

**MINUTES
WHITTIER CITY COUNCIL
WHITTIER REDEVELOPMENT AGENCY
WHITTIER UTILITY AUTHORITY
JOINT MEETING
CITY COUNCIL CHAMBER, 13230 PENN STREET
JUNE 9, 2009, 6:30 P.M.**

1. CALL TO ORDER:

The Whittier City Council met in regular session on June 9, 2009, in conjunction with the Whittier Redevelopment Agency and the Whittier Utility Authority. Mayor Henderson called the joint meeting to order at 6:34 p.m. in the Council Chamber of Whittier City Hall, 13230 Penn Street, Whittier, California.

2. ROLL CALL:

**COUNCIL MEMBERS/AGENCY
MEMBERS/AUTHORITY
DIRECTORS PRESENT:**

Joe Vinatieri, Council Member/Agency
Member/Authority Director
Cathy Warner, Council Member/Agency
Member/Authority Director
Owen Newcomer, Council Member/Agency
Member/Authority Director
Greg Nordbak, Mayor Pro Tem /Vice
Chair
Bob Henderson, Mayor/Chair

OTHER OFFICIALS PRESENT:

Stephen W. Helvey, City Manager/
Executive Director
Richard D. Jones, City Attorney/Authority
Counsel
Toni Maiques, Assistant City Clerk-Treasurer/
Assistant Secretary-Treasurer
Kathryn A. Marshall, City Clerk-Treasurer/
Secretary-Treasurer (9:30 p.m.)

3. PLEDGE OF ALLEGIANCE:

Mayor Pro Tem Nordbak led the Pledge of Allegiance.

4.A PRESENTATION – NEIGHBORHOOD ASSOCIATIONS TREE BEAUTIFICATION

Mayor Henderson presented certificates to Rosie Seelt, Whittier Historic Neighborhood Tree Committee, and Allan Nakken, Friendly Hills Property Owners Association President, in recognition of their partnership with the City Park Department to increase the stock of trees throughout the City by 118%.

Mayor Henderson recognized City of Whittier Tree Supervisor Mike Montoya on his International Society of Arboriculture Gold Leaf Award, one of only five such awards in the western United States. Parks Director Kurkowski accepted the award on Mike's behalf.

4.C PRESENTATION – ROTARY YOUTH LEADSHIP COMMENDATION AWARDS

Mayor Henderson presented Certificates of Commendation to Samantha Coelho and Kevin Islas as Rotary Youth Leadership Award winners, recognized as role models for youth in the community and the leadership program. John Tah, Youth Program Whittier Sunrise Rotary Club Chairman, said the youth leadership program focuses on ethics and community service; and commended Samantha and Kevin and all of the participants for their accomplishments.

4.B BLUE STAR PRESENTATIONS

Mayor Henderson presented Blue Star Program flags, pins, and decals to the following families, in honor of their family members serving in the armed forces:

1. Dolores Yslas, Raymond Morales, and Rachel Greco, whose son and brother, Albert J. Morales, is serving as a Lance Corporal in the United States Marine Corps, stationed in Okinawa, Japan.
2. Heidi and Frank Montes, Jr., Daniel and Dominic Montes, and Lucy and Frank Montes, Sr., whose daughter, sister and granddaughter, Bernadette Montes, is a 1st Specialist in the United States Army, currently serving in Balad, Iraq.

5. ORAL COMMUNICATIONS:

Norm Kirschenbaum, 6256 Friends Avenue; Whittier, invited the Council to a career event for high school students from the Whittier Union High School District, Whittier City School District, El Rancho School District and the Tri-Cities Regional Occupational Program.

Alessandro Birdine, 12300 Washington Boulevard, Whittier; announced the launch of Today's Whittier Magazine, which includes information on community events; and he said proceeds from the sale of the magazine will be donated to the joint Whittier/Pico Rivera Parent Teachers Association.

Sue Dean, 9447 Ruoff Avenue, Whittier; announced Whittier Area Chamber of Commerce events Wake-Up-Whittier, Economic Development Committee meeting, Tasty Tuesday and the Whittier Relay for Life.

Erica Maldonado, Oasis Tropical Fruits and Juices, Leffingwell Road, Whittier, said it is difficult getting business into her location because of insufficient signage; she was fined \$100 for illegal signage for advertising her specials on Tuesdays and

Thursdays; those are the only days she breaks even; and she wants to see an arrangement for signage for small businesses.

Robert Canales, 6333 Milton Avenue, Whittier, said that two residents had been killed by members of the Whittier Varrio Lobos gang; he said Whittier was founded on good values; and the City needs to ban gang members from coming too close to schools and parks.

George Poochigian; asked why the City uses cameras for traffic enforcement; said the City of Huntington Beach opposes it; and said the City should take care of its veterans and their problems.

Joe Marsico, Whittier, said the City's cable television and monitors are not used appropriately; he said local events should be televised; and he asked why recorded tapes of previous City Council meetings were destroyed.

Ralph Marsico, Penn Street, Whittier, said he helped a foreign cellmate while in the Whittier jail for two days last week.

6. CITY COUNCIL/REDEVELOPMENT AGENCY/UTILITY AUTHORITY JOINT CONSENT CALENDAR:

Council Member Vinatieri declared a conflict of interest on Item 6.C.2 and recused from voting.

Mayor Pro Tem Nordbak declared a conflict of interest on Item 6.C.2 because Presbyterian Intercommunity Hospital is a customer of his business, and he recused from voting.

It was moved by Council/Agency Member/Director Newcomer, seconded by Council/Agency Member/Director Warner and carried, by roll call vote, to approve the Consent Calendar, with Council Member Vinatieri and Mayor Pro Tem Nordbak recusing on Item 6.C.2, and that Resolution No. 8207 be read by title only, further reading be waived, and it be declared adopted.

6.A The City Council denied claims filed by Teri Duncan, Liandra Sapien-Perez, Juventino Lepiz, William Valencia, and Keri Odum.

6.B The following actions were taken regarding Minutes:
1. City Council, Agency Board and Board of Directors approved the Minutes of the Regular Meeting of May 26, 2009;and
2. City Council approved the Minutes of the Adjourned Regular Meeting of June 2, 2009.

- 6.C** The City Council received and filed the following Planning Commission actions:
1. Approval of Conditional Use Permit No. C09-003 and Development Review No. DR09-020 to operate and expand an existing 1,544 square-foot auto repair facility on an 18,999 square-foot lot located at 10807 Whittier Boulevard; Owner: Sherif Hanna; Applicant: Roy Furuto, Furuto Rubio & Associates.
 2. Approval of Conditional Use Permit No. C09-006 to utilize the first floor of an existing building located within the Uptown Whittier Specific Plan (Uptown Core) for professional offices at 6557 Greenleaf Avenue; Owner/Applicant: Interhealth Corporation (PIH).
- 6.D** The Agency Board approved the First Amendment to the Affordable Housing Covenant and Regulatory Agreement with Gables Whittier 96 Partners, LP (HDS Group, LLC) for use of up to \$3,761,000 of Low and Moderate Income Housing Set Aside funds for affordable ownership housing units at The Gables Condominium Project; and authorized the Agency Chair to execute the First Amendment.
- 6.E** The Agency Board reviewed and approved the program description and corresponding legal documents for use in implementing the Affordable Home Ownership Program.
- 6.F** The City Council and Agency Board approved the First Amendment to the HOME Program Participation Agreement with Whittier Area First Day Coalition to assist in the rehabilitation of housing units located at 7916 - 7920 Newlin Avenue for use as a transitional housing project; authorized the City Manager/Executive Director to execute the Agreement; and adopted Resolution No. 8207 entitled, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHITTIER, CALIFORNIA, AMENDING THE FISCAL YEAR 2008-09 BUDGET FOR THE PURPOSE OF INCREASING A LOAN AMOUNT TO THE WHITTIER AREA FIRST DAY COALITION," in the amount of \$92,300.
- 6.G** The City Council declared the following vehicles surplus to be sold at public auction to the highest bidder:
1. 2000 Ford Taurus, Equipment No. 11555
 2. 1998 Oldsmobile Cutlass, Equipment No. 11620
 3. 1984 American LaFrance Refuse Truck, Equipment No. 20224
 4. 1989 Mack Street Sweeper, Equipment No. 29129
 5. 1988 John Deere 5030T Backhoe, Equipment No. 31631
 6. 1989 Dresser A450E Grader, Equipment No. 34246
 7. Five El Dorado Buses; Equipment Nos. 30897, 31803, 31885, 31887 and 31898

- 6.H** The City Council approved the first amendment to the Encroachment License Agreement for Omega Chemical PRP Group (OPOG) for the installation of two piezometers in the public right-of-way; and authorized the Mayor to execute the Amendment.
- 6.I** The City Council reviewed a progress report on the police facility project budget and schedule.
- 6.J** The City Council took action regarding the Taxi Voucher Program:
1. Received and filed an update report;
 2. Approved a change in the scope of work; and
 3. Authorized the City Manager to make future administrative changes.

7. RECESS REDEVELOPMENT AGENCY AND UTILITY AUTHORITY MEETINGS:

Mayor Henderson recessed the Redevelopment Agency and Utility Authority meetings at 7:09 p.m.

8.A PUBLIC HEARING – ZONING CODE AMENDMENT 09-007, MEDICAL MARIJUANA ORDINANCE

City Manager Helvey announced it was the date and time set and duly noticed for a public hearing to consider prohibiting the establishment and operation of all forms of medical marijuana dispensaries, located in all zoning classifications and specific plans, by adopting an ordinance entitled, “An Ordinance of the City Council of the City of Whittier, California, to amend Chapter 18.52 (Variance and Conditional Use Permits) and Chapter 18.45 (Medical Marijuana Regulations) of the Whittier Zoning Code, prohibiting the establishment and operation of all forms of medical marijuana dispensaries citywide. (Applicant: City of Whittier, Zoning Code Amendment 09-007).” The Planning Commission recommended the City Council deny Zoning Code Amendment 09-007 and retain the existing medical marijuana ordinance as codified.

In response to Council Member questions, Police Chief Singer said the use of medical marijuana is prohibited by federal law; he read from the “White Paper on Marijuana Dispensaries”, written by the California Police Chiefs Association’s Task Force on Marijuana Dispensaries, and stated that there is an increase in crime, noise, robberies, money laundering, murders, and selling marijuana to children near dispensaries. He also said that the United States Attorney General acknowledges it is a violation of federal law, but rights are given to states to monitor dispensaries within the guidelines of the law; the Drug Enforcement Agency (DEA) serves warrants on dispensaries if there are problems; dispensaries have been exposed as fronts for drug trafficking; and federal law preempts state law.

City Attorney Jones stated that the United States Supreme Court may choose not hear a case until one is presented that will articulate their position; federal law preempts state law; he said if the City does not take a position on the issue and does not regulate the dispensaries, the City will not be able to enforce local authority; and he urged the Council to take a position to either allow or ban the dispensaries to allow enforcement.

Mayor Henderson opened the public hearing at 7:22 p.m.

Kathryn Clifton, 1811 Rhea Avenue, La Mesa, representing 7th and Hope, spoke in support of maintaining the City's current Medical Marijuana Dispensary ordinance and said 7th and Hope is a non-profit corporation that has filed all necessary paperwork and applied for a conditional use permit (CUP); the refusal of the Supreme Court to hear a medical marijuana case is an indicator they are not allowing federal law to preempt state law; Ordinance 2870 articulates the conditions under which dispensaries can be established and operated; there are numerous illnesses and diseases that can be treated with medical marijuana; repealing the City's current ordinance would cost 7th and Hope thousands of dollars; and 7th and Hope sees a need for medical marijuana and has followed the law to meet that need.

Joe Marsico, Whittier, spoke in opposition to the establishment of medical marijuana dispensaries and said he has studied the history of drugs; he wants to see a drug museum to show the history of drugs and their effect on children; and common sense says commercial marijuana should not be allowed.

Robert Canales, Whittier, said there are numerous state cases that have gone against the 10th Amendment; there are alternatives to medical marijuana, and he opposes the dispensaries.

Robert Ortiz, 6103 Gleese Avenue, Pico Rivera, said 7th and Hope is a family business; the board of directors is him, his mother and a friend; the City's current ordinance approved the zones and addresses allowing dispensaries; he believes there is a need for this type of business; he sees no fundamental reason to repeal the existing ordinance; and 7th and Hope is a closed collective for members only.

City Manager Helvey left the Council Chamber at 7:42 p.m. and resumed his seat at the dais at 7:50 p.m.

There being no other speakers wishing to address the City Council, it was moved by Council Member Newcomer, seconded by Council Member Vinatieri, and carried, to close the public hearing at 8:05 p.m.

Council Member Newcomer said conflicts with federal law are important; the US Attorney General has acknowledged there is a health exemption and the federal government will not intervene if a medical marijuana dispensary is operated within state

law for medical purposes; many substances used recreationally or for unintended use are illegal; he supports the Planning Commission decision and recommends upholding the City's current ordinance.

Mayor Henderson said the City's current ordinance is very restrictive regarding hours of operation; management, surveillance, loitering, minors; doctor letters; and location; 70% of California voters approved the use of medical marijuana; the City has local control to regulate the businesses; he believes the use of medical marijuana should be studied; and he believes the current law works.

City Manager Helvey left the Council Chamber at 8:17 p.m. and resumed his seat at the dais at 8:20 p.m.

Council Member Vinatieri said federal law identifies marijuana as a banned Schedule 1 drug; in 2005 the U.S. Supreme Court heard many states' cases regarding medical marijuana statutes and upheld federal law, preempting state law; the White Paper executive summary is predicated on case studies from California and states that criminal activities are possible as a result of dispensaries; marinol is an approved form of marijuana that has been available since 1985; there are alternatives to medical marijuana; and it is in the best interest of the City to ban the dispensaries. He based his decision on three factors: federal law, criminal activities; and how to help people in need of medical care.

Council Member Warner said her rationale for denying dispensaries is because federal law clearly identified marijuana as an illegal substance; as a health care provider, she works with controlled substances; she understands the need to help people suffering; there are alternative options for pain relief; she has concerns about law enforcement; and she opposes allowing dispensaries in the City.

Mayor Pro Tem Nordbak said he believes there is a need for medical marijuana; the prior clinic located in the City was safe, although he had compliance concerns about the operation; he had concerns about statements in the White Paper regarding crime and challenges of the issue; he did not receive any feedback from the community regarding the Planning Commission decision to recommend upholding the current law; he does not support the use of marijuana; he supports maintaining the current ordinance; and he is confident the City's current ordinance is restrictive and effective.

Following discussion, it was moved by Council Member Newcomer, seconded by Mayor Pro Tem Nordbak, and carried, by roll call vote, with Council Members Vinatieri and Warner dissenting, to uphold the Planning Commission decision to deny approval of Zoning Code Amendment 09-007 and retain the existing medical marijuana ordinance as codified.

Mayor Henderson recessed the City Council meeting at 8:40 p.m.

At 8:55, Mayor Henderson reconvened the City Council meeting, with all Council Members present.

8.B PUBLIC HEARING – ZONING CODE AMENDMENT 09-008, VACANT LOT ORDINANCE

City Manager Helvey announced it was the date and time set and duly noticed for a public hearing to consider adopting an ordinance amending Section 8.08.026 (Vacant Lots) of the Whittier Municipal Code under Zoning Code Amendment 09-008 to revise specific regulations for the maintenance of vacant lots in the City.

Mayor Henderson opened the public hearing at 8:56 p.m.

There being no speakers wishing to address the City Council, it was moved by Mayor Pro Tem Nordbak, seconded by Council Member Vinatieri, and carried, to close the public hearing at 8:56 p.m.

In response to Council Member Warner, Community Development Director Collier confirmed that any property owner may file an appeal with the Director of Community Development or the City Manager without a fee; there is an appeal fee if the property owner files an appeal with the City Council; a property owner may request consideration to any Council Member or during oral communications of a public meeting; and if the Council concurs to address the issue, there is no appeal fee.

Following discussion, it was moved by Mayor Pro Tem Nordbak, seconded by Council Member Vinatieri, and carried unanimously, that Ordinance No. 2928 entitled, "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WHITTIER, CALIFORNIA, AMENDING SECTION 8.08.026 (VACANT LOTS) OF THE WHITTIER MUNICIPAL CODE UNDER ZONING CODE AMENDMENT 09-008 (APPLICANT: CITY OF WHITTIER)," be read by title only, further reading be waived, and this be declared its first reading.

8.C PUBLIC HEARING – VARIANCE V08-004, 14856 MAR VISTA STREET

City Manager Helvey announced it was the date and time set and duly noticed for a continued de novo public hearing to review the decision of the Planning Commission to deny Variance V08-004, to allow an over height (up to 15 feet in certain locations) and view obscuring masonry wall for a single-family residence at the property addressed as 14856 Mar Vista Street; Applicant: Hugo Gutierrez. The hearing was continued from January 27, 2009, February 24, 2009, March 24, 2009, April 28, 2009 and May 26, 2009. At the applicant's request, it was recommended the hearing be continued to June 23, 2009 at 6:30 p.m.

It was moved by Council Member Vinatieri, seconded by Council Member Newcomer, and carried unanimously, to continue the public hearing to Tuesday, June 23, 2009 at 6:30 p.m.

8.D PUBLIC HEARING – FOXLEY DRIVE STREET LIGHTING ASSESSMENT DISTRICT NO. 01-91

City Manager Helvey announced it was the date and time set and duly noticed for a public hearing to consider the levy and collection of assessments for the Foxley Drive Street Lighting Assessment District No. 01-91, between Santa Fe Springs Road and Villa Drive; acceptance of the Fiscal Year 2009-10 Engineer's Report; and adoption of a resolution confirming diagram and assessment of FY 2009-10 for Foxley Drive Street Lighting Assessment District No. 01-91.

Mayor Henderson opened the public hearing at 9:03 p.m.

There being no speakers wishing to address the City Council, it was moved by Council Member Newcomer, seconded by Mayor Pro Tem Nordbak, and carried, to close the public hearing at 9:03 p.m.

It was moved by Council Member Vinatieri, seconded by Council Member Newcomer, and carried unanimously, by roll call vote, to accept the FY 2009-10 Engineer's Report on Street Lighting Assessment District No. 01-91; and that Resolution No. 8208 entitled, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHITTIER, CALIFORNIA, CONFIRMING DIAGRAM AND ASSESSMENT OF FY 2009-10 FOR FOXLEY DRIVE STREET LIGHTING ASSESSMENT DISTRICT NO. 01-91," be read by title only, further reading be waived, and it be declared adopted.

Mayor Henderson declared a conflict of interest on Items 8.E and 8.F because he owns property in Parking District Nos. 1 and 2; and he left the Council Chamber at 9:04 p.m.

8.E PUBLIC HEARING – PARKING DISTRICT NO. 1 (MULTI-DECK) FY09-10 BUDGET

City Manager Helvey announced it was the date and time set and duly noticed for a public hearing to consider the Parking District No. 1 Budget for Fiscal Year 2009-10 and adoption of a resolution confirming the City assessment for the Fiscal Year 2009-10 for Whittier Uptown Parking District No. 1 (Multi-Deck).

Mayor Pro Tem Nordbak opened the public hearing at 9:04 p.m.

There being no speakers wishing to address the City Council, it was moved by Council Member Newcomer, seconded by Council Member Vinatieri, and carried with Mayor Henderson absent, to close the public hearing at 9:04 p.m.

It was moved by Council Member Newcomer, seconded by Council Member Warner, and carried by roll call vote, with Mayor Henderson absent, that Resolution No. 8209 entitled, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHITTIER, CALIFORNIA, CONFIRMING THE CITY ASSESSMENT FOR THE FISCAL YEAR 2009-10 FOR WHITTIER UPTOWN PARKING DISTRICT NO. 1 (MULTI-DECK)," be read by title only, further reading be waived, and it be declared adopted.

8.F PUBLIC HEARING – PARKING DISTRICT NO. 2 FY09-10 BUDGET

City Manager Helvey announced it was the date and time set and duly noticed for a public hearing to consider the Parking District No. 2 Budget for Fiscal Year 2009-10 and adoption of a resolution determining convenience and necessity, adopting the annual report and ordering assessments to be levied.

Mayor Pro Tem Nordbak opened the public hearing at 9:06 p.m.

There being no speakers wishing to address the City Council, it was moved by Council Member Vinatieri, seconded by Council Member Newcomer, and carried with Mayor Henderson absent, to close the public hearing at 9:06 p.m.

It was moved by Council Member Vinatieri, seconded by Council Member Newcomer, and carried by roll call vote, with Mayor Henderson absent, that Resolution No. 8210 entitled, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHITTIER, CALIFORNIA, FOR DETERMINING CONVENIENCE AND NECESSITY, ADOPTING ANNUAL REPORT AND ORDERING ASSESSMENTS TO BE LEVIED – WHITTIER UPTOWN PARKING DISTRICT NO. 2", be read by title only, further reading be waived, and It be declared adopted.

Mayor Henderson resumed his seat at the dais at 9:07 p.m.

9. LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY EASTSIDE GOLD LINE EXTENSION:

Following discussion, it was moved by Council Member Newcomer, seconded by Mayor Pro Tem Nordbak, and carried unanimously, to endorse the Washington Boulevard route alignment for the Eastside Gold Line Extension, and reject all other options.

10. RECONVENE REDEVELOPMENT AGENCY AND UTILITY AUTHORITY MEETINGS IN JOINT SESSION WITH CITY COUNCIL:

Mayor Henderson reconvened the Redevelopment Agency and Utility Authority meetings in joint session with the City Council at 9:15 p.m.

11. COUNCIL/AGENCY MEMBER/DIRECTOR COMMENTS/CONFERENCE REPORTS:

None requiring follow up.

12. ADJOURN REDEVELOPMENT AGENCY AND UTILITY AUTHORITY MEETINGS:

At 9:25 p.m., Mayor Henderson adjourned the Redevelopment Agency meeting to Tuesday, June 16, 2009, at 7:00 p.m.

Mayor Henderson adjourned the Utility Authority meeting at 9:25 p.m.

13. CITY COUNCIL CLOSED SESSION:

City Manager Helvey recommended a Closed Session be held pursuant to:

13.A City Council - Government Code Section 54956.95 to discuss the claim of Christopher Quast vs. City of Whittier.

13.B City Council - Government Code Section 54956.9(a) to discuss two cases of litigation:

1. Case No. 8WW00930, People of the State of California vs. Hugo Gutierrez and Carmen Gutierrez; and
2. Case No. BS113401, Hugo Gutierrez vs. City of Whittier.

13.C City Council – Government Code Section 54956.9(c) to discuss one case of potential litigation; City of Whittier vs. Federal Receiver Clark Kelso.

13.D City Council – Government Code Section 54956.9(a) to discuss one case of litigation, Grobaty & Petit LLC vs. City of Whittier.

13.E City Council – Government Code Section 54957.6 to discuss labor negotiations between negotiator Stephen Helvey, and the Whittier City Employees' Association and unrepresented employees.

Mayor Henderson adjourned the meeting to Closed Session at 9:25 p.m. with City Clerk-Treasurer Marshall replacing Assistant City Clerk-Treasurer Maiques.

NOTE: Assistant City Manager Mendez was out of the Closed Session from 9:38 to 9:45 p.m.

14. RECONVENE IN OPEN SESSION:

Mayor Henderson reconvened the meeting in Open Session at 10:19 p.m.

15. CLOSED SESSION REPORT:

City Attorney Jones reported that, during the Closed Session, the City Council voted unanimously to approve a settlement agreement of pending litigation with Hugo Gutierrez relating to his property at 14856 Mar Vista Street and authorized the City Manager to execute the agreement, subject to it being signed by Mr. Gutierrez. He advised any change in terms in the agreement will render it null and void.

16. ADJOURN CITY COUNCIL MEETING TO TUESDAY, JUNE 16, 2009 AT 7:00 P.M.

At 10:20 p.m., Mayor Henderson adjourned the City Council meeting to Tuesday, June 16, 2009, at 7:00 p.m.

Respectfully submitted,

Toni Maiques
Assistant City Clerk-Treasurer/
Assistant Secretary-Treasurer