

CITY OF ALISO VIEJO
CITY COUNCIL MINUTES
REGULAR MEETING
SEPTEMBER 17, 2014, 7:00 P.M.
Council Chambers, City Hall, 12 Journey
Aliso Viejo, California

CALL TO ORDER: Mayor Tsunoda convened the Closed Session at 6:05 p.m. in the Council Chambers.

PRESENT: MAYOR PHILLIP B. TSUNODA
MAYOR PRO TEM WILLIAM A. PHILLIPS
COUNCILMEMBER CARMEN CAVE
COUNCILMEMBER ROSS CHUN
COUNCILMEMBER MIKE MUNZING

ABSENT: NONE

STAFF PRESENT: SCOTT SMITH, CITY ATTORNEY
DAVID A. DOYLE, CITY MANAGER
ALBERT ARMIJO, PLANNING DIRECTOR

CLOSED SESSION

1. **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**
Pursuant to Government Code Section 54956.9(d)(1)
Number of Case(s): 1
Kyle Hillis v. City of Aliso Viejo, OCSC Case No. 30-2013-00688926-CU-NP-CXC
2. **CONFERENCE LEGAL COUNSEL – ANTICIPATED LITIGATION**
Significant Exposure to Litigation Pursuant to Government Code Section 54956.9(d)(2)
Number of Cases: 1

PUBLIC COMMENT: Mayor Tsunoda opened public comments and the following person spoke:

- 1) Kathleen McCarthy, commented it is her assumption Closed Session item no. 2 is regarding the Mayor's recent use of the City's eNews email subscription list to send out political campaign emails, in which case, pursuant to certain sections cited in the Government Code, the noticing is incorrect. She further stated, if she is incorrect in her assumption, the subject item should be listed on the regular agenda as a matter of discussion and she is disappointed to see that it is not currently listed on the regular agenda.

**A. COUNCIL RECOGNITION AND PRESENTATION TO JOHN GRAYSON,
ALISO PROUD ESSAY WINNER**

Mayor Tsunoda introduced Mr. Grayson, presented him with a certificate of recognition, and asked him to read his essay. Mr. Grayson did and expressed thanks to the Council.

**B. PRESENTATION AND RECOGNITION TO THE ALISO VIEJO U10 GIRLS
ALL-STAR TEAM LIGHTS OUT FOR ITS RECENT ACCOMPLISHMENT**

Mayor Tsunoda introduced the team coaches and presented a certificate of recognition to the team members as follows: Marley Naegele; Brielle Blye; Skylar Rooney; Sophia Miller; Summer Rieden; Britton Purcell; McKayla Peters; Julianna Lassiter; Leah Martinovich; and Ava Snider. Coach Craig Rooney commented about the teams victory and Assistant Coach Ken Blye presented the Mayor with a signed soccer ball.

ADDITIONS, DELETIONS, REORDERING TO THE AGENDA

None

CONSENT CALENDAR

Mayor Tsunoda asked if any member of the City Council or the public wished to remove an item from the Consent Calendar. There was no request from the public, staff and City Council to remove any items on the consent calendar.

**MOTION: COUNCILMEMBER CHUN MOVED AND MAYOR PRO TEM PHILLIPS
SECONDED TO APPROVE CONSENT CALENDAR ITEMS 1 - 7, AS PRESENTED.**

1. **WAIVE THE READING OF ALL ORDINANCES AND RESOLUTIONS**

Approved the reading by title only of all ordinances and resolutions wherein the titles appear on the public agenda; said titles shall be determined to have been read by title, and further reading is waived.

2. **APPROVAL OF MINUTES – AUGUST 20, 2014 REGULAR MEETING**

Approved the subject Minutes as submitted.

3. **ACCOUNTS PAYABLE**

Ratified the following Accounts Payable checks:

1. Issued August 14, 2014 in the amount of \$743,421.93;
2. Issued August 21, 2014 in the amount of \$76,146.74;
3. Issued August 28, 2014 in the amount of \$82,129.45; and,
4. Issued September 4, 2014 in the amount of \$323,027.37.

4. TREASURER'S STATEMENT – JULY 2014

Approved said Statement.

5. REQUEST TO APPROVE PLANNING APPLICATION PA 14-012 (MSP) TO ESTABLISH A MASTER SIGN PROGRAM FOR THE DEVELOPMENT WITHIN SPECIFIC PLAN NO. 1 – VANTIS.

Adopted a Resolution entitled:

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, TO APPROVE PLANNING APPLICATION PA 14-012 (MSP) TO ESTABLISH A MASTER SIGN PROGRAM FOR THE DEVELOPMENT WITHIN SPECIFIC PLAN NO. 1 – VANTIS

6. THIS ITEM IS INTENTIONALLY LEFT BLANK

7. TOWN CENTER SPECIFIC PLAN – AGREEMENT WITH RK ENGINEERING GROUP FOR PROFESSIONAL CONSULTANT SERVICES PERTAINING TO THE TOWN CENTER SPECIFIC PLAN

Approved said Agreement.

MOTION UNANIMOUSLY CARRIED TO APPROVE THE CONSENT CALENDAR.

END OF CONSENT CALENDAR

DISCUSSION ITEM NOS. 8 - 10

8. INTRODUCE AN ORDINANCE ENTITLED BELOW

City Manager David Doyle presented the staff report.

MOTION: COUNCILMEMBER MUNZING MOVED AND MAYOR PRO TEM PHILLIPS SECONDED TO INTRODUCE AN ORDINANCE ENTITLED:

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, AMENDING SECTION 2.20.010 OF THE ALISO VIEJO MUNICIPAL CODE PERTAINING TO THE APPOINTMENT OF THE CITY CLERK

MOTION UNANIMOUSLY CARRIED.

9. OC WINE MART – REVIEW OF AN ADMINISTRATIVE USE PERMIT TO ALLOW THE SALE OF ALCOHOLIC BEVERAGES AT THE ALISO CREEK MARKETPLACE CENTER (PA 14-011). THE PROPOSAL IS CATEGORICALLY EXEMPT FROM ENVIRONMENTAL REVIEW BECAUSE IT IS A USE PERMIT FOR A CONDITIONALLY-PERMITTED LAND USE IN A COMPLETED COMMERCIAL CENTER

Director of Planning Services Albert Armijo presented the staff report noting Planning Consultant Larry Lawrence and Rogier Goedecke of RK Engineering, are present for questions. In response to Council question, Director Armijo described the process of the subject application that has led up to agendaing the item before the Council.

Mayor Tsunoda opened public comments.

- 1) Michael Ayaz, attorney for the applicant, provided clarification of the proposed use and for the record noted the property owner has done their due diligence in this application, noting there are similar successful establishments in Yorba Linda and Irvine. He added, the rest of the tenants in the center support the project and they look forward to be a part of the City. He also expressed thanks to staff for their assistance in the process.
- 2) Eric Sedman, property owner, commented about off-site parking for the center, its business model, and noted the center strives to get good tenants.

Questions and discussion ensued regarding distinction in the permit process for consumption of alcohol and wine tasting, any prohibitions to prevent the use from turning to a bar, ABC regulations, license transferable, patron and employee parking, absence of a site/floor plan in the exhibits, parking study variances, business operations, setting of the Irvine establishment, outdoor consumption and loitering, and timeframe to occupy unit.

Councilmember Cave suggested to continue the item in order to formulate additional conditions regarding prohibition of alcohol consumption outside the wine tasting area and the provision of a clear site/floor plan of the proposed application.

Michael Ayaz, the Applicant's attorney, urged the Council to not continue the item, noting the applicants are in agreement with the additional conditions and suggested crafting them tonight for Council action.

Eric Sedman, Property Owner, provided additional comments that provisions about the wine tasting area is in the lease and noted outside seating is part of the ambience and is common in the center.

MOTION: COUNCILMEMBER CAVE MOVED AND COUNCILMEMBER CHUN SECONDED TO APPROVE ADDITIONAL CONDITIONS OF APPROVAL TO PROHIBIT CONSUMPTION OF WINE OUTSIDE THE 340 SQUARE FEET WINE TASTING AREA AS DEPICTED IN ATTACHMENT A PAGE 9.22 AND TO PROVIDE AN EMBELLISHED EXHIBIT B (THE FLOOR PLAN WITHIN THE PARKING STUDY) AS PART OF THE APPLICATION.

10. NO SMOKING AD HOC COMMITTEE FINDINGS AND RECOMMENDATIONS

City Manager David Doyle presented the staff report and responded to questions about the no smoking ordinances obtained from other agencies, apartments visited, no shared ventilation, no smoking parameters, and clarified the scope of the ad hoc was to study for-rent apartment units.

Mayor Tsunoda opened public comments and the following persons spoke:

- 1) Jan Pollitt, oppose findings noting they are inaccurate since opinions are from apartment owners, not from people impacted by the smoke. She said she does not want to hear it won't work or can't do it. She also expressed disappointed that Councilmember Chun supports the report.
- 2) Jan Shomaker, support findings and would oppose a smoking prohibition and decision on the matter should be left with the property owners and apartments.
- 3) Philip Fleming, support findings.
- 4) Jodie Feinberg, echo the first speaker that findings are inaccurate and no solution was given. She also expressed disappointment with Councilmember Chun.
- 5) Yana and Alex Semenyuta, noted they live in a condo which is up for sale because of smoking problems. Mrs. Semenyuta noted they had approached their HOA who didn't do anything about it, they filed a case in court but it was dismissed, hence their only option was to move. Mr. Semenyuta urged the Council to talk to impacted residents for their side of the story.
- 6) Domenic Sciarra, concerned that residents were not included in providing input and felt the findings were one sided, biased, and with no options. He said the only good thing in the report is the recommended dissolution of the adhoc and its current membership.
- 7) Marlana Lewis, expressed disappointment in the report which lacks backing and did not include condos and townhomes, and in Councilmembers Chun and Munzing.
- 8) Tracy Kiggen, expressed disappointment in the findings, noting the complex she lives in has one no-smoking section and it was not disclosed when she moved in.
- 9) Claire Braeburn, expressed disappointment in the outcome, feels it comes from a biased group of people, noted renters were not interviewed and process was not honest and fair.
- 10) John Van Hogen, urged the Council to adopt staff's recommendation.
- 11) Amanda Knitter, representative, American Lung Association in California, referenced the letter she submitted to the City, said she is alarmed there is no consideration of the

vital core issue in this matter, she noted 18 cities have a no smoking ordinance in place and suggested that proper education to the public about the ordinance would diminish law and code enforcement. She asked the report be revisited, and staff involve and talk with the impacted residents. She also asked the minutes of the stakeholder group meetings be made available.

- 12) Diane Roberts, noted she is a lung cancer survivor and urged the Council to reconsider because it is not just a nuisance but a danger to people's health. She would like the City to come up with solutions.
- 13) Tommy Thompson, Executive Director, California Apartment Association, expressed support of the findings. He stated second hand smoke is a health issue and the question really is whether the City should be involved. He noted of about 5000 apartment units in town, there are currently 1500 units that are smoke-free and the Association is doing its best to manage the issue.
- 14) Shaye Anders, representing the St. Moritz and Barcelona apartment complexes totaling to 1260 units, noted they rarely get complaints about smokers and that the market should indicate if smoking should be prohibited.
- 15) Fred Geraghty, General Manager at City Lights with 793 units, reported the complex has an 85% conversion to no smoking, they educated the residents, designated buildings for smoking, and noted smoking complaints are very rare. He expressed support of staff's recommendation.
- 16) Derek Strader, member, California Apartment Association, expressed support of staff's recommendation and urged Council to adopt it.
- 17) Julie Manthey, noted the concerns not only involve the residents but also their guests and makes it an intense and difficult matter and citizens may take matter into their own hands. She expressed support of staff's recommendation.
- 18) Melinda Graham, Vice President, Graham Property Trust, expressed support of staff's recommendation and urged Council to adopt it. She noted in their association, the leases stipulate non-smoking and if there is a smoker, an addendum is prepared.
- 19) Brandon Lawritson, Manager, Aliso Creek Apartments, expressed support of staff's recommendation, noting they have policies in place and they receive about one complaint a month.
- 20) Choon Lee, Executive Director, Smokefree Living, said the report is flimsy, superficial, incomplete, and full of gaps and errors and is unacceptable.
- 21) Tippy Lambert, said he represents real estate owners, noting they have very limited complaints and have policies in place to manage smoking issues. He expressed support of the ad hoc report.
- 22) Jim Lewis, noted tolerance is a matter of privacy and from a property management perspective, they will keep doing their job and it does not need to be regulated.
- 23) Lou Penrose, Executive Director of Apartment Association of Orange County, noted he has not been involved in the study process and said the report is thoughtful and he would support it. He also noted the apartment industry is working hard to address the issue.

Councilmember Munzing requested to comment to express support for Councilmember Chun's leadership and methodical and thoughtful role in this process and felt the criticisms from the podium were disrespectful. He described the process that took place, and further reiterated about the rare complaints received by landlords, the lack of or no enforcement of ordinances that are in place in other cities, and the cost to the City to enforce such an ordinance.

Councilmember Chun responded to the criticisms and noted that if the process was flawed, it was perhaps because the investigation was too narrow. He said the ad hoc looked at the issues previously raised such as shared ventilation and enforcement and their obligation was to look at the facts and arrive at a conclusion. He added the ad hoc did not include health organizations since the issue of smoking as a health hazard has not been questioned and he is not sure why the list of cities and apartments investigated was not released. He explained condos and townhomes have an HOA and issues should be raised with them since they are the governing body. He also noted the report may not be detailed enough but he is satisfied with it.

Discussion and comments ensued. A suggestion was made to consider an ombudsman to facilitate the discussions with the community about smoking issues and ask Townsend Associates to seek grants for this position; or a city liaison. Concerns were expressed that there is still no solution in place, there are still two opposing sides, deferring to the apartment associations to step in and find a solution and some commonality, a concern to over-regulate, and potential liability and legal suits that could come out of having an ordinance in place. A suggestion was also made to consider contracting with dispute companies to mediate between opposing neighbors.

Councilmember Cave recommended to direct staff to investigate for a part time staff and to ask Townsend Associates to seek grants for it.

Additional discussion and comments ensued regarding looking at the issue from the user, rethink the whole issue and come up with mechanisms to address them.

Mayor Tsunoda invited Choon Lee and Tommy Thompson to the podium and posed the question if it is possible to come up with a mutual solution and commit to finding a commonality. Mayor Tsunoda suggested mediating a mayoral summit with Mr. Lee and Mr. Thompson for this purpose. The two parties expressed agreement.

Councilmember Munzing noted for the record, he does not support a mayoral summit. He also noted this is totalitarianism on a single issue and cannot be binding and no agreements can be put in place.

Mayor Tsunoda suggested to hold the mayoral summit and explore an ombudsman position as earlier suggested by Councilmember Cave.

Councilmember Munzing commented he is formally withdrawing from the ad hoc.

Councilmember Chun commented to make it clear with Mr. Lee that the no smoking issue to be addressed with Mr. Thompson is for apartments only, since it is the industry he represents. Mr. Lee expressed agreement.

At this time, Mayor Tsunoda opened public comments to those individuals who have not had a turn to speak:

- 24) Steven Spiegel (no speaker slip), commented about an experience he had with a smoking neighbor in where he expressed that the smoke was a problem for him and his neighbor stepped away. He also suggested adding arbitration clauses to lease documents, as a way to resolve an issue.
- 25) Mr. Todd Freeze (no speaker slip), California Apartment Association, commented there are strict fair housing laws in California which usually include mediation clauses. He also commented that an ordinance causes a concern for the apartment industry because of potential civil or criminal penalties that could come out of it. He urged the Council to approve the ad hoc report and resolve this issue between private parties and the Council to go on record to not do an ordinance.

There were no further public comments on this item.

THE REPORT WAS ACCEPTED INCLUDING THE RECOMMENDATION TO NOT PURSUE A NO-SMOKING ORDINANCE AND MAYOR TSUNODA SUGGESTED TO HOLD A MAYORAL SUMMIT WITH MR. CHOON LEE AND MR. TOMMY THOMPSON TO FIND COMMONALITY AND A MUTUAL SOLUTION TO ADDRESS THE NO SMOKING ISSUE.

MOTION: COUNCILMEMBER CAVE MOVED AND COUNCILMEMBER CHUN SECONDED TO DIRECT STAFF TO LOOK INTO CREATING A PART TIME/ FULL TIME OMBUDSMAN WITH A JOB DESCRIPTION, AND EXPLORE A FUNDING SOURCE FOR IT. MOTION CARRIED 4 – 0 WITH COUNCILMEMBER MUNZING DISSENTING.

SECOND MOTION: COUNCILMEMBER CAVE MOVED AND COUNCILMEMBER CHUN SECONDED TO DISBAND THE NO SMOKING ADHOC COMMITTEE. MOTION UNANIMOUSLY CARRIED.

COMMUNITY INPUT

- 1) Andrew Abrecht, did not speak.

- 2) Arlene Hayden, Pacific Ridge Community, expressed concerns about free roaming cats in her community and requested the Council to pass an ordinance to protect their wildlife from the cats.
- 3) Marlena Lewis, expressed concern about barking dogs and suggested improving the City's animal services contract with the City of Mission Viejo, by requiring only one resident to report a complaint as opposed to the current requirement of two residents.

CITY MANAGER'S REPORT

City Manager Doyle reported Aliso Viejo was chosen the best city to live in by the Orange County Register Best of Orange County, and the Aliso Viejo Wood Canyon Emergent Wetland Project also received the 2014 California Stormwater Quality Association Award for the Outstanding Local Stormwater BMP Implementation Project.

ANNOUNCEMENTS/COUNCIL COMMENTS/COMMITTEE UPDATES

Councilmember Munzing

- Attended the SCAG meeting

Councilmember Chun

- Attended the TCA board special meeting, the TCA Financial Ad Hoc meeting, the TCA leadership meeting of chairs and vice chairs
- Attended a brief meeting with SCAG
- Attended a meeting with the League of California Cities and completed his term with the LOCC Environmental Policy Committee.

Councilmember Cave: None at this time.

Mayor Pro Tem Phillips:

- Invited the public to attend the Shop and Dine event
- Invited the public to attend the TEDx Conference at Soka University
- Thanks to the Sheriff's Department, in particular Lt. John MacPherson for their response to the St. Mary's school incident.

Mayor Tsunoda:

- Stated for the record the following message. He wants to give his sincerest, open and public apology regarding the issue that occurred with the City with regards to his use of the City's eNews email subscription list and would like to walk through the actions that have been taken to date in response to this incident, as follows:
 - Kathleen McCarthy spoke under public comments at Closed Session tonight to address this issue.
 - He had a phone conversation with Ms. McCarthy about two weeks ago, after she

contacted the City to complain about this issue and they discussed three items. He apologized profusely for his actions, she suggested he work with the candidates that were harmed for some remedy, of which he said he would seriously consider, and reimburse the City for any costs incurred in the handling of this matter.

- He said he has reached out to all four candidates and sincerely apologized to each one of them personally or through voicemail and expressed his deepest regret.
 - He said he wrote and posted a public apology to the community on his Facebook and LinkedIn accounts, and also asked the Orange County Register to print his public apology to the community.
 - He reached out and talked to the Fair Political Practices Commission (FPPC), since there was a complaint filed, and recently the FPPC contacted the complainant and himself and said they would not investigate the matter any further, but suggested it is possible some County laws were broken, and there could be a filing with the District Attorney's office. He contacted the FPPC and DA's office and profusely apologized, noting it was all his fault, and explained the entire situation to them. He said he also expressed complete commitment to whatever investigation the DA's office decides to put forth and would completely and 100% cooperate with them and not dispute any of the findings that they might have if they decide to pursue an investigation to this matter.
 - He stated he received and adhered to a letter from the City that lists precise items including retraction of said email list back to the City and his response letter to the City has been completed.
 - He apologized again for the error that occurred and said he feels horrible about it. He further stated if anyone would like to speak to him about this matter, to call him on his cell phone at 714.981.7596 or his email at pltsunoda@cox.net. He reiterated he feels horrible about it and will continue to apologize until it is over.
 - He thanked the audience for listening and allowing him to express his apology.
- Announced the State of the City is coming up on October 16, 2014 at the Aliso Viejo Conference Center and invited the public to attend.

ADJOURNMENT: The Council meeting adjourned at 11:00 p.m. to the next regularly scheduled meeting of October 1, 2014, and convened as the Public Facilities Corporation body.

Respectfully submitted:

Approved by:

SUSAN A. RAMOS, CITY CLERK

PHILLIP B. TSUNODA, MAYOR