

**SPECIAL JOINT MEETING OF THE COSTA MESA CITY COUNCIL AND THE ORANGE
COUNTY FAIRGROUNDS AUTHORITY
CITY OF COSTA MESA**

August 24, 2010

The City Council of the City of Costa Mesa, California and the Orange County Fairgrounds Authority met in a Special Joint Session on Tuesday, August 24, 2010 at 5:30 p.m. in City Council Chamber, 77 Fair Drive, Costa Mesa. The meeting was called to order by the Mayor/Chair.

CLOSED SESSION – 4:00 P.M.

I. ROLL CALL

II. PUBLIC COMMENT

III. CLOSED SESSION

1. Conference with Real Property Negotiators – Property: 88 Fair Drive. Agency Negotiator: Allan Roeder, City Manager. Negotiating parties: State of California and Facilities Management West, Under negotiation: price, terms of payment. Pursuant to Government Code Section 54956.8.

Mayor/Chair Mansoor reported that a Closed Session was held and called the regular meeting to order at 5:30 p.m.

REGULAR MEETING – 5:30 P.M.

ROLL CALL (00:00:15)

Council/Authority Members Present: Mayor/Chair Allan R. Mansoor
Mayor Pro Tem/Vice Chair Wendy Leece
Council/Authority Member Eric R. Bever
Council/Authority Member Katrina Foley
Council/Authority Member Gary Monahan

Officials Present: Executive Director Allan Roeder
City Attorney/Authority Counsel Kimberly Hall
Barlow
Development Services Director Kim Brandt
City Clerk/Secretary Julie Folcik

IV. CLERK'S STATEMENT (00:00:23)

The Costa Mesa City Council and Orange County Fairgrounds Authority Special Joint Meeting Agenda and Notice and Call were posted at the City Council Chambers, on Thursday, August 19, 2010 at 5:30 p.m. The revised agenda was posted on August 20, 2010 at 5:00 p.m.

V. MEETING MINUTES (00:00:50)

1. Minutes of the Special Joint Meeting of the City Council and the Orange County Fairgrounds Authority of June 15, 2010.

Interested parties were invited to address Council/Authority on this item. There was no response and Mayor/Chair Mansoor closed public comments for this item.

MOTION: To approve the Special Joint Meeting of the City Council and the Orange County Fairground Authority of June 15, 2010, moved by Council/Authority Member Bever, seconded by Mayor Pro Tem/Vice Chair Leece.

The motion carried by the following roll call vote:

Ayes: Mayor/Chair Mansoor, Mayor Pro Tem/Vice Chair Leece, Council/Authority Member Bever, Council/Authority Member Foley, Council/Authority Member Monahan
Noes: None.
Absent: None.

VI. PUBLIC COMMENT (00:01:11)

Mayor/Chair Mansoor invited public comments on items not on the Agenda.

Jay Photoglou, Huntington Beach, commented on a letter from Chief Shawkey regarding an investigation conducted by the Costa Mesa Police Department which was forwarded to the Orange County District Attorney's office for review.

Sandra Genis, Costa Mesa, wondered if there are any materials made available to Council that have not been made available to the public noting that it appears that is the case.

There being no others wishing to address Council/Authority, Mayor/Chair Mansoor closed the Public Comments portion of the meeting.

City Clerk/Secretary Julie Folcik affirmed that copies of all documents that were provided to Council/Authority have been provided to the public as well.

Council/Authority Member Foley asked for an update to a previous speaker's comments regarding the Costa Mesa Police Department. It was noted that staff will provide a memo regarding the matter.

VII. UNFINISHED BUSINESS – None (06:40)

VIII. NEW BUSINESS (00:06:45)

CITY COUNCIL (00:07:00)

1. California Environmental Quality Act (CEQA) Determination for the Orange County Fair and Event Center Lease Agreement.

- a. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, FINDING THE PROPOSED LEASE AGREEMENT FOR THE ORANGE COUNTY FAIR AND EVENT CENTER TO BE CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

Development Services Director Kim Brandt presented details of the report noting it is a resolution that identifies CEQA exemptions applicable to the proposed Lease Agreement between the Joint Powers Authority and the City of Costa Mesa to enter into with Facilities Management West (aka Orange County Fair and Event Center, LP). She reported that there are five CEQA exemptions that are applicable to the proposed lease, corrected a typographical error and offered to provide details of each of the exemptions.

In response to an inquiry from City Attorney/Authority Counsel Barlow, Ms. Brandt provided information regarding the need for going through the process, addressing CEQA guidelines, details of the five applicable exemption classes and recommendations.

In reply to Council/Authority Member Foley's inquiry, Ms. Brandt explained the process required if the tenant changes the normal operation of the center, existing facilities or natural conditions. She stated that any change that constitutes a project would be subject to City review and approval via a City permit. The City would assess the environmental determinations required for that action as well as the possibility of a Master Plan approval.

She presented the definition of "Legal, Non-conforming Uses" and distinguished between the City's Zoning Code and Building Codes. She explained that the City does not have a Master Plan for the site, so therefore, it is considered a "Legal, Non-conforming" use. At that time any new buildings are planned, the City would require a Master Plan for the site.

Interested parties were invited to address Council/Authority on this item.

Sandra Genis, Costa Mesa, submitted a letter for review and questioned why the City is the lead agency and addressed categorical exemptions noting that they are not to be used if any environmental impacts will occur noting that the EIR identifies significant unavoidable impacts. In addition, she addressed use of the Pacific Amphitheater, felt that

there is no basis for the City claiming that there are no impacts and noted that CEQA requires environmental documentation to be completed immediately and that a categorical exemption does not apply.

There being no others wishing to address Council/Authority, Mayor/Chair Mansoor closed public comments for this item.

City Attorney/Authority Counsel Kimberly Hall Barlow reported that she, along with outside Legal Counsel, evaluated the applicability of the exemptions and noted that language was included in the lease that further environmental review would have to be done before anything could change on the property. She added that the City is not authorizing anything specific to take place on the facility; that the City would be the permitting agency for that and that is why the City is the lead agency on the exemption determination. Because there is no plan for changes to the status quo, it would be impossible to do an environmental review at this point and the City felt it important to include stringent language in the lease that they cannot go beyond what is currently going on there.

Ms. Brandt presented an example of when the CEQA review process would be triggered and reported that environmental issue would be identified in conjunction with specific proposals.

City Attorney/Authority Counsel Barlow addressed specific language within the proposed lease regarding CEQA review and compliance.

Discussion followed regarding public input opportunities in the process relative to EIRs, notification requirements and possible expansion of notification radiuses through Council direction.

MOTION: To adopt A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, FINDING THE PROPOSED LEASE AGREEMENT FOR THE ORANGE COUNTY FAIR AND EVENT CENTER TO BE CATAGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT moved by Council/Authority Member Monahan, seconded by Mayor/Chair Mansoor.

In response to an inquiry from Council/Authority Member Foley, Ms. Brandt provided information regarding the noticing actions performed relative to this item.

Ms. Barlow noted a requirement within the document that the tenant comply with the terms of the Settlement Agreement and Judgment that applies to the fairground.

Mayor Pro Tem/Vice Chair Leece inquired regarding noise restrictions relative to the Amphitheater.

Ms. Brandt reported that there are several layers of noise restrictions that apply to the property. She referenced a memorandum issued by her office regarding the Settlement

Agreement, the 1980 Judgment and the various noise restrictions that apply to the property.

Regarding the next item, Council/Authority Member Foley asked that staff draft a requirement of notice specific to the fairground site to be included in the Ground Lease to ensure that surrounding residents receive notice of the matter.

Mayor Pro Tem/Vice Chair Leece requested that appropriate Homeowners' Associations be noticed as well.

Ms. Barlow responded to an inquiry noting that regarding noise, the most restrictive requirements would apply.

Mayor Pro Tem/Vice Chair Leece commented on the importance of providing adequate and appropriate noticing on this issue.

Executive Director Allan Roeder confirmed that staff will draft site-specific noticing requirements for this item, beyond what is presently required.

City Clerk/Secretary Julie Folcik read title to the proposed Resolution.

The motion carried by the following roll call vote:

Ayes: Mayor/Chair Mansoor, Mayor Pro Tem/Vice Chair Leece, Council/Authority Member Bever, Council/Authority Member Foley, Council/Authority Member Monahan

Noes: None.

Absent: None.

ORANGE COUNTY FAIRGROUNDS AUTHORITY (00:48:56)

2. Lease Agreement between the Orange County Fairgrounds Joint Powers Authority (JPA) and the OC Fair and Event Center, L.P., for the 150-acre property located at 88 Fair Drive, Costa Mesa.
 - a. A RESOLUTION OF THE ORANGE COUNTY FAIRGROUNDS JOINT POWERS AUTHORITY APPROVING THE PROPOSED LEASE AGREEMENT FOR THE ORANGE COUNTY FAIR AND EVENT CENTER BETWEEN THE AUTHORITY AND OC FAIR AND EVENT CENTER, L.P.

Mr. Roeder reported that the City was advised today, that the State of California has chosen to put the 32nd District Agricultural Association property (Orange County Fairgrounds) back on the market for sale. He noted a posting on the State's website indicating the terms of the offering with some distinct differences and addressed the differences as well as similarities between the prior and the present terms.

Ms. Barlow provided a presentation addressing formation of the JPA, negotiation of a Sale Agreement for the property, with the State of California, negotiation of an MOU and negotiations with FMW, the proposed tenant. She reported that agreement was reached on the majority of issues without the need to bring it before Council for resolution and addressed areas that are still unresolved that will need action this evening. She referenced and presented details of Attachment 5 (draft lease) and attachments dealing with unresolved issues.

RECESS/RECONVENE

Mayor/Chair Mansoor called for a recess at 7:30 p.m. The meeting was reconvened at 7:50 p.m. with all Members present.

Ms. Barlow addressed the City's last-proposed language within the draft lease as well as the tenant-proposed language regarding the preclusion of rave parties and tenant's desire to hold grad-night types of events. She proposed adding the following language to the draft lease (page 11). "This shall not preclude tenant's right to hold 'grad-night-type' events involving graduating students and the presence of adult chaperons". She addressed proposed changes in Attachment 3 regarding community uses, the City's ability to review the number and types of community uses to ensure compliance and joint development of community-use policies and other provisions.

Discussion followed regarding provisions for fair-access community uses, the definition of "commercially reasonable efforts" to ensure continued community uses and considering unintended consequences.

Ms. Barlow addressed provisions regarding the right to rename the facility. She noted that no renaming will occur without approval by the JPA. She presented details of an assignment provision which precludes the tenant from assigning, selling, encumbering, transferring, etcetera, its lease hold interests in the property without the landlord's prior written consent and the State's consent if so required. She explained the term "unreasonable delay" and noted that the City may object to assignment of a lease to another entity if there is a reasonable objection and explained the process, should there be a request for an assignment.

Ms. Barlow continued reviewing proposed language regarding the tenant's ability to participate in regional and local events as long as these don't compete with the regional fair. She identified the standards under which to exercise "reasonable approval" and noted the rights of the JPA and the related process. Ms. Barlow proceeded reporting the proposed changes to the remainder of the document dealing with issues that are still to be resolved as well as issues that are not in dispute.

Discussion followed regarding a history of community uses within the site and current community uses of the facility.

Ms. Barlow pointed out a typographical error in the Resolution (Attachment 6) and stated suggested language to add.

Development Services Director Brandt provided a PowerPoint presentation regarding the history of the property. She addressed pre-1950 structures, existing conditions and historic buildings and City ordinances related to historical resources.

Interested parties were invited to address Council/Authority on this matter.

Dr. Sharon Gerstenzang, Fountain Valley, reported that the Orange County Fair and Event Center was made up since the 2003 Master Plan in order to move it away from the agricultural vision and changed the mission statement to reflect a more commercial vision. She addressed noticing requirements, the equestrian center, required operations and the availability of financial information. She thanked Council/Authority Members and staff for their efforts in this process.

Janice Posnikoff, DVM, Laguna Beach, Vice President of the Equestrian Coalition of Orange County, acknowledged the efforts of Council/Authority and asked that Members not vote in support of the lease and consider not selling the property and finishing the lease, noting that it needs further resolution.

Allan Beek, Newport Beach resident, acknowledged the efforts in developing the lease and addressed the intensity of use, community uses and trust. He felt that the lease should be for a more-restricted period.

Vern Nelson, Huntington Beach, sang his opinion against approval of the lease as currently presented adding that it is a "tainted lease".

Reggie Mundekis, Orange felt that the deal needs to be completely reconsidered. She opined that the process has been corrupted by conflicts of interest and felt that the deal does not negotiate the favor of the residents of Orange County, but rather of the tenants.

Bruce McEvoy, Costa Mesa, noted that the fairgrounds has allowed organizations to have fundraising opportunities and commented in opposition to the proposed lease/deal and the process for addressing liquor licenses. He stressed the importance of ensuring that the City and residents' interests are considered.

Stephanie Barber, Executive Director of the Verse Resource Foundation, felt that the lease needs significant work and research, especially related to historic community uses. She equated this matter to the fight to preserve Crystal Cove. She spoke in support of keeping the facility a State Fairground.

Greg Ridge, Costa Mesa, felt that the issue of community use needs further consideration and expressed concerns that the provisions in Measure C would be negated by a three-person majority of the JPA and spoke in opposition to the deal.

Teresa Sears, Orange, Representing the Orange County Fairgrounds Preservation Society, indicated that she expects that Council/Authority will pass this issue, but felt that the City has been pressured into making a decision on this deal. She listed the goals of her organization and felt that those assurances are not guaranteed by the lease and that this decision is not fair to the taxpayers and creates a huge risk.

Beth Refakis, Costa Mesa, thanked staff and Council/Authority and expressed concerns regarding the remaining historical buildings, re-naming the facility and availability of the facility as an evacuation center in emergencies. She spoke in opposition to the proposed lease/deal.

Lisa Sabo, Newport Beach, spoke in opposition to the term length of the lease and expressed frustration with the pressure being exerted by the State. She urged Council/Authority to vote no on the item.

Patrick Mark, spoke in opposition to the matter and wondered why other cities in Orange County aren't involved. He felt that the City should make zoning changes and let the State sell it at market price.

Sandra Genis, Costa Mesa, indicated that she was encouraged by some of the new language proposed by staff but expressed concerns regarding creating a Master Plan for the facility and felt that there are still too many unknown issues. She encouraged Council/Authority to vote no on the matter.

Joy Williams, Costa Mesa, equated this issue to a shot-gun wedding and expressed concerns with the vague language, economic repercussions and still un-answered questions.

Jay Photoglou, Huntington Beach, felt that something doesn't seem right on the issue and wondered who supports the issue.

Kathy Hoffstetter, thanked staff and Council/Authority for its efforts; she felt that the lease needs a lot more work and asked Council/Authority to continue fighting for openness and transparency and that there are too many issues to be resolved.

John Rittenhaus, Costa Mesa, addressed noise impacts related to the facility and expressed concerns regarding increased uses for non-fair events. Mr. Rittenhaus also expressed concern that if the deal goes through the increased uses will have an impact to his and his neighbors' quality of life. He encouraged Council/Authority to vote no on this matter.

Ms. Barlow noted that the EIR is part of the package of materials put together for the General Plan amendment. Ms. Brandt reported that the environmental documents are available and stated that staff can follow up with a memo regarding the documents.

Debbie Homesen, indicated the importance of having a plan and felt it would be nice to understand their plan.

Guy Lemmon, Facilities Management West and OCFEC, LP, acknowledged residents' concerns and noted his organization's intent to be a good partner with the City and the community. He addressed the company's background and goals and commended the City for its efforts on the matter. He felt that the lease agreement will ensure that what is being promised will be achieved. He stated agreement to preserving all existing uses, honoring provisions of Measure C and the City's General Plan, growing community uses and generating new revenues for the City.

Mr. Lemmon stated the need to have rights to run their business and reported that some of the updated documents were just delivered the previous night, so they have been unable to review them. In reply to an inquiry from Mayor/Chair Mansoor, Mr. Lemmon expressed his willingness to work with the City on unresolved issues and working out details on an on-going basis.

Discussion followed regarding renaming of the facility, making sure that another fair-type use in another facility is not promoted through FMW, financial commitments by FMW, availability of documentation regarding formation of the OCFEC, LP legal entity, community uses and working together to ensure the public benefit.

Mr. Lemmon commented on language regarding raves and stated that they are willing to work with staff and FMW attorneys to address unresolved issues. He felt that there was a level of government involvement that is unnecessary and noted his willingness to continue negotiations on unresolved issues.

Council/Authority Member Foley stated that rarely, has she ever had such little time to evaluate something so important and commented on items that have not been agreed to.

Mr. Lemmon stated that they are willing to have mutual discussions on an as-needed basis as circumstances come up and that they are not willing to agree to make advance commitments. He stated that they have made financial commitments and have the right to operate the facility.

Discussion followed regarding previous community uses and including all appropriate non-profit groups, neighborhood ticket programs, uses for community meetings by other groups such as homeowners' associations, impacts to surrounding neighbors and public safety contracts.

Regarding the latter, Mr. Roeder stated that the City would not negotiate a way that would change the City's authority and responsibilities of public streets to any party.

There being no others wishing to address Council/Authority on this matter, Mayor/Chair Mansoor closed public comments for this item.

In response to Mayor Pro Tem/Vice Chair Leece's inquiry regarding Council/Authority options as this time, Ms. Barlow explained that recommendations include acknowledgements that there will be changes and noted that there are some exhibits that are not yet complete and that it is staff's intend to provide final documentation at a subsequent meeting. She presented options available to Council/Authority at this time. She suggested that Council/Authority approve portions of the lease that are agreeable and provide direction as to the portions that are not. She addressed the short timeline available.

Ms. Barlow commented on property taxes noting that it is owned by the State so that it pays no property taxes. The lease provides that property taxes be paid by the tenant. She addressed application of Measure C, precluding exemption from Measure C by the JPA and noted that there is no financial liability by the City.

Council/Authority Member Foley commented on the requirement for legislative action and the process. She felt that it isn't likely that legislature will be acted upon within a month.

Ms. Barlow stated that it would be staff's preference to move forward as quickly as possible.

Discussion followed regarding the City's right to use personal property and equipment and use of trademarks.

MOTION: To continue the proposed lease to the first meeting in September 2010 and have all of the required exhibits and documents available at that time with opportunities to discuss all of the deal points discussed above, moved by Council/Authority Member Foley.

The motion died for lack of a second.

Council/Authority Member Monahan addressed the time it has taken to resolve the matter and commented on the need to act quickly.

MOTION: To approve the Resolution of the Orange County Fairgrounds Joint Powers Authority approving the proposed lease agreement for the Orange County Fair and Event Center between the Authority and the Orange County Fair and Event Center, LP, adopt a resolution approving and authorizing the Chair and the Secretary to sign, subject to minor revisions to be approved by Authority Attorney and Executive Director, subject to verification of financial capacity, contingent upon opening of escrow, with the changes discussed relative to Section 6.1, regarding the rave language proposed by the City Attorney or such mutually agreed language that prohibits a rave, that the tenant and staff can agree on, Section 6.2 (approving the JPA alternative language) and Sections 15.4, 15.7 and that 15.10 (be brought back at the next meeting), Section 28.3, 28.4, Exhibit H as discussed, moved by Council/Authority Member Monahan, seconded by Council/Authority Member Bever.

Discussion followed regarding the re-naming issue and the proposed JPA alternative language.

Mayor/Chair Mansoor indicated that the fact that FMW is not willing to negotiate language regarding renaming the facility is not acceptable to him. He hoped that the organization work with staff to address matter.

Discussion followed regarding Section 15.10 and the need for further negotiation on the matter.

Ms. Barlow stated that she would like an opportunity to clarify language to Attachment 3 and noted that the property is used as an emergency evacuation center for people and animals and will add that use to the list of community uses.

The motion carried by the following roll call vote:

Ayes: Mayor/Chair Mansoor, Mayor Pro Tem/Vice Chair Leece, Council/Authority Member Bever, Council/Authority Member Monahan

Noes: Council/Authority Member Foley

Absent: None.

IX. BOARD MEMBER/COUNCIL MEMBER COMMENTS

None

X. ADJOURNMENT

The Mayor/Chair adjourned the meeting at 10:33 p.m.



Mayor of the City of Costa Mesa/Chair
Orange County Fairgrounds Authority

ATTEST:



Interim City Clerk of the City of Costa Mesa