

**MINUTES
WHITTIER CITY COUNCIL
WHITTIER REDEVELOPMENT AGENCY
WHITTIER UTILITY AUTHORITY
JOINT MEETING
CITY COUNCIL CHAMBER, 13230 PENN STREET
SEPTEMBER 8, 2009**

1. CALL TO ORDER:

The Whittier City Council met in regular session on September 8, 2009, in conjunction with the Whittier Redevelopment Agency and the Whittier Utility Authority. Mayor Henderson called the joint meeting to order at 6:33 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

3. PLEDGE OF ALLEGIANCE:

Council Member Warner led the Pledge of Allegiance.

4.A ELKS SUMMER READING PROGRAM PRESENTATION

Mayor Henderson presented a Certificate of Commendation to Mike Roche, Whittier Elks, in recognition of their support of the Whittier Public Library Summer Reading Program.

**4.B WHITTIER LITTLE LEAGUE ALL STARS, DISTRICT 56 CHAMPIONS
PRESENTATION**

Mayor Henderson presented Certificates to all members of the Whittier Senior League All-Stars and their coaches in recognition of their District 56 Championship.

4.C YMCA - AMERICA ON THE MOVE PROCLAMATION

Mayor Henderson presented a Proclamation to Laurie Tiffany, Executive Director of the YMCA, in recognition of their nationwide America on the Move program. Ms. Tiffany said the program is designed to encourage healthy activities in daily lives; and the YMCA will be hosting activities such as Greenway Trail walks and zumba classes.

5. ORAL COMMUNICATIONS:

Ralph Marsico, Whittier, said San Francisco has a good transportation system; Detective Woods of the police department should look at the records; his father is not in good health; and he should not be prosecuted.

George Poochigian, Whittier, said the Uptown Car Show held on August 15 was noisy; there were numerous motorcycles Uptown creating congestion; the City does not give enough credit to people going to Iraq and Afghanistan; citizens should send telegrams to their representatives regarding veterans; and he read a letter written by the wife of a veteran thanking veterans for their service.

Joe Marsico, Whittier, said he thinks the three-minute rule during oral communications is nonsense; all commission meetings should be televised; he believes the Parking and Transportation Commission is the most important because of the connection to people; and he believes the City needs a police commission.

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

Council Member Newcomer requested separate consideration of Item 6.F.

Council Member Vinatieri requested separate consideration of Item 6.D.1.

It was moved by Council/Agency Member/Director Newcomer, seconded by Council/Agency Member/Director Warner, and carried unanimously, by roll call vote, to approve the Consent Calendar, except Items 6.D.1 and 6.F, including awarding contracts to All American Asphalt and Azteca Landscape; and that Resolution Nos. 8232 and 8233 be read by title only, further reading be waived, and they be declared adopted.

6.A The City Council denied claims filed by C.T.U. Inc.; AAA for insured Monte Thomas; and Jesse Freeman De La Mora.

- 6.B** The City Council, Agency Board and Board of Directors approved the Minutes of the Regular Meeting of August 25, 2009.
- 6.C** The City Council took actions regarding various class specifications:
1. Approved Street Maintenance Worker I/II class specification to be modified to require the possession of a valid Class C California driver's license prior to appointment and a Class B California driver's license as a pre-requisite to advancement to Street Maintenance Worker II; and
 2. Approved all class specifications requiring a Class A or B California driver's license to be modified to indicate the need to maintain the DL 51A health certification and possession of California endorsements required to operate applicable City vehicles and/or equipment.
- 6.D** The City Council received and filed the following Planning Commission action:
2. Approval of Conditional Use Permit No. C09-005 and Development Review No. DR09-019 to construct and operate a new 6,446 square-foot church facility; and the addition of a 441 square-foot garage to an existing residence for properties located at 5609 and 5621 Pioneer Boulevard; Owners: DiAnne Harrington and Joseph and Marilyn Digenova; Applicant: Daniel Prohoroff D.B.A New United Molokan Church.
- 6.E** The City Council awarded the construction contract to All American Asphalt in the amount of \$167,000 for the Byron/Rivera Road Overlay from Washington Boulevard to the West City Limit Project; rejected all other bids; and authorized the City Manager to sign the contract.
- 6.G** The City Council approved usage of the Palm Park and Leffingwell tennis facilities by Whittier College for its Women's Tennis Conference on April 16 and 17, 2010, from 9:00 a.m. to 4:00 p.m.
- 6.H** The City Council accepted a donation of six paintings from local artist Barbara Ward.
- 6.I** The City council received and filed the Fiscal Year 2008-09 Housing Programs Activity Report.
- 6.J** The City Council took action regarding interim landscape and irrigation maintenance:
1. Approved an emergency agreement with Azteca Landscape in the amount of \$232,500 for medians and parkways, effective September 13, 2009 through June 30, 2010; and

2. Adopted Resolution No. 8232, entitled, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHITTIER, CALIFORNIA, AMENDING THE FISCAL YEAR 2009-10 BUDGET FOR ADDITIONAL FUNDS FOR THE MAINTENANCE OF THE CITY'S STREET MEDIANS," in the amount of \$48,210.

6.K The City Council took action regarding the Bus Stop Improvement Plan:

1. Approved the conceptual designs, to include bus cut-outs, solar lighting, larger shelters, additional seating and landscaping, for four Priority "one Plus" bus stops located at Whittier Boulevard/Santa Gertrudes Avenue; Whittier Boulevard/Colima Road; Whittier Boulevard/Norwalk Boulevard; and Beverly Boulevard/Norwalk Boulevard; and forty-one standard Priority "one" bus stops at various locations;
2. Authorized the City Manager to proceed with negotiations with Montebello Bus Lines and the City of Montebello to secure a capital improvement grant and enter into an agreement to spend these funds; and
3. Adopted Resolution No. 8233 entitled, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHITTIER, CALIFORNIA, AMENDING THE FISCAL YEAR 2009 – 2010 BUDGET TO FUND THE CIVIL DESIGN WORK AT TWO BUS STOP LOCATIONS WITHIN THE CITY LIMITS," in the amount of \$22,000.

6.D.1 CONDITIONAL USE PERMIT C09-002 – MEDICAL MARIJUANA DISPENSARY LOCATED AT 8116 BYRON ROAD, SUITE D

Council Member Vinatieri requested review of the item.

City Manager Helvey responded the item would be scheduled at an appropriate upcoming meeting.

6.F ORDINANCE NO. 2936 – MASSAGE ESTABLISHMENTS

Council Member Newcomer said a local massage establishment operator had concerns about light bulb wattage, closing time, and the use of the same massage room for couples. He requested the City Council consider amending those sections of the ordinance to change light bulb wattage from 60 watts to 40 watts; change closing time from 8:00 p.m. to 9:00 p.m.; and to allow married couples to be in the same massage room with two separate beds.

Council Member Warner stated before supporting the amendments, she wanted more information and discussion regarding the issue of married couples in the same massage room.

City Attorney Jones recommended the ordinance be returned for first reading at a future meeting, due to the substantive changes.

Following discussion, the City Council concurred to remove the item from the agenda and direct staff to return the ordinance for a first reading at a future Council meeting.

City Manager Helvey stated the City would maintain the current status on massage establishments; and that current businesses would continue to operate illegally.

PLANNING COMMISSION MEETING:

At 7:02 p.m., Assistant City Manager Mendez called to order the Planning Commission meeting for Tuesday, September 8, 2009. Due to a lack of quorum, she immediately adjourned the meeting.

7. RECESS REDEVELOPMENT AGENCY AND UTILITY AUTHORITY MEETINGS:

Mayor Henderson recessed the Redevelopment Agency and Utility Authority meetings at 7:04 p.m.

8.A PUBLIC HEARING – CERTIFICATE OF APPROPRIATENESS 08-027, 7758 COLLEGE AVENUE

City Manager Helvey announced it was the date and time set and duly noticed for a public hearing to consider the recommendation of the Historic Resources Commission to approve a Mills Act Agreement between the City of Whittier and the owners of the property located at 7758 College Avenue; and to authorize the Mayor to execute the Mills Act Agreement.

Community Development Director Collier presented a staff report and said this home is the Simon Murphy House built in 1887 with modifications made in the 1920's and a two-car garage added in 1991, when the home was placed on the City's Local Register of Historic Resources. He said the applicants submitted a ten-year preservation timeline; the Historic Resources Commission approved the item unanimously at their August 12, 2009 meeting, with modifications to the agreement for the years 2011 and 2012, which the applicants agreed to; and he recommended the City Council adopt the resolution approving the Mills Act Agreement.

Mayor Henderson opened the public hearing at 7:05 p.m.

There being no speakers wishing to testify before the City Council, it was moved by Mayor Henderson, seconded by Mayor Pro Tem Nordbak, and carried, unanimously, to close the public hearing at 7:05 p.m.

It was moved by Council Member Newcomer, seconded by Council Member Vinatieri, and carried, unanimously, by roll call vote, that Resolution No. 8234 entitled, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHITTIER, CALIFORNIA, APPROVING CERTIFICATE OF APPROPRIATENESS 08-027 FOR A MILLS ACT AGREEMENT BETWEEN THE CITY OF WHITTIER AND THE PROPERTY OWNERS AT 7758 COLLEGE AVENUE (APPLICANTS/OWNERS: VICTOR AND CAROL DENNIS)"; be read by title only, further reading be waived, and it be declared adopted.

8.B PUBLIC HEARING – CONDITIONAL USE PERMIT C09-007, 6518-22 GREENLEAF AVENUE

City Manager Helvey announced it was the date and time set and duly noticed for a de novo public hearing to review the Planning Commission's approval of Conditional Use Permit No. C09-007 to allow the on-site sale of alcoholic beverages under a Type 41 license (beer and wine), extended hours of operation until 2:00 a.m. daily, and live entertainment for a proposed restaurant d.b.a. "Bambooze", located at 6518-22 Greenleaf Avenue, Suites 17 and 18; (Applicant: Carlos Fernandez; Owner: KMS Investment Inc.). It was recommended the City Council direct staff to return with an implementing resolution reflecting the City Council consensus.

Community Development Director Collier presented a staff report and said the applicant was requesting approval of a conditional use permit (CUP) to operate a Japanese restaurant serving sushi, beer and wine with live entertainment; and was requesting a 2:00 a.m. closing time. He said the Uptown area is considered having an undue concentration for alcohol sales, with there being thirty-three alcoholic beverage outlets in the Uptown. He said the first request is to serve beer and alcohol, under a Type 41 alcohol license; and under the conditions of the CUP, all alcohol sales must cease one hour prior to closing. He said the second request is to allow live entertainment, in the form of live karaoke at the rear of the dining room in a seventy-square foot area delineated by different flooring; the stage would not be raised; a public address system connected to speakers in the interior of the business would be utilized; and the windows and doors will remain closed. He said the third request is to operate the business with live entertainment until 2:00 a.m. seven days a week. He said the overall tenant space covers just under 2,600 square feet; with a maximum occupancy of 87 persons; parking will be public on-street and off-street including parking lots to the rear and across the street; the Police department has reviewed the proposed plan and does not believe it will have an adverse affect on surrounding businesses and properties; on August 3 the Planning Commission approved the CUP by a vote of 4-1 with amended conditions; and staff is requesting the City Council provide direction on an implementing resolution based on Council consensus.

In response to Council Member questions, Director Collier said without approval of the proposed CUP, Bambooze's closing hours would be midnight seven days-a-week; the resolution states there is making of a public convenience and necessity supporting the Type 41 license because the proposed location is in a commercial district and it is anticipated there would be a higher concentration of establishments serving alcohol in a downtown district; Amber Blu and Sage are two restaurants located in the same block with 2:00 a.m. closing; Amber Blu's closing hours were approved by a conditional use permit; Sage's closing hours were grandfathered in with the land use; Vinatiero's Wine Shop recently had their hours extended to midnight closing through approval of a minor CUP; the Bagel Pub is approved for a Type 41 liquor license with midnight closing hours, but is not yet operating; and Spin Lounge has 11:00 p.m. closing hours.

Mayor Henderson opened the public hearing at 7:18 p.m.

Carlos Fernandez, applicant, 1300 N. Hazard, Los Angeles, provided an overview of Bambooze and said the owner is aiming to have a sushi restaurant, he is proposing karaoke to keep with Japanese tradition; there will be no dancing; he is requesting 2:00 a.m. closing for food sales; the restaurant is located across the street from Sage; Bambooze wants to offer late dinners; and the owner has another sushi restaurant in San Fernando.

Risha Schottelbauer, 6016 Painter Avenue, Whittier, Whittier Historic Neighborhood Association President, requested denial of the conditional use permit for alcohol sales and live entertainment until 2:00 a.m.; she said there are homes directly behind and across the street from the proposed restaurant location; and the historic neighborhood is one block north; those homes do not have modern amenities such as insulation, double-pane windows or air conditioning; residents would be exposed to undesirable noise and disturbances from the restaurant and patrons; past experiences with Uptown establishments with entertainment and serving alcohol until late hours has not been positive; she believes it is unwise to sell alcohol and have live entertainment until 2:00 a.m. due to the close proximity to residences; she is concerned that approving the extended hours until 2:00 a.m. would establish a precedent for other businesses; she said midnight closing would be acceptable; and she submitted a letter stating her concerns.

Charles Claver, Vice President, Whittier Conservancy; said the Conservancy is an advocate of the Uptown Whittier Specific Plan; the issue before the Council is whether to approve a conditional use permit allowing a 2:00 a.m. closing up to seven days a week; the Conservancy supports a more cautionary approach; there are existing residential neighborhoods to the north and east of Uptown; any decision should be balanced to preserve quality of life for current and future residents; the Conservancy believes a new restaurant should be required to operate under the current rules and prove they can manage their business within current guidelines; the City may then

review and approve extensions to the hours; the Conservancy supports oversight and regulation of existing CUP guidelines to ensure compliance; he said other Los Angeles County cities utilize renewable CUP's whereby a business is judged on community citizenship and business acumen and then either granted or denied an extension; he said restaurants are vital to the future of Uptown Whittier; a balance is necessary between residents and businesses; he recommended the City Council be cautionary when issuing CUPs for late hour alcohol sales, and reward good management; and there are 600 members in the Whittier Conservancy.

James Sass, 6252 Washington Avenue, Whittier, said he has concerns that the Police report states there would be no negative affects on surrounding businesses; the report does not address affects on surrounding residences; the parking lot located to the southeast of the proposed location is surrounded by residences; he said there has not been much done for the implementation of the Uptown Whittier Specific Plan (UWSP); the proposed CUP for extended hours is not consistent with the UWSP; he was concerned that staff could not answer Council questions regarding closing times for other establishments in the Uptown area; he thinks the City should consider the residences and adhere to the UWSP; and he submitted a letter stating his concerns.

Assistant City Clerk-Treasurer Maiques read a letter into the record from Patricia M. O'Toole; 6252 Bright Avenue, Whittier, requesting denial of the extended hours of operation.

Mr. Fernandez responded to the speakers and said he had visited surrounding businesses; the business is not based solely on the sale of alcohol; the proposed business has a direct entrance from Greenleaf; the public parking area is not abutted by residential properties; the owner is willing to work under the recommendation for a trial period and review; he said they would request a six-month review for the 2:00 a.m. closing hours; the building has been newly constructed; there are conditions regarding noise levels; there is a condition that food sales exceed alcohol sales; and Amber Blu has set the precedent for extended hours.

In response to Council Member questions, Director Collier said conducting background checks is difficult and there had not be one conducted on the owner; Condition 24 of the CUP requires the business to maintain records of food and alcohol sales to assure that food sales exceed alcohol sales; Sage is allowed to sell alcohol until the 2:00 a.m. closing; Spin Lounge closes at 11:00 p.m.; there have been no Police issues with Spin Lounge at closing; and Sage has had some occasional calls for PD service.

There being no other speakers wishing to testify before the City Council, it was moved by Council Member Newcomer, seconded by Council Member Vinatieri, and carried, to close the public hearing at 7:40 p.m.

Mayor Pro Tem Nordbak said he has concerns about not knowing who the City is doing business with; he is more comfortable working with people he knows; he said there are police calls for almost every bar or restaurant in the City that serves alcohol; he wants to err on the side of caution; he supports midnight closing on Sunday through Thursday; 1:00 a.m. closing on Friday and Saturday; and a six-month review of the CUP.

Council Member Warner said she has concerns about the name "Bambooze" if the proposal is for a restaurant; she knows the City has no legal control over the name; she believes the past practice of this Council has been to approve 12:00 a.m. closing and no live entertainment at the outset; extended hours and live entertainment are approved after the business has proven itself; and she supports a periodic review of the CUP.

Council Member Vinatieri said the extended hours were approved for Amber Blu because of the proven business record; this is the only Uptown location with residences in the immediate surrounding area; he has concerns about the extended hours; he has no concerns about the Type 41 liquor license or the karaoke; he supports midnight closing on Sunday through Thursday and 1:00 a.m. closing on Friday and Saturday; and a six-month review of the CUP.

Council Member Newcomer said the success of the Uptown area depends on the compatibility of businesses and residences in the area; he has concerns about the live entertainment regarding noise and compatibility with residences; he wants to restrict them to midnight; it is unreasonable for homeowners to refit their homes with double-paned glass or air conditioning to deal with the noise issues; it is difficult to enforce noise limits; and he supports all of the conditions except the 2:00 a.m. closing.

Mayor Henderson said the City is in danger of an escalation of late closures; the City is trying to develop a residential friendly Uptown area to bring in mixed use; he recommends staying with the midnight closing as included in the UWSP; and to set a reasonable review period to see how the business is performing.

City Manager Helvey left the Council Chamber at 7:45 p.m. and resumed his seat at the dais at 7:48 p.m.

Mayor Henderson recessed the City Council meeting at 7:51 p.m.

At 7:58 p.m. Mayor Henderson reconvened the meeting, with all Council Members present.

Mayor Henderson announced that after conferring with the City Attorney, he determined he may have a conflict of interest due to the location of his business; due to the type of business and hours of operation it does not appear he would have an economic conflict; however, because the proposed location is probably within 500 feet of his business, he took the precaution of recusing himself from any action on the item;

he instructed the other Council Members to disregard his comments when voting; and he left the Council Chamber at 7:58 p.m.

Mayor Pro Tem Nordbak chaired the public hearing to conclusion.

Following discussion, it was moved by Council Member Vinatieri, and seconded by Council Member Warner, to direct staff to return with a resolution granting the CUP in all respects except for closing hours which are to be set at midnight Sunday through Thursday, and 1:00 a.m. on Friday on Saturday; and to return in six months to review conformity to the CUP.

For the record, Council Member Warner confirmed with City Attorney Jones that if the City Council vote ended in a tie, the Planning Commission recommendation would stand; she prefers no live entertainment for the first six months, however in light of the fact there were only four Council Members voting, she said she would support the motion.

The motion carried, by roll call vote, with Mayor Henderson absent.

Mayor Henderson resumed his seat at the dais at 8:01 a.m.

8.C PUBLIC HEARING – ZONING CODE AMENDMENT 09-013, SECOND DWELLING UNITS

City Manager Helvey announced it was the date and time set and duly noticed for a public hearing to consider the recommendation of the Planning Commission to approve Zoning Code Amendment 09-013 and to adopt an ordinance amending Whittier Zoning Code regarding second dwelling units.

Community Development Director Collier presented a staff report and said that second dwelling unit standards have been in place for approximately twenty years; the standards have been amended numerous times due to changes in State law; the City has different standards for different single-family zoning districts; and the proposed amendment would set a common standard for all second dwelling units in single-family residential zones. He said staff was also proposing other modifications to the Zoning Code including changing the reference to the California Building Code rather than the Uniform Building Code; modifying the second unit size to a minimum 150 square feet and a maximum size of 30% of the main building, not to exceed 1,200 square feet; allowing tandem or non-tandem parking; clarifying the need to comply with historic building requirements; and the second dwelling unit must comply with setbacks, lot coverage requirements, and minimum lot area requirements. He said the Planning Commission had reviewed and recommended the amendment for approval; and staff was recommending introduction of the ordinance to amend the Zoning Code.

In response to Council Member questions, Director Collier said that carports must comply with Zoning Code setback standards; this amendment is dealing with second units that have kitchen facilities; the amendment would place a 1,200 square-foot cap on the second unit dwelling size; and the minimum lot size for second dwelling units will remain at 7,500 square-feet.

Mayor Henderson opened the public hearing at 8:14 p.m.

There being no speakers wishing to testify before the City Council, it was moved by Mayor Pro Tem Nordbak, seconded by Council Member Vinatieri, and carried, unanimously, to close the public hearing at 8:14 p.m.

Mayor Pro Tem Nordbak said he believes the proposed ordinance is too restrictive; and he would like to see the unit size based on the lot size.

City Attorney Jones said if the City created a standard to comply with the law, and then offer additional amenities; it would probably satisfy the legal requirements.

Following discussion, there was City Council consensus to direct staff to return with a report for additional discussion.

9.A ARTIFICIAL TURF AT CITY FACILITIES

Following discussion, there was City Council consensus to have staff bring back a report on use of artificial turf at City facilities for discussion.

9.B REVIEW THE HISTORIC RESOURCES ORDINANCE

Following discussion, there was City Council consensus, with Council Member Newcomer and Mayor Henderson dissenting, to have staff bring back a report on the Historic Resources Ordinance for discussion.

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

Mayor Henderson reconvened the Redevelopment Agency and Utility Authority in joint session with the City Council at 8:25 p.m.

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

Council Member Warner reported she attended the Southern California Association of Governments (SCAG) Community Economic Development and Housing Committee meeting in Los Angeles where SB 375 regarding greenhouse gas emissions was discussed.

Mayor Pro Tem Nordbak reported he attended a Pio Pico State Park subcommittee meeting with the representatives from the City of Pico Rivera to discuss the future of the state park.

Mayor Henderson said he would like the City to support the Rio Hondo Temporary Home in relocating or retrofitting current buildings prior to being evicted by the state in December.

12. ADJOURN REDEVELOPMENT AGENCY AND UTILITY AUTHORITY MEETINGS:

13. CITY COUNCIL CLOSED SESSION:

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

13.A City Council - Government Code Section 54956.9(a) to discuss the claim of the Natural Resources Defense Council, Inc. et al. vs. the County of Los Angeles.

13.B City Council – Government Code Section 54956.9(b) to discuss one case of potential litigation; the City is not specifically identifying the potential litigation to be discussed or the facts supporting this Closed Session item because to do so would jeopardize the City's position.

Mayor Henderson adjourned the City Council meeting to Closed Session at 8:34 p.m.

14. RECONVENE IN OPEN SESSION:

Mayor Henderson reconvened the City Council meeting in Open Session at 9:08 p.m.

15. CLOSED SESSION REPORT:

None.

16. ADJOURN CITY COUNCIL MEETING TO TUESDAY, SEPTEMBER 15, 2009 AT 7:00 P.M

At 9:08 p.m., Mayor Henderson adjourned the City Council meeting to Tuesday, September 15, 2009, at 7:00 p.m.

Respectfully submitted:

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