

**ONTARIO CITY COUNCIL
ONTARIO HOUSING AUTHORITY
MINUTES
SEPTEMBER 2, 2014**

JOINT MEETINGS

Regular meetings of the Ontario City Council and Ontario Housing Authority were held on Tuesday, September 2, 2014 at the Ontario City Hall, 303 East B Street, Ontario, California.

CLOSED SESSION

The Mayor called the City Council/Housing Authority meetings to order at 6:00 p.m., and inquired whether persons were present who wished to speak to a Closed Session item. Hearing none, he noted that all members were present and thereupon adjourned to Closed Session for discussion as follows:

- GC 54956.9 (d)(2), CONFERENCE WITH LEGAL COUNSEL, ANTICIPATED LITIGATION: *One case*
- GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Property: APN: 0238-152-07, 2175 South Milliken Avenue; City/Authority Negotiator: Al C. Boling or his designee; Negotiating parties: Steve Brown; Under negotiation: Price and terms of payment.
- GC 54956.9 (d)(1), CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION: *City of Ontario vs. City of Los Angeles, Los Angeles World Airports, and Los Angeles Board of Airport Commissioners, RIC 1306498.*

CALL TO ORDER – OPEN SESSION

The Mayor called the City Council/Housing Authority meetings to order at 6:52 p.m., and requested the City Clerk call the roll.

PRESENT:	Mayor/Chairman	Paul S. Leon
	Mayor pro Tem/Vice Chairman	Alan D. Wapner
	Council/Authority Members:	Jim W. Bowman, Debra Dorst-Porada and Paul Vincent Avila

ABSENT: None

Also present were City Manager/Executive Director Al C. Boling, City Attorney/Legal Counsel John Brown and City Clerk/Secretary Mary E. Wirtes.

The Pledge of Allegiance was led by Council Member Avila.

The Invocation was offered by *Reverend Jesus Briones*, St. George Catholic Church.

CLOSED SESSION REPORT

City Attorney Brown reported that three items were discussed in Closed Session and no reportable actions were taken. City Attorney Brown advised the public that he had requested the presence of an Ontario Police Officer during Closed Session due to a disruption.

Mayor pro Tem Wapner noted that he had recused himself from the first item in Closed Session due to a financial conflict of interest in the matter.

PUBLIC COMMENT

Paul Mim Mack, called for improved conduct from all City Council Members. He also spoke on his concerns with the City Council Rules of Conduct and gave suggestions regarding the speaking order in which Council Comments should be given.

Ruben Valencia, discussed his concerns with the City Council Rules of Conduct.

Rudy Favila, stated his interest in having a mayoral debate for those running in the November 4, 2014 election.

Peggi Hazlett, President of the Ontario Chamber of Commerce spoke on the upcoming events at the Chamber of Commerce.

Barbara Hartley, thanked City Council and the City of Ontario for their leadership and stated that she was proud to be a resident of the City of Ontario.

Dale Robinson, spoke on his concerns with the Ontario International Airport flight path.

Steven Figueroa, spoke on his concerns with City Council conduct.

Stephen Rogers, spoke on his concerns with the decisions made in Closed Sessions versus open session.

M. Rich, thanked City Council for all of the work that has been done in the City of Ontario, especially on the historical part of Ontario. He also commended Council Member Debra Dorst-Porada on her exceptional eye for art. Mr. Rich invited all to his new restaurant Amazigh's grand opening on September 30, 2014 located at 112 West B Street.

Josef Nikyar, spoke on his concerns with code enforcement issues and his concerns with the current leadership within City Council.

Paul Vincent Avila, spoke on his concerns with the poverty level of senior citizens in the City of Ontario.

Cory Briggs, requested to speak. Mayor Leon indicated his speaker request was received after public comments began. Discussion ensued.

City Council meeting recessed at 7:31 p.m.

City Council meeting reconvened at 7:38 p.m.

Cory Briggs, made a public records request for documents regarding issues discussed during closed session as attorney client privileges were waived with the presence of an Ontario Police Officer. He also asked that Mayor pro Tem Wapner disclose the reason for his recusal during Closed Session. In addition, he requested all public records of the legal advice from City Attorney Brown to Mayor pro Tem Wapner, and made a public records request for the video of this meeting.

AGENDA REVIEW/ANNOUNCEMENTS

City Manager Boling indicated there were no announcements.

CONSENT CALENDAR

Agenda Item #2 was pulled from the Consent Calendar for separate consideration as requested by Mayor Leon.

Public Comment

Stephen Rogers, spoke on Item No. 3 and inquired about the Community Facilities District funding.

City Manager Boling gave an explanation with regard to the funding of both facilities and services which are contemplated under the CFD.

Council Member Bowman added that Item No. 3 is for the new community being developed in the south part of the City, which Council has committed to be funded by the new community itself and not by the existing communities.

MOTION: Moved by Council Member Bowman, seconded by Council Member Dorst-Porada to approve the Consent Calendar Items as recommended, with Council Member Avila opposing Item No. 3 and with the exception of Consent Calendar Item No. 2.

1. BILLS/PAYROLL

Approved **Bills** in the amount of \$11,489,758.30 for the period from July 13, 2014 through July 26, 2014 and **Payroll** in the amount of \$2,475,213.85 for the period of July 13, 2014 through July 26, 2014, when audited by the Finance Committee.

3. ACCEPT A WRITTEN PETITION TO CREATE A COMMUNITY FACILITIES DISTRICT; ADOPT A RESOLUTION OF INTENT TO ESTABLISH CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 24 (PARK PLACE FACILITIES - PHASE I); AND TO AUTHORIZE THE ASSOCIATED LEVY OF SPECIAL TAXES AND ADOPT A RESOLUTION TO INCUR BONDED INDEBTEDNESS

City Council:

- (A) Accepted a written petition (on file with the Records Management Department) from KB Home Coastal Inc., located in Wildomar, CA, to create a Community Facilities District (CFD), and to waive certain procedural matters, under the Mello-Roos Community Facilities Act of 1982;
- (B) Adopted a Resolution of Intent to establish City of Ontario Community Facilities District No. 24 (Park Place Facilities - Phase I); authorized the associated levy of special taxes therein; and set a public hearing for the formation of the CFD as part of the regularly scheduled City Council meeting scheduled for Tuesday, October 7, 2014; and
- (C) Adopted a Resolution to incur bonded indebtedness of proposed Community Facilities District No. 24 (Park Place Facilities - Phase I).

RESOLUTION NO. 2014-090 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, OF INTENTION TO ESTABLISH A COMMUNITY FACILITIES DISTRICT AND TO AUTHORIZE THE LEVY OF SPECIAL TAXES.

RESOLUTION NO. 2014-091 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO INCUR BONDED INDEBTEDNESS OF THE PROPOSED CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 24 (PARK PLACE FACILITIES – PHASE I).

4. AN ORDINANCE APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN GENSTAR DEVELOPMENT CORPORATION INVESTMENTS 6, L.P., AND THE CITY OF ONTARIO TO UPDATE CERTAIN PROVISIONS OF THE EXISTING DEVELOPMENT AGREEMENT AND TO CONFORM WITH THE CONSTRUCTION AGREEMENT WITH NMC BUILDERS

City Council considered and adopted an ordinance approving an amendment (File No. PDA14-003) to the Development Agreement between Genstar Development Corporation Investments 6, L.P., a Delaware Limited Partnership, and the City of Ontario to update certain provisions of the existing Development Agreement and to conform with the Construction Agreement Amendment with

NMC Builders, LLC of Ontario, California, to update certain provisions of the existing Development Agreement (File No. PDA06-002), and to provide for phasing of the construction of public infrastructure. First reading and introduction took place at a public hearing on August 19, 2014.

ORDINANCE NO. 2997 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND GENSTAR DEVELOPMENT CORPORATION INVESTMENTS 6, L.P., (ESPERANZA SPECIFIC PLAN) (FILE NO. PDA14-003) TO UPDATE CERTAIN PROVISIONS OF THE EXISTING DEVELOPMENT AGREEMENT (FILE NO. PDA06-002) TO CONFORM TO THE CONSTRUCTION AGREEMENT WITH NMC BUILDERS, AND TO PROVIDE FOR PHASING OF THE CONSTRUCTION OF PUBLIC INFRASTRUCTURE AS PROVIDED IN TRACT MAP NOS. 17931, 17932, 17933, AND MAKING FINDINGS IN SUPPORT THEREOF (APN: 0218-332-12 AND 0218-252-16).

5. AN ORDINANCE APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN GENSTAR DEVELOPMENT CORPORATION INVESTMENTS – RCCD, L.P., AND THE CITY OF ONTARIO TO UPDATE CERTAIN PROVISIONS OF THE EXISTING DEVELOPMENT AGREEMENT AND TO CONFORM TO THE CONSTRUCTION AGREEMENT WITH NMC BUILDERS

City Council considered and adopted an ordinance approving an amendment (File No. PDA14-004) to the Development Agreement between Genstar Development Corporation Investments – RCCD, L.P., a Delaware Limited Partnership, and the City of Ontario to update certain provisions of the existing Development Agreement to conform with the Construction Agreement Amendment with NMC Builders, LLC of Ontario, California, and update certain provisions of the existing Development Agreement (File No. PDA06-003). First reading and introduction took place at a public hearing on August 19, 2014.

ORDINANCE NO. 2998 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN AMENDMENT BETWEEN THE CITY OF ONTARIO AND GENSTAR DEVELOPMENT CORPORATION – RCCD L.P., (ESPERANZA SPECIFIC PLAN) (FILE NO. PDA14-004) TO AMEND DEVELOPMENT AGREEMENT, FILE NO. PDA06-003, TO UPDATE CERTAIN PROVISIONS OF THE EXISTING DEVELOPMENT AGREEMENT TO CONFORM TO THE CONSTRUCTION AGREEMENT WITH NMC BUILDERS, TO INCLUDE THE ADDITIONAL DEVELOPMENT OF UP TO 217 RESIDENTIAL UNITS ON 27.23 ACRES OF LAND, AND TO PROVIDE FOR PHASING OF THE CONSTRUCTION OF PUBLIC INFRASTRUCTURE AS PROVIDED IN TRACT MAP NOS. 17935, 17936, 18876, AND 18778, AND MAKING FINDINGS IN SUPPORT THEREOF (APN: 0218-332-11 AND 0218-252-17).

6. AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF ONTARIO, THE ANKER FAMILY DECEDENT'S TRUST, AND NEW CINGULAR WIRELESS PCS, LLC, FOR THE CONTINUED USE OF A TELECOMMUNICATIONS FACILITY

City Council considered and adopted an ordinance approving a Development Agreement (File No. PDA14-005), which allows for the continued use of an existing telecommunications facility located at 13524 South Grove Avenue (APN: 1052-481-02) within the future right-of-way of Grove Avenue; and establishing standards for its future removal/relocation. First reading and introduction took place at a public hearing on August 19, 2014.

ORDINANCE NO. 2999 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDA14-005, A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF ONTARIO, A CALIFORNIA MUNICIPAL CORPORATION, THE ANKER FAMILY DECEDENT'S TRUST, AND NEW CINGULAR WIRELESS PCS, LLC, A DELAWARE LIMITED LIABILITY COMPANY, FOR THE FUTURE REMOVAL/RELOCATION OF TELECOMMUNICATION EQUIPMENT FROM THE CURRENT/FUTURE RIGHT-OF-WAY OF GROVE AVENUE IN CONJUNCTION WITH A DEVELOPMENT PLAN (FILE NO. PDEV13-009), CONDITIONAL USE PERMIT (FILE NO. PCUP13-003), AND VARIANCE (FILE NO. PVAR13-004) TO ALLOW THE CONTINUED USE OF A 65-FOOT TALL MONOPOLE TELECOMMUNICATIONS FACILITY AT 13524 SOUTH GROVE AVENUE, AND MAKING FINDINGS IN SUPPORT THEREOF-APN: 1052-481-02.

7. A RESOLUTION TO ADOPT THE REVISIONS TO THE CITY OF ONTARIO LOCAL GUIDELINES FOR IMPLEMENTING THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

City Council adopted a resolution approving the 2014 revisions to the City of Ontario Local Guidelines for Implementing the California Environmental Quality Act (on file in the Records Management Department).

RESOLUTION NO. 2014-092 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING AND ADOPTING LOCAL GUIDELINES FOR IMPLEMENTING THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (PUBLIC RESOURCES CODE §§ 21000 ET SEQ.).

MOTION CARRIED. The Mayor/Chairman declared Resolution Nos. 2014-090, 2014-091, 2014-092 and Ordinance Nos. 2997, 2998, and 2999 adopted with Council Member Avila opposing Item No. 3.

	Yes	No	Abstain
Mayor Leon	X		
Mayor pro Tem Wapner	X		
Council Member Bowman	X		
Council Member Dorst-Porada	X		
Council Member Avila		X	

ITEM PULLED FROM CONSENT CALENDAR

2. A RESOLUTION AMENDING THE CITY COUNCIL MEETING DECORUM EXPECTATIONS, RULES OF CONDUCT AND ASSOCIATED CONSEQUENCES

Mayor Leon stated that he was not completely satisfied with the language in the Resolution and asked that it be reviewed before approval per the statements that were brought forward.

Mayor pro Tem Wapner stated that he supported Mr. Briggs comments regarding the limitation of the public. Mr. Wapner asked that the language that pertains to the public be removed and the City Council continue with the approval of Item No. 2.

Mayor Leon stated that the letter submitted by Cory Briggs was constructive criticism and asked Mr. Briggs if the removal of language that pertained to the public was sufficient. Mayor Leon invited Mr. Briggs to the podium for his response.

Mr. Briggs stated that his clients concerns also included “Paragraph A” under “Decorum and Order of the Public” and encouraged City Council to consider the removal of the remaining language.

Mayor Leon stated that the intent behind the Rules of Conduct was to directly affect the City Council’s behavior towards one another and towards the public, and was not intended to affect the public’s rights.

Council Member Dorst-Porada asked that Item No. 2 be continued to the next meeting and asked City Attorney Brown for his input.

Mayor pro Tem Wapner inquired about the pending items on the agenda that are affected by Item No. 2.

City Attorney Brown recommended that City Council adopt the Resolution and instruct the City Attorney’s Office to bring another amended Resolution with revisions at a future meeting. He clarified that the Rules of Conduct were based on City Council civility and not meant to affect the public.

Council Member Bowman suggested that City Council move forward with the Resolution and asked that the Resolution be revised and brought to City Council again in the future to make sure that issues regarding the public be clear.

Council Member Avila stated his concerns with other issues that were not related to Item No. 2.

City Council meeting recessed at 8:04 p.m.

City Council meeting reconvened at 8:17 p.m.

Public Comment

Stephen Rogers, stated his concerns with language specifically regarding Closed Session Items. Mr. Rogers indicated that he has been made aware of things that happen during Closed Session. Mr. Rogers submitted a letter to be handed out to City Council.

City Manager Boling informed Mayor Leon that during the recess there was a discussion with the City Attorney and Mr. Briggs and stated that Mr. Briggs expressed that he would be in agreement with City Council removing all language under Decorum and Order of the Public.

RESOLUTION NO. 2014-089 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING THE RULES GOVERNING THE CONDUCT OF CITY COUNCIL MEETINGS AND RESCINDING PREVIOUS RESOLUTION NO. 2014-079.

MOTION: Moved by Mayor pro Tem Wapner, and seconded by Council Member Bowman to adopt Resolution No. 2014-089 with the exclusion of the language under Decorum and Order of the Public to include all language under Section A and any reference made to the public.

	Yes	No	Abstain
Mayor Leon	X		
Mayor pro Tem Wapner	X		
Council Member Bowman	X		
Council Member Dorst-Porada	X		
Council Member Avila		X	

END OF JOINT CONSENT CALENDAR

PUBLIC HEARINGS

8. A PUBLIC HEARING TO CONSIDER AN ORDINANCE AMENDING CHAPTER 6 OF TITLE 4 OF THE ONTARIO MUNICIPAL CODE PERTAINING TO SEVENTY-TWO HOUR PARKING LIMITATIONS

City Council introduced and waived further reading of an ordinance amending Chapter 6 of Title 4 of the Ontario Municipal Code pertaining to seventy-two hour parking limitations in City-owned parking lots and facilities.

The Mayor opened the public hearing, seeing no one requesting to be heard, the public hearing was closed. There were no written communications.

Notice of public hearing was duly given and affidavits of compliance are on file in the Records Management Department.

ORDINANCE NO. 3000 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING CHAPTER 6 OF TITLE 4 OF THE ONTARIO MUNICIPAL CODE RELATED TO SEVENTY-TWO (72) HOUR PARKING LIMITATIONS.

MOTION: Moved by Council Member Dorst-Porada, and seconded by Council Member Bowman and unanimously carried to introduce Ordinance No. 3000.

ADMINISTRATIVE REPORTS/DISCUSSION/ACTION

CITY ATTORNEY REPORT ON INVESTIGATION OF COUNCIL MEMBER ACTIONS

City Attorney Brown introduced Grover Trask, Cynthia Germano and Carlos Campos.

Mr. Trask gave a brief report on the results of the investigation which concluded that inappropriate conduct most likely occurred, and recommended that City Council further review the matter and take appropriate action if warranted.

Mayor pro Tem Wapner inquired as to whether the document was public record.

City Attorney Brown informed City Council and the public that the document is public record.

Mayor pro Tem Wapner asked for concurrence from City Council to place the item on the next meeting agenda.

City Council agreed to place the Investigation Item on the next meeting agenda.

Council Member Avila expressed his opposition to the report.

City Council meeting recessed at 8:33 p.m.

City Council meeting reconvened at 8:40 p.m.

STAFF MATTERS

City Manager Boling had no comments.

COUNCIL MATTERS

CITY COUNCIL RULES OF CONDUCT – CONSIDERATION OF SANCTIONS

Mayor pro Tem Wapner recommended, given Council Member Avila's behavior that Council Member Avila vacate himself of all City Council assignments and any committee or liaison positions that he holds; that Mr. Avila not be in a position where he can represent the City at any ribbon cuttings or civic ceremonies. Mr. Wapner also stated that Mr. Avila never provided proof of conducting business at the International Council of Shopping Centers Conference and was not present at any conference events and recommended that he reimburse the City for his trip to Las Vegas and that he be denied any future travel. Mr. Wapner apologized to Council Member Dorst-Porada on behalf of the City Council for what Council Member Avila has put her through.

Council Member Avila expressed his opposition.

Council Member Bowman seconded the recommendation made by Mayor pro Tem Wapner.

Council Member Avila continued to disrupt the meeting by interrupting the Mayor and Council Members recognized by the Mayor to speak.

City Attorney Brown informed City Council that Council Member Avila was in violation of the California Penal Code for disruption of a public meeting and that Council Member Avila could be arrested if he continues to disrupt the meeting.

Council Member Dorst-Porada stated that the City of Ontario is a \$480 million company and the City needs to run like the big business that it is; and Council Member Avila's behavior demeans the City of Ontario, and she does not want to experience this behavior at every meeting. Ms. Dorst-Porada stated that no woman nor anyone's daughter should have to put up with his behavior.

Council Member Avila continued to disrupt the meeting.

Mayor Leon stated that he allowed Council Member Avila's behavior to continue during this meeting so that the residents of Ontario can see who Council Member Avila really is and understand why the City Council has to consider sanctions. Mayor Leon apologized

for Council Member Avila's behavior and stated that he would take control of future meetings.

MOTION: Moved by Mayor pro Tem Wapner, and seconded by Council Member Bowman and carried with Council Member Avila opposed to sanctions.

	Yes	No	Abstain
Mayor Leon	X		
Mayor pro Tem Wapner	X		
Council Member Bowman	X		
Council Member Dorst-Porada	X		
Council Member Avila		X	

MAYOR PRO TEM WAPNER'S REQUEST FOR COUNSEL

Mayor pro Tem Wapner apologized to Mr. Briggs for not disclosing his reason for recusal from the Closed Session. Mr. Wapner stated his reason for recusal from Closed Session and from this Item was due to conflict of financial interest. Mayor pro Tem Wapner also asked that it be noted for the record that he did not receive any legal advice from City Attorney Brown and he made the decision to recuse himself on his own.

City Attorney Brown clarified that he did discuss the item with Mr. Briggs during the recess and that he agreed with Mayor pro Tem Wapner's recusal from both closed and open session.

Mayor pro Tem Wapner recused himself at 8:57 p.m.

City Attorney Brown gave a brief description of the civil case against Mayor pro Tem Wapner filed by Ruben Valencia. Mr. Brown advised City Council that the defense of this case has been tendered to the City of Ontario and stated that he discussed the legal consequences of accepting the tender and not providing the defense and not accepting the tender. City Attorney Brown stated that Mr. Wapner expressed that he felt that Mr. Avila had prejudged the matter and had a level of animosity towards him and asked that he recuse himself, however Mr. Avila refused to recuse himself.

Mayor Leon stated that Mayor pro Tem Wapner made the choice to take action based on the request from his constituents who were in disagreement with Ruben Valencia mixing work and campaigning and expressed his thoughts on the issue.

MOTION: Moved by Council Member Dorst-Porada, and seconded by Council Member Bowman and carried with Council Member Avila opposed to provide legal counsel for Mayor pro Tem Wapner.

	Yes	No	Abstain
Mayor Leon	X		
Mayor pro Tem Wapner			X
Council Member Bowman	X		
Council Member Dorst-Porada	X		
Council Member Avila		X	

Mayor pro Tem Wapner returned to the meeting at 9:10 p.m.

ADJOURNMENT

Mayor Leon adjourned the meetings of the Joint Agencies at 9:10 p.m. and announced the next regularly scheduled meetings will be held on Tuesday, September 16, 2014.

Respectfully submitted,



MARY E. WIRTES, MMC, CITY CLERK/ SECRETARY

APPROVED:



PAUL S. LEON, MAYOR/ CHAIRMAN