective Tim Walker**.

Detective Walker introduced his partner, Detective Richard Mize. Detective Walker spoke to the following points from the PowerPoint presentation, outlining some of the details of the investigation.

- Business Information
- Reason for the Investigation
- Police Response to the Location
- ABC/Narcotic/Health Violations
- Community Impact
- Administrative Hearing
- Summary
- Findings
- Conclusion
- Staff's Recommendation

At Council Member Marsh's request, Detective Walker clarified a statement made by a minor female patron of Beach Girls.

Detective Walker explained that during the beginning of the investigation they looked at five bars within about a four mile radius. The amount of minutes spent at the scene of Beach Girls Bar was about equal to the four other bars combined, which was one of the reasons that they looked even further into problems with Beach Girls. There was a lot more activity compared to other bars in the area.

Council Member Marsh asked whether assaults occurring outside the premises/parking lot are directly attributed to Beach Girls. Detective Walker

responded that in reviewing all reports, the majority of assaults occurred from customers that had frequented the bar or people exiting the bar.

In response to Mayor Rice, Detective Walker stated that in reviewing reports from 2007, three or four assaults involved waitresses employed by Beach Girls Bar, but not working at that time, coming in to drink and being involved in assaults and disturbances.

Mr. Cogorno, attorney representing Beach Girls Bar, stated that he had no questions for the City witness.

The City Clerk swore in Witness **Sergeant Dan Schoonmaker**.

In response to questions from City Prosecutor Gerli, Sergeant Schoonmaker spoke to an occurrence on March 6, 2008 wherein an off duty police officer reported that he had seen what he considered to be an employee of Beach Girls bikini dancing on the sidewalk directly outside of the front door of the bar. There was a group around her and he felt that one male subject was the recipient of the bikini dance. The second incident occurred March 18, 2008 when a patrol officer arrested a drunk driver who had been drinking at the Beach Girls establishment that evening.

Sergeant Schoonmaker spoke in regards to the references that had been provided during the March 4, 2008 hearing with Mr. Cogorno and the business owners relative to Mr. Bryant's experience as a successful bar owner. In addition, he spoke about the ID scanner and wristbands that the owners said would be implemented at the business, as well as additional security guards.

BEACH GIRLS – CROSS EXAMINE OF CITY WITNESS

Sergeant Schoonmaker responded to questions posed by Mr. Cogorno relative to the date and time the notice was served; who was with him when the notice was served; the purpose of the wrist bands; the purpose and his knowledge of the ID scanner; whether ABC complaints have been filed against the bar owners; whether there was sufficient time for the owners to implement their changes; whether there was a written or oral notice to the bar owners prior to the January 28, 2008 notice; and whether he felt that Bill Hunt who submitted a report dated April 29, 2008 (attached to their proposal for settlement), is credible in assisting the bar owners in correcting the alleged problems at the bar, and if he agreed with Bill Hunt's proposals;

In response to City Prosecutor Gerli, Sergeant Schoonmaker stated that there had been 290 calls for service at Beach Girls Bar during the period January, 2005 through December 31, 2007. If not the owners, the manager or employees were contacted by police on the vast majority of the calls for service.

Council Member Marsh asked Sergeant Schoonmaker whether or not he is the person at the Police Department whose role it is to make the determination of whether the proposal made by Bill Hunt as the agent/consultant for Beach Girls is or is not an appropriate mitigating measure. Sergeant Schoonmaker stated that it would fall under the realm of the Chief of Police, and would not be his decision to make.

City Prosecutor Gerli said there are no further witnesses from the Police Department.

OPENING STATEMENT – BEACH GIRLS

Mr. John Cogorno, attorney for Beach Girls Bar, stated that he took this case because he felt the bar could be saved. The owners have owned the bar for 3 ½ years and have had some problems. He would like to get the government and business entities together to resolve the issue to save the business. He acknowledged that there have been problems at the bar, but that after 3 ½ years, this was the first time the Police Department came to the bar. They came in to give them written notice. Further, it's impossible to say a person that got pulled over for drunk driving had only been drinking at Beach Girls. Although they will not contest it, he stated that he felt there were a lot of innuendos, here say and suggestions in the reports.

Mr. Cogorno spoke to the damages the people at Beach Girls are going to suffer if they are issued a death warrant to the business. The owners have an obligation on the \$322,000 balance on the written lease agreement for the property at the Beach Girls that they are obligated to pay. The loss of their initial investment is \$250,000; loss of investment in improvement of \$40,000; and the loss of business income to the owners is an amount to be determined. He further spoke to the loss of tax revenues to the government, income tax, and income to employees. In addition, he said that it is unfair to compare this high volume bar with other bars. He felt that statistics were used in such a way to put Beach Girls in a bad light. One thing the owners have done recently which is why they stopped having problems is they started eliminating the skinheads that were creating problems at the bar. Mr. Cogorno proposed eleven suggestions or alternatives in order to salvage the business, and urged the Council to take more time to deliberate this matter.

Council Member Marsh commented that he would have liked for Bill Hunt to be present to attest to his written statement. In response to Council Member Marsh, Mr. Cogorno said that his clients are willing to take ownership of Bill Hunt's statement in his April 29, 2008 letter. Mr. Cogorno said that Beach Girls is a single location Limited Liability Company (LLC), and Terry Bryant and Eric Lakey are the only two owners.

Mr. Cogorno commented that Beach Girls is only legally responsible for four parking spaces. Discussion ensued relative to the parking spaces at Beach Girls

Bar. In response to Council Member Quach, Mr. Cogorno stated the capacity of the bar is approximately 80 persons; the types of businesses surrounding the bar and their closure times, and there has not been a parking problem at the bar for over 40 years.

City Attorney Bettenhausen stated for the record that the parking issue in not before the Council at this meeting. The appeal is from a decision to revoke a police permit. Specific findings were made and parking was not a part of this.

Council Member Marsh asked Mr. Cogorno what Bill Hunt will do for Beach Girls as agent/consultant. Mr. Cogorno responded that Mr. Hunt would be retained on a monthly basis to assist them in setting up the management to make sure the employees are properly trained and the managers are trained to continue and manage the business in an appropriate manner. Once new policies are implemented and followed he will assist in the management as long as it takes to get the bar operating in a legitimate fashion so that it doesn't run afoul of any violations.

BEACH GIRLS WITNESSES

The City Clerk swore in **Nehad Ouri**.

Nehad Ouri, owner of the liquor store next to Beach Girls, stated that since Beach Girls has closed it has affected his business. In response to questions raised by Mayor Rice and Council Member Ta, Mr. Ouri said he has not observed the smoking of marijuana in the parking lot or violations.

The City Clerk swore in Beach Girls Bar owner, **Terry Bryant**.

In response to questions from City Prosecutor Gerli, Mr. Bryant agreed that at the hearing with the Chief of Police that his business was going to start using wrist bands in the daytime and nighttime. It is also true that when the officers came to his business that the wristbands were not being used. Mr. Bryant said they decided not to use the wristbands during the day because they have a regular clientele, they know everyone that goes in their business, and the volume is so small they can identify everybody. He said that he did not notify Sergeant Schoonmaker or the Chief of Police that he was making the change. He said that the security guards are going to be undergoing a certification process and that the security guards were given applications to be certified about two or three weeks after he received the January notice. He responded to questions raised about the status of the certification process for the security guards. Mr. Bryant said it is true they were shut down by the health department for droppings of rats and dead rodents found in the bar. He said he was sure that they did renew their police permit in 2007; and if they received a bill in the mail for the 2008 expiration, he was sure that they renewed it.

In response to questions from Beach Girls attorney Mr. Cogorno, Mr. Bryant said the reason the wristbands were not being used the day the officers came in was because they know the small volume of people that come in during the day and the regulars were complaining about them. He said that they had one security guard during the day and did not miss a day for the two months after they received the letter. They had two security guards every night and three on the weekends. They did not have the problems during the day that they had at night, and made sure that the wristbands were used at night. That was their only deviation from the plan. Once they received the letter, he said that they went way above what any bar around does. He said that Sergeant Schoonmaker said they had 291 calls over a 3 ½ year period, which he calculated to be approximately seven calls a month. He admitted that is a lot of calls. Mr. Bryant further said that from the time they received the letter and the business closed, they took immediate action and did not have any calls for service at the bar. He said they are asking for a chance, and if they have excessive calls again, they will walk away and will understand. The ID scanner was used every single day for a month. Discussion ensued relative to when the scanner was purchased and the purpose, use and operation of the scanner.

Mr. Bryant said that the implementation of wrist bands and the ID scanner was suggested by them, and not a requirement of the Chief of Police. Mr. Bryant said it did help them with a lot of problems. In the 3 ½ years, they were shut down once by the Health Department for a day and a half. He said that the rodent problem is a shared problem, but the other businesses were not checked. The Police Department escorted a health inspector to their business, which was not a part of his area. After the rodent problem was corrected, they entered into a monthly contract with an exterminator to ensure no further rodent problems.

CITY PROSECUTOR – CROSS EXAMINE OF WITNESS

In response to City Prosecutor Gerli, Mr. Bryant said the ID scanner was ordered two weeks after they received the City's letter. A second machine is being purchased because the battery in one machine is not long enough to last day and night. The second machine has not yet been purchased because their business has been shut down. He said if the business opened back up, they would buy it. The first machine was used for about a month before their business was shut down. It would not be safe to assume that some of the hours they are open the machine was not being operated or out of battery, as the security guard used the outlet near the door to charge the battery.

REBUTTAL – CITY PROSECUTOR

In response to City Prosecutor Gerli, Sergeant Schoonmaker stated that a police permit was issued to Beach Girls in 2006. A permit was not issued in 2007 or in 2008.

Mayor Rice asked about the effectiveness of the ID scanner machine. Sergeant Schoonmaker responded that the machine is only as good as the security guard that scans in the ID. If regulars are not being scanned, then capturing the time and date that they were in the bar (if something were to occur at that time), the scanner becomes ineffective. There would be no record.

In response to Attorney Cogorno, Sergeant Schoonmaker replied that it was the owners' suggestion at the hearing with the Police Chief to use the machine; no conditions were set forth by the Police Chief or himself or anyone else from the Police Department that it had to be run for every customer that went into the bar. There were no conditions placed on the owners of the bar after the hearing.

REBUTTAL - BEACH GIRLS

The City Clerk swore in **Ken G. Bryant**.

Mr. Ken Bryant, brother of Terry Bryant, spoke regarding a few occasions where he and Terry have been affiliated or associated with the business. He said that he has managed some of his brother's establishments. He commented and defended statements in the supplemental report that he felt tarnished he and his brother's reputation. In response to Mayor Pro Tem Quach, Mr. Bryant said that he honestly felt that his brother's bar should have been shut down long ago.

PUBLIC COMMENTS

Ed Shoemaker, Westminster resident, asked if the ID scanner stores the social security number embedded on the back of the driver's license.

Darrell Nolta, Westminster resident, commented that he personally knows John Cogorno and that he is an excellent attorney. He said that he is repulsed in regards to the bar; opposed to granting liquor licenses because of the issues with driving under the influence; and bothered by the substituting brands of liquor and that the business did not have a police permit in 2007.

Jason Hunter commented that 290 calls in the three year period looks like a lot of calls, but half of the calls were officer initiated. He said that he works for a police agency and has been going to Beach Girls for two or three years. He has seen it go up and down with different managers.

RECESS

Mayor Rice recessed the meeting at 11:30 p.m.

RECONVENE

Mayor Rice reconvened the meeting at 11:45 p.m. All members of the City Council/Agency Board were present.

Joel Lugo, stated that he worked at Beach Girls as security on the weekends. He said that the system works with the scanners. He personally has had to get rid of problem matters. He commented on the background and experience of the security guards at Beach Girls. He commented on the money being lost since the business has been closed. He urged that Beach Girls be given a second chance.

CLOSING STATEMENT – CITY PROSECUTOR

City Prosecutor Gerli pointed out that the reason the Police Department so strongly advocates the revocation of the police permit is because they have no confidence, based upon what they have seen since January and the March hearing, that the owners of the bar will put in place all the things they said they were going to do the way they said they were going to do them. She said that their duty to run a bar lawfully arises from the moment they purchased the bar and does not arise from the City issues them notice. The number of violations should have put them on notice that something was going wrong. For them to continue to argue that the January notice was the first time that they ever knew anything was happening is disingenuous at best. Ms. Gerli also spoke about the certification of the security guards and the last minute faxed letter from Bill Hunt.

Ms. Gerli continued by saying that there is no dispute that everything that the owners suggested was their ideas, as the Police Department did not put conditions on them. The concern is that given the short amount of time that they had to do something, they didn't do it the way it was meant to be done. Even in the short time in which they were scrutinized by the Police Department, every move they made, they did not do what they said they were going to do and they did not do it the way it was meant to be done. They provided references that would not be references for them. Everything they gave us that was investigated turned out not to be in their favor. They do not have a reputation as excellent bar owners. How the past is relevant is their track record is an indication that in the future things are not going to get better. The recommendation is therefore that the Council uphold the findings of the Chief of Police and revoke the permit.

CLOSING STATEMENT – BEACH GIRLS

Mr. Cogorno stated that the evidence is that from January 28, 2008 to March 28, 2008 there were zero calls. The owners immediately took action and corrected it. It was not the bar that was causing the problem. It was some individuals within or outside the bar that were the problems. He said that there is no reason for the security guards to fill out applications when the bar is closed. They would go forward with the application process if the bar is allowed to open. Further, all of the suggestions came from the owners of Beach Girls, not the Chief of Police.

Mr. Cogorno said that they are asking for a chance to take a look at the possibility of probation and setting forth the conditions as Council wishes. This

way, it would also give the bar owners an opportunity to possibly sell the bar, at least recover what costs they may have incurred, or try to recoup part of their investments. He asked that the City Council take a look at the suggestions they have made to come up with a solution to keep the business as an entity within the City, and work within the guidelines set forth by the City.

MAYOR RICE CLOSED THE HEARING.

COUNCIL TAKES MATTER UNDER CONSIDERATION

Mayor Rice said that she is amazed that they have stayed open as long as they did and stated that she does not support reversing the decision to revoke the permit.

Mayor Pro Tem Quach commented that he was impressed with Mr. Cogorno and the letter submitted by Bill Hunt. The Westminster Police Department did an excellent job in monitoring and documenting this situation. He said that the fact that the applicant's own brother admits that it should have been closed a long time ago doesn't help him with his decision. He said that he is very comfortable with upholding the Police Chief's recommendation to revoke the permit. He is also open to upholding it and maybe not enforcing it for a period of time – 30 days or whatever the Council agrees, to work through a strict conditional use permit.

Council Member Marsh stated that former Lieutenant Bill Hunt has informed Council in writing, and it has been acknowledged, that the appellant accepts the findings and conclusions. He said that Mr. Cogorno raised a good point that during the brief two months between the period of notice and when the business closed they didn't have any calls. He questioned though, whether that would be sustainable in the long haul. Over a three year period they averaged an assault or battery once every seven weeks – a quarter of those were weapons charges. Council Member Marsh further stated that he is not convinced that the bar owners are going to be able to turn the business around. The number of calls in the last three year period is staggering. The number of calls involving threats to people is big. He is troubled by that and feels that it poses a danger to the public. He expressed support of the Police Chief's decision to revoke the permit. He is open to something more concrete if someone on Council has a proposal that they think will turn this around.

Council Member Ta stated that he is not convinced that the business will run better. He does not see a solution to continue the permit. Public safety to the community is important. He too is willing to discuss this further if another Council Member can offer a solution.

Council Member Fry stated that the bar has had too many changes in the past few years to turn the bar around and it is too dangerous for its continued operation.

Motion was made by Council Member Fry, seconded by Mayor Pro Tem Quach to deny the appeal and uphold the Police Chief's decision to revoke the police permit for Beach Girls Bar located at 15549 Beach Boulevard.

Council Member Marsh commented from the findings admitted by the appellant. Finding No. 3 is critical – the owners Eric Lakey and Terry Bryant knew or should have known about unlawful and disruptive behavior that occurred at the location. Finding No. 4 - the acts of the owners Eric Lakey and Terry Bryant contributed to the unlawful and disruptive behavior that occurred there. Those two factors indicate that they have a level of culpability. They knew about this problem before and they should have done something about it. He expected an argument that although they accepted responsibility for it, disputing that they knew or should have known or that their acts contributed to the unlawful and disruptive behavior. Instead, Mr. Hunt's letter squarely concedes them. He said that Mr. Hunt, ironically, brought in to assist the establishment, has really sealed the coffin on this argument. How are we supposed to find that there is going to be a way to fix it if those things are admitted to be true?

The motion carried by a 5-0 vote.

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Motion was made by Mayor Pro Tem Quach, seconded by Council Member Marsh to bring forward Item No. 6.5 on the agenda for consideration at this time. The motion carried by a 5-0 vote.

6.5 Award of Professional Services Agreement for Orange County Transportation Authority's (OCTA) Go Local Program to provide Transit Needs Assessment Services to the Cities of Westminster, Huntington Beach, Fountain Valley, and Stanton. (502-20)

Motion was carried by Mayor Pro Tem Quach, seconded by Council Member Ta to:

- 1) Approve a revenue increase in the amount of \$400,000 to the fiscal year 2007-08 Measure M budget for the OCTA – Go Local for the initial assessment for Metrolink connection;
- 2) Approve the transfer of \$400,000 to the Measure M Capital Improvement Project Account – Go Local Metrolink Study; and Award a Professional Services Agreement to The Solis Group in the amount of \$385,000 to conduct the Transit Needs Assessment Study as part of the OCTA "Go Local Program", and authorize the City Manager to execute the agreement on behalf of the City.

Council Member Marsh requested the contact information for the entity to which the services are being awarded, as he has requested this from staff in the past.

The motion carried by a 5-0 vote.

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Motion was made by Council Member Marsh, seconded by Council Member Ta to bring forward Item No. 7.1 on the agenda at this time. The motion carried by a 5-0 vote.

- 7.1 Request from The Rose Center Foundation for Financial Assistance from the City in the Amount of \$2,500 to Help Defray Expenses for the Mayor's Ball to be held on Saturday, June 21, 2008 at the Westminster Rose Center. (213-04)**

Motion was made by Council Member Marsh, seconded by Council Member Ta to:

- 1) Approve the request from the Rose Center Foundation for financial assistance with the Mayor's Ball, in the amount of \$2,500. This is the same amount that was approved by the Mayor and City Council in FY 2005-06 and FY 2006-07; and
- 2) Approve a budget transfer of \$2,500 from the General Fund Contingency Account to the Community Promotions Special Departmental Expenses Account.

The motion carried by a 5-0 vote.

- 6.2 Transfer of Funds Seized Under the Department of Justice Asset Forfeiture Program to Supplement the Purchase of Safety Equipment. (105-02)**

Motion was made by Mayor Pro Tem Quach, seconded by Council Member Ta to increase the Police Local Seizure fiscal year 2007-08 budget by \$138,400 and authorize the transfer of funds from the Police Local Seizure Undesignated Unreserved Fund to Safety Equipment in the amount of \$138,400.

The motion carried by a 5-0 vote.

- 6.3 Review of Case No. 2006-59 Conditional Use Permit and Variance for property located at 9741-9743 Bolsa Avenue – Six month review of business operations. (201-00) (CN 2006-59)**

Council Member Ta and Mayor Pro Tem Quach reported a potential conflict of interest as they live within 500 feet of the subject property.

Motion was made by Council Member Marsh, seconded by Council Member Fry to continue this item to the May 14, 2008 meeting. The motion carried by the following roll call vote:

AYES: RICE, FRY, MARSH
NOES: NONE
ABSTAIN: QUACH, TA
ABSENT: NONE

6.4 Change Order with Sequel Contractors, Inc. and Notice of Completion for work performed for 11th, 13th, 15th, and 15th Street Alley Street Improvements – Project No. 16510-051600 and 16510-071604. (502-19)

Motion was made by Council Member Marsh, seconded by Council Member Fry to:

- 1) Authorize an increase of \$5,235.05 to Purchase Order No. 4391 to Sequel Contractors, Inc.; and
- 2) Accept the subject project and authorize the City Clerk to file a Notice of Completion with the County Recorder's Office.

The motion carried by a 5-0 vote.

7. WRITTEN COMMUNICATIONS (Public) – None

8. LEGISLATIVE ITEMS

8.1 Case No. 2007-87. Review of Ordinance 2429, Amendment to Title 17 (Land Use Ordinance) of the Westminster Municipal Code to require applicants to post a public hearing notice at the site to which a hearing pertains. (201-00) (CN 2007-87)

Motion was made by Council Member Marsh, seconded by Mayor Pro Tem Quach to defer this item to the May 14, 2008 Council meeting. The motion carried by a 5-0 vote.

9. COMMISSION AND COMMITTEE ITEMS – None.

10. **COUNCIL/AGENCY ADJOURNMENT:** Adjourned at 12:30 a.m. in memory of Assemblyman Van Tran's uncle, General Du Quoc Dong to Tuesday, May 13, 2008 at 6:00 p.m. in the Council Chambers, 8200 Westminster Boulevard, Westminster, California for the purpose of reviewing the preliminary budget for fiscal years 2008-09 and 2009-10, and to discuss City/Agency business.

Submitted by:



Marian Contreras, City Clerk/Agency Secretary