

SPECIAL CITY COUNCIL MEETING

Monday, August 6, 2012

NOTICE IS HEREBY GIVEN that a Special Meeting of the City Council is hereby called and will be held on Monday, August 6, 2012, at 6:00 p.m. in the City Council Chambers, 3191 Katella Avenue, Los Alamitos. The agenda is as follows:

AGENDA

NOTICE TO THE PUBLIC

This Agenda contains a brief general description of each item to be considered. Except as provided by law, action or discussion shall not be taken on any item not appearing on the agenda. Supporting documents, including staff reports, are available for review at City Hall in the City Clerk's Office or on the City's website at www.ci.los-alamitos.ca.us once the agenda has been publicly posted.

Any written materials relating to an item on this agenda submitted to the City Council after distribution of the agenda packet are available for public inspection in the City Clerk's Office, 3191 Katella Ave., Los Alamitos CA 90720, during normal business hours. In addition, such writings or documents will be made available for public review at the respective public meeting.

It is the intention of the City of Los Alamitos to comply with the Americans with Disabilities Act (ADA) in all respects. If, as an attendee, or a participant at this meeting, you will need special assistance beyond what is normally provided, please contact the City Clerk's Office at (562) 431-3538, extension 220, 48 hours prior to the meeting so that reasonable arrangements may be made. Assisted listening devices may be obtained from the City Clerk at the meeting for individuals with hearing impairments.

Persons wishing to address the City Council on any item on the City Council Agenda will be called upon at the time the agenda item is called or during the City Council's consideration of the item and may address the City Council for up to three minutes.

1. CALL TO ORDER

2. ROLL CALL

Council Member Graham-Mejia
Council Member Kusumoto
Council Member Stephens
Mayor Pro Tem Poe
Mayor Edgar

3. ORAL COMMUNICATIONS

At this time any individual in the audience may come forward to speak on any item on the agenda. Remarks are to be limited to not more than five minutes.



Mayor:
Troy D. Edgar

Mayor Pro Tem:
Marilynn M. Poe

Council Members:
Gerril L. Graham-Mejia
Warren Kusumoto
Ken Stephens

City Manager:
Angie Avery

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4. SPECIAL ORDERS OF THE DAY

A. Council Member Request Regarding Prosecution of Alleged Municipal Code Violation Relating to Waste Franchise Award

Council Member Kusumoto has requested that the City Council take steps to determine whether prosecution is warranted for alleged violations of the Municipal Code in connection with the award of the City's waste franchise.

Recommendation: City Council take no action.

5. ADJOURNMENT

The next meeting of the City Council is scheduled for **Monday, August 20, 2012, at 6:00 p.m.**, in the City Council Chambers.

I hereby certify under penalty of perjury under the laws of the State of California, that the foregoing Agenda was posted at the following locations: Los Alamitos City Hall, 3191 Katella Ave.; Los Alamitos Community Center, 10911 Oak Street; and, Los Alamitos Museum, 11062 Los Alamitos Blvd.; not less than 24 hours prior to the meeting.



Windmera Quintanar
Department Secretary

8/2/12
Date

City of Los Alamitos

Agenda Report

August 6, 2012

Special Orders of the Day

Item No: 4A

To: Mayor Troy D. Edgar & Members of the City Council

Via: Angie Avery, City Manager

From: Sandra J. Levin, City Attorney

Subject: Council Member Request Regarding Prosecution of Alleged Municipal Code Violation Relating to Waste Franchise Award

Summary: Council Member Kusumoto has requested that the City Council take steps to determine whether prosecution is warranted for alleged violations of the Municipal Code in connection with the award of the City's waste franchise.

Recommendation: City Council take no action.

Discussion

Los Alamitos Municipal Code Section 2.20.020(B) gives the City Attorney the authority and duty to prosecute municipal code violations. This role of the City Attorney is fundamentally different from the role as advocate for the City in that the City Prosecutor does not report to the City Council for direction or supervision. Council Members do not have the authority to direct or reverse decisions made by the City Attorney acting as City Prosecutor. Although Council Members may set general enforcement policies (e.g., determining the appropriate allocation of City resources), they are not allowed to direct or provide input on a criminal prosecutor's decision to prosecute or not prosecute a specific case.

In this case, when the suggestion was made by a member of the public in late 2011, the City Attorney evaluated the application of Los Alamitos Municipal Code, Section 1.20.010 (Criminal Penalties for Violations of the Municipal Code) to actions taken by the Council in its legislative capacity and concluded that prosecution was neither warranted nor permissible. Given the recent request for additional input, however, the City Attorney consulted the City's contract code enforcement counsel as well. Outside counsel concurred that the act of voting on the waste franchise award was not a criminal violation of the Municipal Code and is not subject to criminal prosecution under the Municipal Code. This would be true regardless of whether the initial award of the waste franchise complied with City purchasing procedures or not. It is a matter of constitutional law, legislative immunity, and separation of powers.

Also, Council Member Kusumoto's request states that it is based upon the finding of the trial court regarding compliance with Municipal Code procedures. For clarification, that finding is legally of no effect because it was appealed and the case was dismissed pursuant to a settlement prior to any final determination.

Conflicts of Interest and Lack of Quorum

Three members of the Council voted in favor of the waste franchise award. Each of the three members would be a potential subject of the proposed prosecution and therefore has a conflict of interest in this matter. The remaining two members would not constitute a quorum and could not act.

Conclusion

For the reasons discussed above, it is recommended that the City Council take no action.

Approved By:



Angie Avery
City Manager

Attachment: 1. Request from Council Member Kusumoto

Date: July 16, 2012

To: Angie Avery, City Manager

cc: Sandra Levin, City Attorney

Subject: Request for a Special Council Meeting for August 6, 2012.

References:

- (a) OC Superior Court Case Number 30-2010-00420414 - CITIZENS FOR A FAIR TRASH CONTRACT, Petitioner, vs. CITY OF LOS ALAMITOS
- (b) Los Alamitos Municipal Code (LAMC) 1.20.010 Violation - Penalty

Dear City Manager;

I am formally requesting that this item is included in the Special Council Meeting Agenda for a CLOSED SESSION for August 6, 2012 for discussion and a possible action by the Council:

1. Based on the ruling by Judge Andrew Banks on and the granting of the Writ of Mandate in favor of the Petitioner, questions have been raised regarding alleged violations of the Los Alamitos Municipal Code relative to the awarding of the original trash contract in June 2010. The City dropped our appeal, and in doing so, we have essentially accepted the Writ.
2. I am requesting that the Council consider this matter in closed session to determine one or more of the following actions, or no action if there is no merit in this proposed agenda item.
 - a. Hire a lawyer and/or law firm to examine the facts and evidence and the Los Alamitos Municipal Code and prepare and submit a report to the Council that either recommends prosecution or a finding that the LAMC was not violated.
 - b. Determine if the City should seek reimbursement from the City's consultant SloanVasquez for their failure to understand the LAMC and provide competent service and guidance with crafting the City's Request for Quote and subsequent evaluation and selection of the franchisee.

To be very clear: a decision of "no action" should be determined by the Council in closed session, with expert guidance from the City Attorney and should not be determined by the City Attorney without discussion by the Council.

Please let me know if you have any question on this matter.

Warren Kusumoto