

MINUTES

CITY COUNCIL
CITY OF COSTA MESA

APRIL 26, 2005
SPECIAL MEETING

Mayor Mansoor called the Special Meeting of the City Council of the City of Costa Mesa to order at 6:00p.m.

PRESENT: COUNCIL MEMBERS: ALLAN R. MANSOOR
GARY C. MONAHAN
ERIC R. BEVER
LINDA W. DIXON
KATRINA A. FOLEY

ABSENT: COUNCIL MEMBERS: NONE

ALSO PRESENT: ALLAN L. ROEDER, CITY MANAGER
KIMBERLY HALL BARLOW, CITY ATTORNEY
JULIE FOLCIK, DEPUTY CITY CLERK
STEVE HAYMAN, ASSISTANT CITY MANAGER

PUBLIC COMMENTS: The Mayor noted that since this is a Special Meeting, only those items listed on the agenda may be addressed. Therefore, public comments would be requested on each item following any staff presentation.

OLD BUSINESS

1, Request for Rehearing of City Council Action on April 5, 2005 Relating to the Job Center: The Deputy City Clerk stated the matter before the City Council was a request for rehearing of the action the Council took on April 5, 2005 and noted that the matter was continued from the April 19th meeting.

The Mayor invited the appellant to speak. Mike Berry, Costa Mesa, stated he filed the appeal of the Council's action of April 5th because at 2:00 a.m. in the morning, the motion was less than clear. In his opinion, the discussion that transpired between Council Members had nothing to do with the motion on the floor; it spoke to funding. Mr. Berry offered to discuss the technical issues, when Council Member Bever interjected that he would like to offer a motion which, if approved, should adequately address the concerns of the appellants.

MOTION: Council Member Bever offered a motion to amend the Job Center motion of April 5/6, 2005 as follows: Regardless of the progress in providing an alternate site, the Job Center located at 17th Street and Placentia, shall permanently cease operations as of September 30, 2005. Council Member Mansoor seconded the motion.

Mayor Mansoor stated that clarifies the prior direction to staff. Mr. Berry stated he was satisfied with that motion, noting it clears up any ambiguity in the April 5th motion.

Council Member Foley stated she could not support the motion since, in her opinion, there was a timing issue in transitioning the Job Center from one location to another, that every one agrees that the Center needs to be moved, but she did not want to tie the transition to such a firm date. She stated the request for a rehearing has caused a delay in moving forward to form a committee to find an alternate location and alternate financing, and further, a September 30th deadline provides too tight a time frame to accomplish the goals.

Council Member Dixon recalled that she clarified with the maker of the April 5th motion that the Job Center was going to close at the end of six months. She could not support

that motion then and still believed that the public and private sectors should be given at least one year to work together to find a new location for the Job Center. She reminded the City Council that she had suggested working with the City of Santa Ana to find a location at MacArthur and Harbor Boulevard that could be shared.

Mayor Mansoor asked if any member of the public wished to address the City Council on the motion to close the Job Center by September 30, 2005. The following persons spoke:

1. Judy Berry, Costa Mesa, favored a date specific so that everyone knew the deadline for closure.
2. Edward Truill, Costa Mesa, requested the City Council to vote unanimously with the way the majority voted the last time on the issue.
3. Rich Gullick, Costa Mesa, suggested allowing them to form a committee and report back to the City Council at the end of June on how and where they would relocate the Job Center; he suggested putting it near the IKEA store on the cul-de-sac street named Susan and share it with the City of Santa Ana.
4. Ron Renish, Costa Mesa, stated he left the April 5th meeting with the impression that a committee was to be appointed to form a 501C-3 organization and now he has learned that the Job Center is to be closed by September 30th; that does not allow sufficient time to form a 501C-3 organization.
5. Josh Boyle, Costa Mesa, stated a month has been wasted and that September 30th is an unreasonable deadline; requested the City Council to reaffirm their commitment to keep the Job Center open.

The Mayor asked if anyone else wished to address the City Council; there was no response.

Mayor Pro Tem Monahan clarified that at the last meeting when a request for rehearing was submitted, the closure date for the Job Center was June 30th and it was extended to September 30th. A public hearing was to be scheduled at the end of August to give the City Council an update on whether or not progress had been made on relocating the Job Center. The intent of his motion was not to notify the property owner that the City would be vacating the site until after the August Council meeting to determine if a couple more months might be needed to secure a new Job Center site. The definitive closing date of September 30th will stand unless it is shown that only a couple of months would be needed to affect a relocation.

Mayor Pro Tem Monahan noted that the Job Center has been in place for approximately 17 years, and for the last ten years he has been supporting and listening to comments about the Center, but now since the West Side is being redeveloped, it is time for it to be relocated.

Relating to formation of a 501C-3 for the Job Center, Mayor Pro Tem Monahan stated it doesn't necessarily have to operate under a 501C-3 tax status. What is needed now, is a relocation site, determination on how it is to be funded and volunteers to operate it. To date no one or any committee has been formed to make those determinations. Mayor Pro Tem Monahan advised that by August, he needed to see committed people in the community actively pursuing a relocation site, funding, and getting volunteers involved.

Mayor Pro Tem Monahan stated, therefore, he would not support the motion on the floor, and unless he heard testimony this date to the contrary, he most likely would not support the request for rehearing. He expressed his support for the motion made at the last meeting and encouraged those supporting the Job Center meet with City Staff and the Chamber of Commerce who has offered to help organize the effort.

Council Member Foley clarified that there is a strong motivated group of people working on the relocation effort, including business leaders, non-profits, churches and community individuals. She personally has secured a pledge from Wells Fargo for funding the Job Center, while others have been working diligently on researching the non-profit status issue and funding alternatives and grants. The groups have been

waiting for the City to set a meeting date with them, but given the request for the rehearing, City staff decided to wait for a decision on the rehearing request.

Council Member Bever stated he understood both sides of the issue, one group dedicated to securing an alternative site, which he appreciates, and another group who has dealt with the situation for 17 years and who need a date certain. Council Member Bever thereupon revised his motion as follows, if acceptable to the appellant:

REVISED MOTION: Council Member Bever revised his motion to amend the Job Center motion of April 5/6, 2005 as follows: Regardless of the progress in providing an alternate site, the Job Center located at 17th Street and Placentia, shall permanently cease operations as of December 31, 2005. Council Member Mansoor accepted the revised motion.

Mike Berry, appellant, stated the revised motion was acceptable to him, but pointed out the motion at the last meeting did not address the closure date issue, only the funding. Council Foley read the City Council action taken at the last meeting and emphasized many issues were addressed, not just funding.

The Mayor asked if anyone wished to address the revised motion.

1. Helen McClure, a professor at Coastline Community College, Costa Mesa, advised she was in favor of the Job Center and when the revised motion was clarified for her, she thanked the City Council.

A vote on the foregoing revised motion was taken. Council Members Foley and Monahan voted "No". MOTION CARRIED.

A brief discussion clarifying the status of the request for rehearing ensued. Upon conclusion, appellant Mike Berry officially withdrew his request for rehearing.

City Manager Roeder stated his office is putting together a master notification list of parties who wish to be involved in the Job Center effort and encouraged any interested person to call 71.754.5327.

Following the last item on the agenda, Council Member Dixon stated she voted for the extension to the Job Center closure not because she favored closure, but that she believed it gave more time for the committee now forming to find another location and secure funding. She asked the City Attorney what her options were if she wanted to bring the matter back to the Council. City Attorney Barlow stated that as a Council Member, she had the right to request any matter be agendaized, in accordance with the Brown Act. Ms. Barlow stated that a report is still forthcoming in August giving the status of the progress of the direction given by the City Council. The issue can be brought forward at that time also. Council Member Foley stated she supported the motion because it had more flexibility in it, no drop deadline date.

2. Proposed Urgency Ordinance—Solicitation of Employment, Business or Contributions from Streets and Certain Parking Lots: Deputy City Clerk Julie Folcik advised that the proposed urgency ordinance was continued from the April 19, 2005 City Council meeting and thereupon read the title.

City Attorney Kimberly Hall Barlow briefed her Council Agenda Report dated April 20, 2005, and noted she was recommending adoption of an urgency ordinance, as well as a non-urgency ordinance (two readings) to insure that the revisions would be effective in the event of any challenge to the urgency ordinance findings.

Ms. Barlow stated that the proposed revisions were for clean-up and clarification purposes, resulting from recent Court decisions. For example, she pointed out that although she believed the current Municipal Code relating to the difference between a sidewalk, median, and parkway was adequately clear to the public, a recent Court decision indicated that more definitive descriptions were required. Another Code revision will make clear the actual scope of enforcement so there would be no conflict

between the terms of the Code and to make it clear to the public what is prohibited and what is not prohibited. Ms. Hall advised that Lt. Birney of the Police Department would address the solicitation ordinance and its history.

Lt. Dale Birney gave a historical overview of the cause for enactment of a solicitation ordinance, noting that in July 1988, the Police Department began receiving complaints of individuals congregating in large groups and stopping vehicles in the street and upon investigation of those complaints, it was found that large gatherings were interfering with business operations primarily in commercial areas, resulting in public safety issues. Officers began to issue citations in violation of the Vehicle Code. In October 1988, the Job Center opened and the solicitation ordinance went into effect. Lt. Birney advised that in the last five years the response of the Police Department has been based upon officer's observation of solicitation activity or citizen complaints and in the last six months, four enforcement operations relating to the solicitation ordinance have resulted in 16 citations being issued. In conclusion, Lt. Birney stated that the need for recent enforcement has been fairly inconsistent, but when necessary in the last 12 months, enforcement has been consistent with the proposed solicitation ordinance language.

Mayor Mansoor asked if any member of the public wished to address the City Council on the matter. The following persons spoke:

1. Mike Berry, Costa Mesa, asked if the new ordinance would affect the sign ordinance, and if so, would the current signs have to be replaced with new signs, noting there was a cost to those businesses to do so; he believed the City should pay for any necessary new signs.

City Attorney Kimberly Barlow stated there is a minor change and businesses should be able to comply with the new ordinance by blanking out a word and not have to replace the entire sign. Council Member Bever asked if the language remains on the sign, but the City does not actively enforce the language, would that signage remain valid. Ms. Barlow stated she would recommend that business owners make the change, but noted that the Police Department would not be enforcing it outside the parameters of the Code. In response to Council Member Bever, Lt. Birney stated the Police Department would conduct an outreach program to inform property owners of the changes, noting there were less than ten involved. The Mayor requested that the number of recent citations prosecuted by the District Attorney be provided.

2. Beth Refakes, Costa Mesa, stated she believed it was a consumer safety issue, particularly in large parking lots where people gather and solicit money, and she hoped that property owners would participate in the program.
3. Richard Gullick, Costa Mesa, questioned if signs with big arrows pointing people to a location for parking would be in violation of the proposed ordinance, and if Section 9 discriminates against volunteers soliciting signatures in a petition drive and people who are being paid to solicit signatures.

City Attorney Barlow stated the proposed ordinance addresses conduct where a person goes into the street and solicits a moving vehicle, whether they are a day laborer or a person wanting to rent out an apartment, and that the Police Department would be enforcing the ordinance equally.

4. John Earl, Huntington Beach, stated he believed the proposed ordinance should have been printed in Spanish and that an interpreter should have been present this evening.

Council Member Foley questioned if an analysis had been conducted to see if there was any conflict with the City's sign ordinance, noting at the Planning Commission level an in depth discussion had been held in which apartment owners strongly expressed that people on corners should be allowed to direct persons to their apartment areas, and she believed it is allowed under the current sign ordinance. Council Member Bever stated

he assumed that an apartment owner on his own property could have people holding signs directing the public onto his/her premises.

City Attorney Barlow stated the proposed ordinance does not affect people on private property, but does prohibit people standing and soliciting in the public right of way or public roadway. She advised that the proposed ordinance does not criminalize standing or holding signs, but jumping and twirling signs, does. Ms. Barlow stated that if there is a conflict with the existing sign ordinance, she would be bringing back an Amendment. She stated that the ordinance cannot distinguish between those seeking work and those seeking a commercial transaction.

Council Member Foley requested clarification, would a person standing on a corner, moving a sign up and down vigorously so as to attract one's attention, be allowed. The City Attorney answered that if they were waiving a sign, waiving their arms, or shouting and directing it toward moving vehicles, it would be prohibited under the proposed ordinance.

Council discussion ensued and Mayor Pro Tem Monahan stated he thought the motivation behind the ordinance that has been enforced and will be enforced in the future, is that if a person is attracting attention by waiving signs and arms so as to create a hazard to the motoring public so they are unable to focus their attention to the road, they will be cited.

Council Member Bever clarified that a person holding a sign on the sidewalk can be problematic if they impede movement on the sidewalk. City Attorney Barlow stated the proposed ordinance does not speak to sidewalks, but that there are other Municipal Code and Vehicle Code provisions that address impeding the flow of pedestrian traffic on sidewalks.

5. David Kincaide, Costa Mesa, expressed his appreciation to the City Attorney for the clear and definitive update of the Code and encouraged the City Council to adopt the proposed ordinance.
6. Jean Forbath, Costa Mesa, expressed concern that the people affected by the ordinance, particularly day workers, understand all ordinances relating to solicitation by publishing it in their language and that an outreach program be implemented. Ms. Forbath questioned what would happen to the existing solicitation ordinance if by chance the Job Center was closed and no alternative site opened.
7. Martin Mallard, Costa Mesa, expressed the view that people do not understand this is a narrowly crafted ordinance that prohibits solicitation in the public streets, not on sidewalks or in parks, although those areas need to be addressed; and that an outreach program was not necessary.
8. Jarrett Lovell, Tustin, questioned what "certain commercial parking lots" meant. City Attorney Barlow stated that owners of private commercial parking lot may designate their lots an area where active solicitation may not occur and if they do that, they must notify the Police Department and post signs on their property.

The Mayor asked if anyone else wished to address the City Council on the matter; hearing no response, he closed public comments.

The Mayor asked the City Attorney to address the question of the public relating to what happens to the ordinance if the Job Center is permanently closed. City Attorney Barlow stated the question has not surfaced in any legal challenge, nor has an issue arisen. She noted they are working toward making sure there are available alternatives, and this is one way of doing that, by making sure people are aware that the ordinance addresses only active solicitation that has the effect or intent of distracting drivers and does not reach most of the kinds of conduct that would not allow people to communicate their message. Further, the Courts have said that if there are adequate, available alternative avenues of communication, that ordinances like Costa Mesa's are valid and enforceable. Ms. Barlow expressed the opinion that the City has crafted an ordinance that creates those alternatives.

In response to Council Member Dixon, City Attorney Barlow advised that the person actually waiving the sign on the sidewalk would be cited, not the business owner who hired him. Ms. Barlow stated that through the conditional use permit process, an owner is responsible for compliance with all laws, and the City can use that methodology to condition them to notify the people who serve them of the solicitation requirements/limitations. For those businesses that do not have a conditional use permit but have their parking lots noticed and posted, the Police Department will be in contact. Ms. Barlow further stated from a staff level, the City can make sure that local businesses are aware of the requirements, but the City cannot make them criminally responsible for the acts of the persons they hire.

Council Member Dixon stated she would like to see something sent to local businesses notifying them of the change in the solicitation ordinance and advising them that they have a responsibility to inform the persons they hire. City Attorney Barlow stated The Register, Daily Pilot, and Chamber of Commerce could be notified of the new requirements and press releases could be issued. In addition, City Manager Roeder advised that the City provides information about new regulations and works with the business community. He stated that there is a limited but well identified number of locations in the City where the activity in question occurs and the City's initial effort will be to contact individuals with the signs and the businesses who hire them. Council Member Dixon expressed the desire to have the Police Department initially warn and educate both the person waiving the sign and the business who hired him, rather than citing everyone at first. Lt. Birney stated that with all new regulations, the Police Department makes contact with individuals and businesses and initially informs and warns.

MOTION: On motion by Council Member Mansoor, seconded by Council Member Monahan, the City Council moved to adopt the following entitled urgency ordinance and to waive further reading:

ORDINANCE NO. 05-7: AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, AMENDING TITLE 10, CHAPTER XIX OF THE COSTA MESA MUNICIPAL CODE REGARDING SOLICITATION OF EMPLOYMENT, BUSINESS OR CONTRIBUTIONS FROM STREETS AND CERTAIN COMMERCIAL PARKING LOTS.

In response to Council Member Foley's request to add a grace period provision to the ordinance, Mayor Mansoor and Mayor Pro Tem Monahan stated they were comfortable with the Police Department's past warning and cite approach to new ordinances.

Roll Call Vote:

AYES: COUNCIL MEMBERS: MANSOOR, MONAHAN, BEVER, DIXON, AND FOLEY

NOES: COUNCIL MEMBERS: NONE

ABSENT: COUNCIL MEMBERS: NONE

The Mayor declared urgency Ordinance No. 05-7 duly passed and adopted.

3. Proposed Ordinance—Solicitation of Employment, Business or Contributions from Streets and Certain Parking Lots: Deputy City Clerk Julie Folcik advised that the proposed ordinance was continued from the April 19, 2005 City Council meeting and thereupon read the title.

City Attorney Kimberly Hall Barlow noted she was recommending adoption of a regular ordinance (two readings) as a precautionary measure against any challenge to the findings in the urgency ordinance.

The Mayor asked is anyone wished to address the City Council on the matter. The following person spoke:

1. John Earl, Huntington Beach, expressed the view that the ordinance would not work, since people would still stand out there looking for work and encouraged the City, instead, to keep the Job Center open.

The Mayor asked if anyone else wished to address the City Council; there being no response, he closed public comments.

MOTION: On motion by Council Member Mansoor, seconded by Council Member Bever, the City Council introduced for first reading the following entitled ordinance and waived further reading:

ORDINANCE NO. 05-8: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, AMENDING TITLE 10, CHAPTER XIX OF THE COSTA MESA MUNICIPAL CODE REGARDING SOLICITATION OF EMPLOYMENT, BUSINESS OR CONTRIBUTIONS FROM STREETS AND CERTAIN COMMERCIAL PARKING LOTS. (Second reading/adoption will be May 3, 2005)

MOTION UNANIMOUSLY CARRIED.

ADJOURNMENT: The Mayor declared the meeting adjourned at 7:12 p.m.

Respectfully submitted,

JULIE FOLCIK, DEPUTY CITY CLERK

ALLAN R. MANSOOR, MAYOR