

City of Manhattan Beach

*1400 Highland Avenue
Manhattan Beach, CA 90266*



Meeting Minutes - Draft

Tuesday, January 21, 2014

6:00 PM

Regular Meeting

City Council Chambers

5:00 PM Adjourned Regular Meeting - Closed Session

City Council

*Mayor Amy Howorth
Mayor Pro Tem Wayne Powell
Councilmember Mark Burton
Councilmember Tony D'Errico
Councilmember David J. Lesser*

A. PLEDGE TO THE FLAG

Mr. George Butts led the Pledge of Allegiance.

B. ROLL CALL

Present: 5 - Mayor Howorth, Mayor Pro Tem Powell, Councilmember Burton, Councilmember D'Errico and Councilmember Lesser

C. CERTIFICATION OF MEETING NOTICE AND AGENDA POSTING

City Clerk Liza Tamura confirmed that the meeting was properly posted.

D. APPROVAL OF AGENDA AND WAIVER OF FULL READING OF ORDINANCES

Without objection, the meeting proceeded as posted and the agenda was approved.

E. CEREMONIAL CALENDAR

None.

F. CITY MANAGER REPORT

Interim City Manager John Jalili provided a status report on the City Manager selection process and addressed water-conservation issues, review of the meeting regarding the design plan of the Strand stairs at 6:00 PM on January 23, 2014, to be held at the Police/Fire conference Room and status of the Rite Aid site at the corner of Manhattan Beach and Sepulveda.

G. CITY ATTORNEY REPORT

City Attorney Quinn Barrow reported that earlier this evening, City Council entered into Closed Session to discuss the two (2) items identified in the Closed Session agenda. One was discussion of a pending Workers' Compensation case where City Council authorized, by a vote of 5 – 0, accepting a compromise settlement of \$117,000, noting that the case is now settled and he addressed final steps to be taken. Additionally, the second item identified on the agenda pertained to negotiations with labor units and City Council gave direction to the Interim City Manager.

City Attorney Barrow addressed the third item on the Closed Session agenda relative to the Shade Hotel amendment to the Conditional Use Permit noting that two (2) Public Hearings are scheduled with the Planning Commission, one for February 12, 2014 and the other for March 12, 2014. Relative to the fourth item on the agenda, a status report was provided regarding a petition associated with the requirements of the MS4 Permit, part of the NPDES and pertaining to environmental storm-water discharge requirements imposed by the Federal government and the State.

In response to Councilmember Burton's inquiry regarding the hearings on the Shade Hotel, City Attorney Barrow reported that it will be a consideration to their amendment to the use permit. Regarding the 900 Club, City Attorney Barrow reported that the Public Hearing is scheduled for February 26, 2014. He added that this matter will be a Planning Commission hearing where the Commission will be considering revocation of the 900 Club use permit.

H. CITY COUNCIL ANNOUNCEMENTS AND REPORTS

Councilmember Lesser, on behalf of the Manhattan Beach Neighborhood Watch Program, announced the Map Your Neighborhood Program which provides information about disaster preparedness. The program will be held on January 22, 2014, from 7:00 PM to 8:30 PM in the Police/Fire Conference Room. Attendance is by reservation only by calling 310/802-5183.

Mayor Pro Tem Powell announced that AARP will be providing free tax advice to adults age 60 plus, every Wednesday beginning February 5 through April 9, 2014, 9:00 AM to 1:00 PM at Joslyn Community Center.

Councilmember Burton thanked staff for providing him with a copy of the Water Master Plan. After reading it, he reported meeting with Water Replenishment District representatives who will be setting up a meeting with the Mayor and City Manager to talk to City Council about their organization and water independence.

I. COMMUNITY ANNOUNCEMENTS REGARDING UPCOMING EVENTS

Kate Nelson, Senior Advisory Committee, highlighted Cultural Sundays with an upcoming event scheduled for Sunday, January 26, 2014, with scenes and monologues from some of the City's acting groups. The event will be at 2:00 PM at the Joslyn Center.

Don Gould, Manhattan Beach Library, provided a brief status update on the Library renovation project and listed features and services available on their website.

Bill Victor noted that the matter of Street Sweeping Fee Refunds is on tonight's agenda and encouraged interested residents to participate in the discussions.

J. PUBLIC COMMENT ON NON-AGENDA ITEMS

Yuri Gurvich congratulated Mayor Howorth on her new position and wished her well. He commented on traffic-accident prevention in the El Porto area of the City and provided testimony regarding his meeting with Councilmember Burton who stated that he would try to help with the matter. He referenced prior comments that he made to City Council regarding unsafe conditions on bike paths in the area and reported that later, street bumps disappeared. Six (6) months later, he reported receiving an email that his suggestions regarding a specific intersection were accepted and that the curbs will be painted red in "several months". He expressed concerns regarding the amount of time it has taken to paint the curbs to prevent traffic accidents.

Mayor Howorth asked Public Works Director Olmos to speak with Mr. Gurvich off-line.

Steve DeBaets, Manhattan Beach Senior Advisory Committee, referenced prior comments to City Council regarding the Committee's goals and reported that the Committee has developed a method for obtaining those goals by preparing a weekly "Seniors" article in "The Beach Reporter" and would be done in cooperation with other cities and agencies and would not affect staff time. He added that a complete program will be developed within the next month and will present it to City Council at an upcoming meeting.

Viet Ngo alleged continued felonies by City Council and the City in particular to a conflict of interest relative to a financial interest by Councilmembers Burton and D'Errico, in the Manhattan Village Shopping Center project.

Mayor Howorth asked Mr. Ngo to provide proof of his allegations.

Mr. Ngo reported that their places of business are near the Manhattan Village Shopping Center. He further alleged that Interim City Manager John Jalili has falsified information on his application to the City regarding his name.

Geroge Butts, Manhattan Beach CERT, reported that Mr. DeBaets was at a recent Red Cross training for the Rotary Club and stated that he produces a radio talk show on Tuesday mornings, "Preparing for Disaster in America". He reported that his guests this morning were two Canine-handler Officers who have developed a scent kit that can separate a person's DNA from any other DNA around them. He reported that every forty (40) seconds, a child goes missing in the United States and nearly 40% of people with Alzheimer's wander off. He announced that upcoming guests on his next show have developed a patch that is scanable and can be sewn onto children's clothing. The patch can be scanned with a smart phone and will provide information as to who to contact. He encouraged those interested to visit info@mbcerta.org.

Robert Bush commented on City Council's recent consideration of the Manhattan Beach Shopping Center and stated that it serves to eliminate the "small-town" feel of the City. He expressed concerns about the scale of the project, increased traffic, lack of parking and crime. He reported that the most dangerous location in the City is where the bike path meets the pier and suggested placing permanent signs advising people to walk their bikes. He encouraged residents and City Council to begin grass-roots, e-mailing writing campaign to the California Public Utilities Commission President asking for Southern California Edison to fix its infrastructure and stop outages. Additionally, he commented on explosions of Pacific Gas and Electric gas

lines that have resulted in several deaths, commented on the lack of resident participation during City Council meetings and regarding bagging parking meters.

Kelly Struman, President of the Downtown Manhattan Beach Business Association, referenced consideration of the budget.

Mayor Howorth noted that the matter will be considered under the Public Hearing portion of the meeting and that she may comment at the time stating the Public Hearing is open.

Gerry O'Connor referenced City Council's approval of an additional \$80,000 for its contract with Larry Kosmont, noting that it was dependent upon a report coming back from staff with information regarding how much had been exceeded in the \$70,000 contract. He stressed the importance of that report, especially, given City Council's recent action relative to the Manhattan Village Shopping Center project. He stated he would like to hear that report before there is a commitment and the amounts in the contract continue to grow.

Mayor Howorth stated that the matter is not on tonight's agenda but asked Interim City Manager Jalili to follow up on the item.

Interim City Manager Jalili added that Mr. Kosmont's contract has been suspended.

Councilmember D'Errico reported that he has disclosed, on several occasions, that he and his wife own two (2) businesses in Downtown Manhattan Beach and asked the City Attorney to report whether that poses a conflict of interest relative to the Manhattan Village Shopping Center project.

City Attorney Barrow reported that it does not pose as a conflict of interest as Councilmember D'Errico has no financial interest in that decision. Additionally, Councilmember D'Errico's stores are way beyond the 500 foot radius so that decisions on property that far away do not have a financial impact on Councilmember D'Errico.

Councilmember Burton reported that he does not have an office on Sepulveda Boulevard.

Councilmember Lesser reported that he has an office on the 100 North Block of Sepulveda Boulevard and that the Manhattan Village Shopping Center is located in the 3600 Block of Sepulveda Boulevard, therefore, there is no conflict of interest.

K. CONSENT CALENDAR

Viet Ngo pulled Consent Calendar Item No. 1 for separate discussion and consideration.

Mayor Howorth asked that Mr. Ngo provide his comments regarding Item No. 1 at this time.

1. Donation of Two Surplus Ford F250 Utility Trucks to the Manhattan Beach Community Emergency Response Team (CERT) (Finance Director Moe). **14-0050**

APPROVE

Viet Ngo commented on the proposed donation of two (2) surplus Ford F250 Utility Trucks to the Manhattan Beach CERT and stated that these were supposed to be sold at auction, that CERT should not use City vehicles and that City Council has no authority to give them same. He referenced the use of CERT pictures in campaigns and opined that CERT has enough vehicles and that they cannot be used for political advantage. He alleged misappropriation of public funds.

At Mayor Howorth's request, City Attorney Barrow stated that one of Mr. Ngo's concerns is that CERT may use the vehicles for campaigning and that neither of the grounds expressed by Mr. Ngo is of concern. He added there is no legal impediment to approving this item.

The Mayor asked for any additional public comment regarding Item Nos. 1 and 2.

Seeing no request to speak, Mayor Howorth closed public comments.

A motion was made by Mayor Pro Tem Powell, seconded by Councilmember Burton, that items No. 1 and 2 be approved. The motion carried by the following vote:

Aye: 5 - Howorth, Powell, Burton, D'Errico and Lesser

Councilmember Lesser thanked CERT Members for the work they do for the community.

Mayor Howorth encouraged residents to become involved with CERT.

2. First Amendment to the Professional Services Agreement with Willdan Engineering for Interim City Engineer Services in the Amount of \$17,500 (Public Works Director Olmos). **CON 14-0004**

APPROVE

The recommendation for this item was approved on the Consent Calendar (See motion for Item No. 1).

L. PUBLIC HEARINGS**M. GENERAL BUSINESS**

3. Fiscal Year 2014-2015 Budget (Finance Director Moe). **14-0056**
CONDUCT PUBLIC HEARING

Mayor Howorth suggested that Finance Director Moe go through the presentation, then inviting public input and deferring City Council discussion until afterwards.

Members of City Council concurred.

Finance Director Bruce Moe introduced the item and addressed the purpose of the Public Hearing, framework to tonight's meeting, Operating Budget versus Capital Improvement Plans, Budget Philosophy, Reserves and Fiscal Position, City Funds, Fiscal Year 2013-2014 City-wide Revenues by Fund, Fiscal Year 2013-2014 City-wide Expenditures by Fund, Fiscal Year 2013-2014 General Fund Revenues, Manhattan Beach Property Tax Dollar Breakdown, Taxable Assessed Value Trends from Fiscal Year 2005 to Fiscal Year 2014, Top Sales Tax Producers, Sales Tax Trends Fiscal Year 2004 to Fiscal Year 2013, Sales Tax by Geographic Area, Other General Fund Revenues of Interest and Fiscal Year 2013 versus Fiscal Year 2012 General Fund Result Trends. Finance Director Moe continued with the presentation addressing Fiscal Year 2013-2014 General Fund Expenditures by Category, Fiscal Year 2013-2014 General Fund Expenditures by Department, Labor Agreements, Challenges Ahead, Fiscal Year 2014-2015 Budget Timelines and Conclusions.

Mayor Howorth reported she would like to take a quick recess and upon return, she would like the public to comment or present questions, after which, City Council will have an opportunity to comment. She noted that there will be additional public workshops provided on the budget, going forward.

At 7:12 PM the City Council recessed and reconvened at 7:21 PM with all Councilmembers present.

Mayor Howorth announced an event by FOLA which supports local arts in the community, will be having their 5th Annual Fundraiser on February 1, 2014. Additional information can be obtained at www.foundationoflocalarts.com.

Mayor Howorth opened the Public Hearing.

Barbara Bandoza, Member of the Ceramic Studio, thanked City Council for previous fund allocations and reported that the Studio is booming, offering classes six (6) days a week and offers its services to children and seniors alike. She reported that the Director has been working under two (2) part-time contracts but that the organization has grown so much that they need two full-time people, one of which would be for a newly-created supervisor position. She reported that the Hometown Fair would like to showcase the studio and noted the need for staff to support their growth.

Carol Zee, Member of the Ceramic Studio, commented on various contracts for staff and services used by the Studio and noted the need for cohesiveness. One of the teachers is currently performing those tasks but has never been acknowledged as being the Studio leader. She encouraged City Council to find a place in the budget for a dedicated Ceramic Studio leader in the upcoming budget process and listed potential responsibilities of that person. She reported that the Studio has attracted people from surrounding cities and that the Studio has a reputation for solid work.

George Butts, Manhattan Beach CERT, thanked City Council for the vehicle donation. He referenced a conversation with the City Manager regarding their need for a place to store and protect their vehicles on the east side and store disaster

supply materials. He asked for support from the City in order to accomplish same.

Kelly Struman, President of the Downtown Manhattan Beach Business Association, commented on parking and bagging of the meters during the Holidays. She asked that going forward, the bagging of meters be approved for four (4) weeks during the Holiday Season. She reported that the City of Hermosa Beach extended their program during the month of January and encouraged City Council to continue using the red bags and the possibility of using the bags for advertising purposes.

Patrick McBride commented on having infinite needs and limited resources and highlighted the \$58 million that the City spends on salaries and benefits noting that when that is divided by the number of employees it results in \$208,000 plus for each. He reported that the University of Michigan published every persons salary and stated he would like to see that being done in the City. He commented on increases to the senior budget last year but noted that nothing was added to services. He requested that this year, City Council consider what the City actually gets for the money it is spending and asked for increased transparency.

Jim O'Callaghan, Manhattan Beach Chamber of Commerce, asked that City Council continue working in conjunction with the Chamber on economic development in the City and driving new business into the community and addressed possible use of funds in doing so. He addressed the Chamber's growth in the past year and listed future programs/projects for which they will need funding.

Dr. Lester Silverman, Look Optometry, announced their fundraising event at the Modern California Beach House on February 1, 2014, adding that the money that will be raised will go towards funding art education in City schools. He commented on the need for a "facelift" in the downtown area and to spend money, on a regular basis, to upgrade the area. He stated that it will help spur business and requested that City Council discuss a vision for the area in the near future.

Viet Ngo commented on the need to follow "Robert's Rules of Order" and the law regarding approving items by four (4) or five (5) votes and referenced an item approved last year by three (3) votes with two (2) abstentions. He encouraged City Council to follow the law in this regard and specifically related to the adoption of the budget. He commented on the conversion of City business funds to the General Fund and well as funds allocated to the Chamber of Commerce. Additionally, he commented on a local hotel that has not paid TOT and alleged conspiracy and misappropriation of fund relative to conversion of City property to build Metllox. He added that the latter has not paid business license tax.

In response to Mayor Howorth's inquiry, City Attorney Barrow reported that four (4) votes are not needed in order to adopt the budget and added that certain actions require a 4/5ths vote but that the budget is not one of them.

Regarding other issues addressed by Mr. Ngo, Interim City Manager Jalili indicated there is no need to look into them.

Gary Osterhout stated that three (3) minutes is not enough time for public comments. He noted the need to focus on the General Fund CIP relative to City facilities, better funding of tree protection and saving for residential parking, enforcement and education. Additionally, he stated there is need to better fund the Community Development Department so that it can perform economic development rather than having to outsource the function. He recommended discussing the two types of CIP in terms of those funded by the Enterprise Fund and those funded by the General Fund, noting that they need to be distinguished. Regarding deferred

maintenance, he stated that it should come out of another dedicated fund stream rather than the regular CIP because those functions should have been done prior to paying higher salaries or things that should not have been funded in the past and suggested the City needs to restructure its budget. He commented on parking meter rates and stated that the City should be paying for its own facilities, without sponsorships, for the public good and is not doing what it should.

In response to an inquiry from Mayor Howorth, Mr. Osterhout commented on the AYSO having to pay for a field that was for the good of everyone and was a safety issue. He stressed that the City should pay for those things that are good for the community.

Robert Bush provided a brief history of his background in the City and opined that residents of Manhattan Beach are spoiled, are not concerned about what is going on and do not care what is happening. He voiced opposition to bagging parking meters and the skate park and commented on issues related to Southern California Edison and the need to be proactive regarding same.

Elizabeth Kunkee suggested that the City's 2015 budget include an allocation to keep the new Library open on Sundays. She believed it would have a positive effect on the vitality of the downtown area and it would benefit citizens of all ages. She added that because of increased costs, the County of Los Angeles favors keeping libraries closed on Sundays. She addressed service hours and stated that if the City approves keeping the Library open on Sundays, it will have to reimburse the County for at least the first year. Additionally, she referenced an MOU that provides for annual review of service hours and suggested negotiations with the County in subsequent years for Library Hours of Operation on Sundays. She commented on other cities across the United States that have Sunday hours for libraries and stated this will be a positive image for the City.

Bill Victor commented in support of having the new Library open on Sundays. Additionally, he complimented Finance Director Moe on his presentation and suggested placing it on the City's website. He commented on Metlox and requested a status update on the matter. Mr. Victor inquired regarding the percentage of revenue provided by the TOT, commented on property taxes and the City's allocation to the Chamber of Commerce and parking.

Gerry O'Connor commented on important items for the City to consider including the budget, the strategic plan and staff management. He suggested that the City's strategic plan should be reflected in the budget and stated he had hoped to have a town hall discussion where the public could have more than three (3) minutes to provide comments and meaningful input. He commented positively on Finance Director Moe's presentation to expressed concerns that it was not posted in advance of the meeting for the public to review. Mr. O'Connor commented on the differences between budgeting and spending and hoped that City Council would address the matters of compensation and contract labor and services differently than it has done previously. He noted that the City has no formalized process or form for evaluating performance and suggested generating a spreadsheet with information regarding contract labor and services.

Mayor Howorth closed the Public Hearing.

Mayor Howorth noted this is a way to get the process moving forward and that there will be additional hearings on the budget with opportunities for public comment.

Councilmember Burton stated that Finance Director Moe is proposing a new

approach and asked what the problem was with the old approach.

Finance Director Moe commented on the opportunity to hear public comments in advance of the budget as opposed to after the proposed budget was presented to City Council. The direction provided by City Council this evening, can therefore, be factored in to the budget rather than at the tail end of the process.

Finance Director Moe stated that the expectation is for City Council to provide direction. He added that the mid-year budget review will occur on February 25, 2014 and that City Council will have another opportunity to provide direction then. Additionally, there will be multiple budget study sessions and the ideal would be to have as much information as possible prior to development of the budget.

In response to Mayor Pro Tem Powell's inquiry, Finance Director Moe reported that the public may provide comments through emails, the City website and/or social media between now and February 25, 2014.

Mayor Pro Tem Powell commented on documents that were not provided prior to the budget presentation in the past and asked that they be available. Regarding providing better performance and service indicators and metrics as a baseline for comparison, he requested that the information also be provided.

Finance Director Moe reported there is a concerted effort to review those this year and that the public may comment on anything related to the budget throughout the process. Additionally, he addressed property and sales taxes and stated that the City gets 1% of the latter, as per State law.

Councilmember D'Errico expressed appreciation for beginning the process now and commented on the last budget process. He addressed upcoming budget meetings and the process going forward and stressed the need to have an order of the process in order to move towards the goal line.

Interim City Manager Jalili reported that the study sessions listed are an estimate of what may be required to go through the process. The study session will provide opportunities to discuss and provide comments on items that can be reflected in the budget. He agreed with the need to better define the study sessions for City Council.

Councilmember Burton referenced a previous presentation where Finance Director Moe discussed budget development and stated that is the information he is seeking. Additionally, he commented on the Chief's presentation during a budget study session last year and stated he would like to see that also. He addressed the long-term impacts of public employee pensions, asked for a "top-to-bottom" presentation regarding same and stated the importance of discussing what City Council expects from the process.

Discussion followed regarding last year's process.

Mayor Howorth stated that her goal is to discuss the process, to educate the public, determine needs in the community and begin discussing priorities in broad terms. She noted the need to be careful in terms of the long view because of constantly-moving targets. Relative to franchise fees paid by Southern California Edison, Mayor Howorth stated that the City should raise their fee.

City Attorney Barrow stated there is a statutory 2% franchise fee set by the State.

Councilmember Lesser thanked Interim City Manager Jalili and Finance Director Moe

for responding to City Council's request to start the process early. He addressed the prior process in developing the budget and commented positively on the new approach to obtain input prior to its development. He stated that he hoped this session would provide an opportunity for public engagement and that the City will continue to improve the process in the future. He suggested other formats/forums so that members of the public could have more than three (3) minutes to express their interests and concerns and to segregate larger policy issues from specific interests. Additionally, he referenced comments by Mr. O'Connor and stated that he addressed a lot of issues that he would also like to see addressed going forward including performance metrics, capital improvements, economic development, contracted services, identification of profitable programs, downtown infrastructure and pensions. He added that he would love to see Sunday hours for the Library.

Mayor Pro Tem Powell thanked Finance Director Moe for his presentation and City Controller Henry Mitzner for his efforts. He reported that the City has limited funds and must "live within its means" and commented on the interrelationship between the Capital and Operating budgets and on the benefits of considering them simultaneously. He commented on priorities and noted that Public Safety and maintaining the City's infrastructure are among the highest priorities. Additionally, he stated that he would like salaries and pensions addressed including metrics and baselines as well as contract services. He commented on a community survey and stated the importance of having open-ended questions. Mayor Pro Tem Powell reported that all budget-related documents will be on the website but agreed that Finance Director Moe's presentation should be made available on the website as well and commented on the need to consider the City's long-term view in terms of the Capital Improvement Plan and what is anticipated regarding pensions. He agreed with the need for a definition regarding the City's new direction as it will be a driver for the budget as well as Sunday hours for the new Library adding that it will need to be budgeted for.

Councilmember D'Errico stated that budgeting defines the City's priorities, that priorities define the budget and that the budget should closely reflect the City's strategic plan. He added that the budget is a means of building commitment to priorities, whether short-term or long-term, should identify factors vital to the City's success. Defining the kinds of services provided by the City will help in the prioritization process and Councilmember D'Errico referenced an example from the City of Kirkland. He stressed the importance of defining core services.

Councilmember Burton commented on the importance of looking at the long-view in terms of ten (10), twenty (20) and thirty (30) years and what can be done now to be fiscally sound then. He addressed the significance of public pensions, core and discretionary services, a reliable supply of clean water and a visionary City planning to support the City's home-town charm and character. Additionally, he noted the need to identify savings where ever possible and suggested that every presentation provided at study sessions should be about the programs offered by the City. He commented positively on getting the process started early.

Councilmember Lesser commented on better conveying the information to the public and making this more of a public process. He inquired how the City can define its core services in the absence of a strategic plan.

Interim City Manager Jalili stated that the comments provided tonight have been very helpful to staff in terms of proceeding with the budget program. He indicated that the City faces many challenges and that the biggest being the fact that there are no adopted City goals, there is no strategic plan and noted that the budget is nothing but a tool for implementing goals and programs. He stressed the need to make the

process work and commented positively on the comments received. Additionally, going forward, he indicated that once the City has adopted goals and a strategic plan, the process will be much easier.

Councilmember Lesser commented on the need to identify and prioritize needs and stated that it would be helpful to hear from Department Heads in terms of their needs and priorities. He stated he would like to hear how proposed program additions or reductions could be conveyed after the present meeting, as well as conveying the identification of savings.

Mayor Pro Tem Powell commented positively on the person currently leading the Ceramic Studio and on savings resulting from suggestions and employee suggestion boxes.

Interim City Manager Jalili noted that savings are not part of the budget process but that they need to be on-going and involving employees on a regular basis.

Mayor Howorth reported that the School District set up a special e-mail for people to send budget suggestions and stated that may be another way to receive public comment. She agreed that suggestion boxes are a good method to receive ideas and commented on considering the CIP and budget, separately.

Finance Director Moe agreed that considering the CIP and budget, separately, was a good idea.

Mayor Howorth addressed Mr. Osterhout's comments regarding the City getting private partnerships to perform certain tasks she stated that she believes it is a great opportunity and that the City should continue to explore public/private partnerships. She commented on the need to define metrics and performance standards and agreed with Councilmember D'Errico's comments relative to defining the types of services provided by the City and with Councilmember Burton's comments. She commented on the importance of being proactive rather than reactive.

In response to Councilmember Burton's question, Interim City Manager Jalili indicated that City Council articulated goals that staff was unsure as to whether they were discussions or real needs and that receiving public and City Council comments this early in the process has been very helpful.

Councilmember D'Errico commented on challenges related to the lack of a strategic plan and suggested noticing the February 25, 2014 City Council meeting to have a discussion and community input at that level.

Councilmember Lesser indicated he would be receptive to that. He commented on Interim City Manager Jalili's experience in other cities and asked how he would see this process progressing considering that he may not be in the City to see it to its conclusion.

Interim City Manager Jalili stated he has observed City Council proceedings for various years, as he is a resident of the City, that it has had goals and work programs in past years and that the lack of goals and a strategic plan is a recent phenomenon. He added that the City has not had a traditional budgeting process over the years. Going forward, he recommended involving the public as much as possible and providing them with useful information. Regarding the meeting of February 25, 2014, he would like to discuss the issue with Councilmember D'Errico as to how to keep discussions at the policy level. He commended Finance Director Moe on his presentation and noted there is a lot of staff time involved in preparing the documents

and that deadlines must be set and met.

Councilmember Burton commented on an internal timeline and stated that the meeting on February 25, 2014, should remain as this year's mid-year budget review and the CIP but that a meeting should be scheduled after Interim City Manager Jalili meets with the Department Heads relative to next year's budget.

Interim City Manager Jalili clarified that City Council seems to be involved at the program level and Councilmember Burton agreed.

Interim City Manager Jalili stated that staff can provide City Council with an outline of Department presentations and programs ahead of time.

At 9:10 PM the City Council recessed and reconvened at 9:20 PM with all Councilmembers present.

N. ITEMS REMOVED FROM THE CONSENT CALENDAR

Item No. 1 was pulled by Viet Ngo but was addressed at the time of consideration of the Consent Calendar.

4. Street Sweeping Fee Refunds (Finance Director Moe). **14-0048**
DISCUSS AND PROVIDE DIRECTION

Finance Director Bruce Moe provided details of the staff report addressing Background, Relevant Dates, Refund Period, Refund Process, Release Requirement, Fiscal Impacts and Recommended Actions.

In response to Mayor Pro Tem Powell's inquiry regarding maximum exposure under different scenarios, Finance Director Moe reported that going back to Bighorn, the maximum exposure would be \$2.2 million and going back to inception, the maximum exposure would be \$3.3 million. He added that 30% of the accounts have already made claims.

Councilmember Lesser stated that all of the fees collected were applied to street-sweeping to the streets and the Strand and asked how other cities are paying for street-sweeping.

Finance Director Moe reported that some cities do not charge and pay for street-sweeping out of the General Funds and that more recently, many cities have included their costs in refuse collection charges. Additionally, other cities have gone out to a Proposition 218 vote to justify their street-sweeping fees.

Councilmember Lesser commented on a liability release and reported that some of the complaints he has received involve the steps required in getting the refund. He asked whether the City could consider simplifying the liability release process.

City Attorney Barrow explained that initially, staff had prepared a form in which people wanting to receive refunds would waive all claims adding that people would sign the liability release before knowing how much money they would receive. He stated that would be clearly unenforceable but that there are ways to streamline the process and that a simpler release could be developed.

Councilmember Lesser commented on the possibility of residents applying the refund to their bill or receiving the refund in cash.

City Attorney Barrow affirmed that could be a possibility.

Councilmember Lesser asked how most cities have addressed similar situations.

Interim City Manager Jalili reported that in most cases, cities stopped charging the fees or would charge to a different fund. He added that no cities have been found that have actually provided refunds and that the City of Manhattan Beach would be pioneering in this area.

Councilmember Burton commented on his experience when Proposition 13 was passed and asked the City Attorney to address the consequences when Proposition 218 was passed.

City Attorney Barrow presented a brief background of the issues including Proposition 62. Regarding the possibility of the City collecting on Proposition 218, City Attorney Barrow stated that it has to be attributed to debris coming directly from properties.

Councilmember Burton referenced Proposition 218 and commented on different statutes of limitations for different issues. City Attorney Barrow stated that there is no statute of limitation on point and that there was no statute of limitations provided relative to Proposition 218. It was noted that cities can waive statutes of limitations

and have done so relative to affirmative defense.

Councilmember Burton commented on instances where the State has improperly held funds as well as the County and City Attorney Barrow briefly expanded on the latter. Additionally, Councilmember Burton stated that one of the risks of litigation relative to this matter is a class-action suit and noted that they cost money.

In response to Mayor Pro Tem Powell's inquiry regarding a past case where the County improperly withheld funds, City Attorney Barrow affirmed that the City was limited by the statute of limitations and that originally, the County was going to pay only one year, based on the county's claim statute. The City sued the County and the County is in the process of paying for three years based on the three year statute of limitations.

Councilmember Lesser commented on whom staff relied regarding this fee and stated that there may have been an oversight relative to the impact of the Bighorn decision.

Finance Director Moe noted that the consultant addressed street-sweeping on the 2010 study.

Councilmember Lesser stated that in 2010, there was reaffirmation of the validity of the fee by the outside consultant.

In reply to Mayor Howorth's inquiry, Interim City Manager Jalili stated that no refunds were made by other cities. He added that the analogy with respect to the County was that those funds would be paid to another jurisdiction and that the funds used in the City were used locally for residents.

In response to Councilmember Burton's question regarding the policies relative to the statute of limitations, City Attorney Barrow reported that in general, it is supposed to prevent stale claims and that with respect to the City, the claims statute has a one year statute of limitations.

Mayor Pro Tem Powell commented on another purpose of the statute of limitations involving possible changes in situations.

The Mayor opened the floor for public comment.

Robert Bush commented on the City's budget surplus and stated that residents want the refund of nine years of illegal street-sweeping fees, now. He suggested providing claim forms in resident water bills, encouraged expediting the process and recommended that the Water Department should credit customer accounts in the amount of the illegal fees.

Bill Victor commented on his previous comments to City Council regarding the matter and stated that a specific City Council video where the matter was discussed is missing. He referenced the minutes from that meeting noting that he stated that the fee was a tax and reported speaking to one of the drafters of Proposition 218 who affirmed that it was a tax. He encouraged City Council to do the right thing and reimburse residents for nine years of street-sweeping fees.

Viet Ngo alleged on-going corruption in that the City has taken the people's money for personal use and stated this is a good case for a class-action suit against the City. He accused City Council of turning the City into a racketeering enterprise and extortion. He urged City Council to refund nine years of fees plus interest otherwise it

will face class-action litigation.

Gerry O'Connor referenced an email he sent to Council Members and commented on the lack of information presented regarding this matter. He reported that he had approached the previous City Manager but that he was stonewalled. He stated that the press release indicated that the law had changed but that it was a misrepresentation and that the statute of limitations should have been explained. He questioned the four year statute of limitations and stated that he would like to clearly understand the matter adding that he will not sign a release. He believed that people will not fill out a form for \$100 and that most don't understand that it is available to them. He stated that the process has been "bungled" and that the matter should have gone before City Council before a decision was even made. He requested that City Council refund fees from the entire nine years. He noted that the contract was changed but that Athens drives by at twice the speed and does half the job. He suggested that the City go back to Clean Sweep and cut the frequency in half but stressed that the fees should all be refunded.

Patrick McBride stated that his street is not cleaned and that no one cleans their street anymore because the City is supposed to take care of the task. He commented on marked and unmarked streets and encouraged City Council to refund the entire nine years of street-sweeping fees.

Mayor Howorth closed public comments.

Councilmember Burton commented on changes in the law relative to the Bighorn decision. He stated that people have lost faith in their government organizations and their elected officials. He reported that one way to re-establish trust and credibility in this instance is to refund the entire fee and voiced his support for doing so and for the City being leaders. He noted that the statute of limitations can be waived and that this would be an important policy decision. Additionally, he stated that not doing so would place the City in a risk for a class-action lawsuit which is expensive.

Councilmember Lesser expressed appreciation for the public discussion at this time and listed challenges related to this matter. He acknowledged that the issue should have been presented to City Council at the time of the decision and addressed practices by other cities. He reported that the fees collected were applied to street-sweeping and that residents did get something for what they paid. He added that to the extent that the City wants its streets swept, the task must be paid for. He asked regarding the funding source of the refunds, commented on fiscal impacts to the City and on whether four years is a reasonable period.

Councilmember D'Errico believed this issue is about an error made by the City, albeit unintentionally. He commented on the Bighorn decision and on the beginning of the error and stated that whatever decision is made will have an economic impact. Additionally, he stated this is not an economic decision or one that should be based on the process adding that smart people will figure out how to implement whatever decision City Council makes. Councilmember D'Errico stated that this is about what is right, about whose money it is and an issue about trust and ethics. He voiced his support for refunding the fees for the entire nine years.

Mayor Pro Tem Powell addressed comments made regarding a prior City Council and reported that Proposition 218 was based on property-based fees and that all legal experts at the time claimed it was a consumption-based fee which are exempt from Proposition 218. He commented on the Bighorn case and reported that some cities are not refunding the money until there is a definitive case that adjudicates street-sweeping. He added that it was determined under the Bighorn case that it was

a property-based fee. He stated there was nothing anybody did that was fraudulent, erroneous or incorrect and noted that the fees actually went towards street-sweeping, which what was intended. He noted that it was later determined to be an error and commented on City Council actions and available options.

Mayor Pro Tem Powell noted the challenges involved including changes in ownership or situations. He believed that if it can be clearly established that a resident paid the money then it should be refunded. He commented on the release form and felt it should be in plain and simple English and not in "legalese" but that it is essential in establishing ownership and the length of time of same.

A motion was made by Councilmember D'Errico, seconded by Councilmember Burton, to refund street-sweeping fees for the entire nine years and direct staff to provide a process that mitigates necessary issues and direct the City Attorney to make the release form simple.

Councilmember Lesser followed up on Councilmember Burton's comment that this would help to support a Proposition 218 vote and noted the balance in the Refuse Fund.

Mayor Howorth noted that nothing was done illegally and that no money went into City Council pockets and stated that laws are made in the courtroom and that the City is always under threat of laws changing. She added that residents got something from those fees. She commented on the majority needed to pass Proposition 218 and that anti-tax groups will use this against the City declaring that it cannot manage what it has. She disagreed with previous comments that action on this matter will be good for City Council, politically but agreed that it should be done because it is the right thing to do. She believed that City Council and the City could have handled this matter better and easier but whatever is decided will be challenging. She expressed concerns that the City won't be able to pass Proposition 218 after refunding the money.

Councilmember D'Errico commented on the statement that residents got something for the money they paid noting that it does not change the fact that the money was taken in error. He added that the City previously acted, based on good advice, but that it has since been overturned and commented on the importance of establishing trust.

Councilmember Burton reported this has nothing to do with the decisions of prior City Council but that it is about doing the right thing and expressed support for the motion.

Mayor Pro Tem Powell commented on how far back in time for which the refund should be made. He commented on changes in the interpretation of the law and suggested that the refund should go back to 2006.

Mayor Howorth clarified the motion as stated previously.

Councilmember Burton commented on actions by various cities.

A motion was made by Councilmember D'Errico, seconded by Councilmember Burton, to refund street-sweeping fees for the entire nine years and direct staff to provide a process that mitigates necessary issues and direct the City Attorney to make the release form simple. The motion carried by the following vote:

Aye: 4 - Powell, Burton, D'Errico and Lesser

Nay: 1 - Howorth

City Attorney Barrow clarified that the motion includes having staff identify a process and return to City Council with same.

Mayor Pro Tem Powell inquired regarding someone who has already signed a release and obtained a refund being bound by the release.

City Attorney Barrow affirmed that they would not be bound by that release, according to City Council direction.

O. OPTIONAL ADDITIONAL PUBLIC COMMENTS ON NON-AGENDA ITEMS

None.

P. OTHER COUNCIL BUSINESS, COMMITTEE AND TRAVEL REPORTS, FUTURE DISCUSSION ITEMS

Councilmember Burton referenced a request from Surfrider Foundation to repeal Ordinance No. 2150 (Restaurant Bag Ban Exemption) and requested that the matter be placed on a future agenda in February or March.

A question was raised regarding the number of votes needed to place a matter on an agenda and City Attorney Barrow stated that the City's practice is you need two Councilmembers to place an item on a future agenda.

Mayor Howorth suggested that it would behoove having a City Council Sub-Committee to work on the smoking ordinance with staff. She volunteered to be in the Sub-Committee and appointed Councilmember Burton to same.

Councilmember Burton agreed.

Additionally, Councilmember Burton commented on special permits for serving alcohol in public places and suggested that City Council needs to consider a policy in this regard.

Interim City Manager Jalili stated that the general policy that needs to be considered is serving alcohol on public property and then special events. He added that staff intends to work on the matter but based on the budget and dates, he is uncertain as to when the item can be presented to City Council.

Councilmember Burton commented on the previous meeting regarding the Manhattan Village Mall and expressed concerns that process-wise, he is not sure as to its status. He apologized for making the motion when he did and stated that there should have been a period of time to review the record. He had expected that City Council would have an opportunity to discuss what was in the record in order to make a better decision. He suggested scheduling an all-day meeting regarding the matter to review the record and discuss the matter completely, between now and April, so that City Council can make a good decision.

At Councilmember Lesser's request regarding the status of the Manhattan Village Shopping Center project, City Attorney Barrow stated that City Council gave direction to staff to return with a resolution in April. He noted the matter is not on the agenda tonight, so there can be no discussion about this concept. If City Council wants to place it on a future agenda for discussion, it may do so.

A motion was made by Councilmember Burton to direct staff to place on an upcoming agenda consideration of scheduling a meeting for City Council to review and discuss the records related to the Manhattan Village Shopping Center project.

After further comments Councilmember Burton withdrew the motion and commented on the motion at the last meeting regarding directing staff to return with a resolution. He stated that there are still unanswered questions and that City Council did not get a chance to deliberate.

Councilmember Burton indicated that direction is unnecessary and that he will meet with the City Attorney to discuss the matter.

Q. RECEIVE AND FILE ITEMS

The Mayor opened the floor for public comment.

Viet Ngo commented on a check issued to David Carmany for \$16,240.29 and alleged violation of the Brown Act related to a prior Closed Session. He alleged misappropriation of public funds and that the Interim City Manager is not using his real name.

Mayor Howorth closed public comments.

Mayor Howorth ordered the aforementioned items as being received and filed, without objection.

Councilmember Lesser objected to the misrepresentation of the Interim City Manager's name noting that it is John Jalili.

5. Financial Reports: **14-0041**
Schedule of Demands: January 2, 2014
(Finance Director Moe).

RECEIVE AND FILE

6. Commission Minutes: **14-0054**
This item contains minutes of City Council subcommittees and from other City commissions and committees which are presented to be received and filed by the City Council. Staff recommends that the City Council, by motion, take action to receive and file the minutes of the:
a) Planning Commission Meeting of January 8, 2014
(Community Development Director Thompson).

RECEIVE AND FILE

R. ADJOURNMENT

At 11:08 PM, January 21, 2014, the Regular City Council Meeting was adjourned to the 4:30 PM, Adjourned Regular City Council Closed Session meeting of February 4, 2014, to be followed by the 6:00 PM Regular City Council meeting in the City Council Chambers.