

**CITY OF MANHATTAN BEACH
MINUTES OF THE CITY COUNCIL
REGULAR MEETING
JULY 1, 2008**

The Regular Meeting of the City Council of the City of Manhattan Beach, California, was held on the 1st day of July, 2008, at the hour of 6:31 p.m., in the City Council Chambers of City Hall, at 1400 Highland Avenue, in said City.

PLEDGE TO FLAG

Public Works Director Jim Arndt led the Pledge of Allegiance.

ROLL CALL

Present: Cohen, Ward, Tell, Montgomery and Mayor Aldinger.
Absent: None.
Clerk: Tamura.

CEREMONIAL CALENDAR

07/01/08-1. Presentation of a "Baby Passport" to Gregory and Pearl Bonanni

The Council presented a "Baby Passport" to Gregory and Pearl Bonanni in acknowledgment of the birth of their son, Marcus.

07/01/08-2. Presentation of a Proclamation Declaring the Month of July as Parks and Recreation Month

The Council presented a proclamation to Parks and Recreation Director Richard Gill declaring the month of July as Parks and Recreation Month.

07/01/08-3. Presentation of the 2008 Manhattan Beach Recreation and Youth Services Award to Tammy Choy and Johnnie Morgan

The Council presented the 2008 Manhattan Beach Recreation and Youth Services Award to Tammy Choy and Johnnie Morgan.

CONSENT CALENDAR

At the request of Mayor Montgomery, Public Works Director Jim Arndt shared information regarding the anticipated timelines for Consent Calendar Item Nos. 9 (*Award a Contract (\$306,440) for the 2008 Slurry Seal Project to American Asphalt South, Inc. and Approve a Supplemental Appropriation of \$81,500 From Gas Tax Reserves*) and 10 (*Disbursement of Final Payment in the Net Amount of \$145,722.44 to Sully-Miller Contracting Co.; Formally Accept the Section 3 and 4 Concrete Repair Project as Complete; and Authorize Filing of the Appropriate Notice of Completion*).

The Consent Calendar (Item Nos. 4 through 11), consisting of items under *General Consent* and *Boards and Commissions*, was approved by motion of Councilmember Aldinger, seconded by Councilmember Ward and passed by unanimous roll call vote.

Ayes: Ward, Tell, Aldinger, Cohen and Mayor Montgomery.
Noes: None.
Absent: None.
Abstain: None.

GENERAL CONSENT

07/01/08-4. Approve Minutes of the City Council Regular Meeting of June 17, 2008

The Council approved the subject minutes.

07/01/08-5. This Space Intentionally Left Blank

07/01/08-6. Approve Highland Avenue Improvement Project Funding Agreement with LA County for Total Project Costs (\$1,072,000)

The Council approved authorizing the Mayor to execute the project funding agreement with Los Angeles County to obligate \$553,236 of Federal Surface Transportation funds.

07/01/08-7. Consideration of Financial Reports:

a) Ratification of Demands: June 26, 2008

b) Investment Portfolio for the Month Ending May 31, 2008

c) Financial Reports for the Month Ending May 31, 2008

The Council approved with no exception Warrant Register No. 27B in the amount of \$2,108,281.53 in payment of ratification of demands and claims as prepared by the Director of Finance, together with the original demands and claims as prepared by said Warrant Register; received and filed the Investment Portfolio for the month ending May 31, 2008; and received and filed the Financial Reports for the month ending May 31, 2008.

07/01/08-8. Award Professional Services Contract to Kathleen McGowan for NPDES Permit and TMDL Consulting

The Council approved an award of contract to Kathleen McGowan in the amount of \$58,322 for assisting the City in meeting the requirements of the NPDES Permit for Municipal Storm Water and Urban Runoff Discharges (MS4 Permit) and undertaking implementation activities to comply with the Santa Monica Beaches Bacteria Wet Weather and Dry Weather TMDLs.

07/01/08-9. Award a Contract (\$306,440) for the 2008 Slurry Seal Project to American Asphalt South, Inc. and Approve a Supplemental Appropriation of \$81,500 from Gas Tax Reserves

The Council approved an award of contract for the 2008 Slurry Seal Project to American Asphalt South, Inc. in the net amount of \$306,440 and approved a supplemental appropriation of \$81,500 from Gas Tax Reserves.

07/01/08-10. Disbursement of Final Payment in the Net Amount of \$145,722.44 to Sully-Miller Contracting Co.; Formally Accept the Section 3 and 4 Concrete Repair Project as Complete; and Authorize Filing of the Appropriate Notice of Completion

The Council approved the issuance of the subject final payment; formally accepted the Section 3 and 4 Concrete Repair Project as Complete; and authorized the filing of the appropriate Notice of Completion.

BOARDS AND COMMISSIONS

Planning Commission

07/01/08-11. Consideration of Action Minutes, Planning Commission Meeting of June 25, 2008

The Council received and filed the subject action minutes.

COMMUNITY ANNOUNCEMENTS

07/01/08-16. Pat Baraz Re Reading Education Assistance Dogs (READ)

Pat Baraz, No Address Provided, presented information about the Reading Education Assistance Dogs (READ) Program at the Manhattan Beach Library. She encouraged those interested in the Program to contact the Library.

07/01/08-17. Los Angeles County Librarian Don Gould Re Upcoming Library Programs

Los Angeles County Librarian Don Gould noted that participants of the READ Program must sign a waiver and announced the following upcoming events at the Manhattan Beach Library: Coffee and Classics on July 3, 2008; READ to the Dogs Story Time beginning July 12, 2008 and Story Time beginning on Tuesday, July 15, 2008.

07/01/08-18. Councilmember Aldinger Re Anniversary

Councilmember Aldinger congratulated his parents on their 50th Wedding Anniversary.

The following agenda item was taken out of order:

AUDIENCE PARTICIPATION

Mayor Montgomery inquired if anyone in the audience would like to speak on any matter of business not on the agenda. He explained that he is considering this item out of order because the number of items on tonight's agenda.

Council resumed to the regular agenda order.

PUBLIC HEARINGS

07/01/08-12. Consideration of an Ordinance to Prohibit the Use of Plastic Carry-Out Bags in Manhattan Beach

City Manager Geoff Dolan introduced this item, noting that this is a continued Public Hearing.

Assistant to the City Manager Lindy Coe-Juell gave a brief presentation on the proposed ordinance which would prohibit the use of plastic carry-out bags in Manhattan Beach. She explained that the primary concern is that plastic bags are not biodegradable, become litter and make up a significant amount of debris in storm drains and the ocean. She shared information about the following: the various requirements pertaining to the use of plastic bags in California, Los Angeles County, and other cities, including Assembly Bill 2449 which prohibits a government agency from imposing a fee on plastic bags. She also spoke of why the Cities of San Francisco and Malibu were not sued by the plastic bag lobbyists over their bans against plastic bags; and the use of plastic bags versus paper and reusable bags.

Council discussion prior to the Public Hearing included the following: the idea of placing a “catch” at the end of storm drains in Manhattan Beach to prevent plastic bags from entering the ocean; implementing a fee on paper bags rather than adopting the proposed ordinance; how a ban on plastic bags would affect small businesses in Manhattan Beach; the Manhattan Beach Chamber of Commerce’s general support of the proposed ban on plastic bags; the recycling of paper versus plastic bags; and the large number of consumers in Manhattan Beach already using reusable bags.

Mayor Montgomery opened the Public Hearing at 7:16 p.m.

Steven Joseph, Counsel for Save the Plastic Bag Coalition, presented supplemental information to the Coalition’s previously expressed opposition to the proposed ban on plastic bags. He voiced his understanding that a Swedish report favoring paper bags over plastic was prepared by the paper industry and he questioned why this information was excluded from the staff report. He stated the Coalition’s intent to litigate and suggested that the Council’s decision be delayed to see what happens at the State level; clarified the Coalition’s position that plastic bags should be made available and the use of reusable bags encouraged. **Mr. Joseph** extensively discussed the negative aspects of paper bags and shared information about the composition of the Coalition.

Craig Cadwallader, Resident and Chairperson of the South Bay Surfrider Foundation, encouraged adoption of the proposed ordinance.

Walter (Last Name Inaudible), Subway Sandwich Owner, related Subway’s plans to use paper instead of plastic bags; however, voiced his concern that the bulkiness of paper bags will make them difficult to store.

Dr. Marc Gold, President of Heal the Bay, stated the organization’s strong agreement with the proposed ordinance. He commended the staff report; disputed information provided by **Mr. Joseph**; voiced his understanding that the ban on plastic bags in some other cities did not include bio-plastics, which do biodegrade in a compost pile, but not in the ocean; presented input regarding Los Angeles County’s efforts to ban plastic bags; and contended that the use of reusable bags should be the ultimate goal.

Jose Bacallao, No Address Provided, favored the proposed ban on plastic bags.

Heather George, 400 Block of 10th Street, expressed her understanding that a great majority of residents support the proposed ban on plastic bags.

Alan Walti, Surfrider Foundation, agreed with the proposed ban on plastic bags.

Jennifer Forkish, on behalf of the **Progressive Bag Affiliates of the American Chemistry Council**, stated her belief that the use of paper bags would increase if plastic bags are banned and suggested that the negative consequences of paper bags be examined prior to banning plastic bags.

Megan Wright and Emily Vaughn, (No Address Provided), offered information about their previous efforts to ban the sale of plastic water bottles at City events. They supported the proposed ban on plastic bags and the promotion of reusable bags.

Pleia Hall, (No address Provided), spoke against plastic bags. She suggested that stores could ask basket makers to make baskets or people could use their hands in place of plastic bags.

Rachel Dorfman, Surfrider Foundation, agreed with the proposed ban on plastic bags.

Patrick Haddix, 1800 Block of Pine Avenue, felt that the use of reusable bags would be best, but bio bags could be used as a temporary option.

Stephanie Bargler, Earth Resource Foundation, discussed the Foundation's efforts to work with cities to achieve zero waste and reduce dependence on non-renewable resources.

Mayor Montgomery closed the Public Hearing at 8:11 p.m.

Councilmember Aldinger related his concern that the California Environmental Quality Act (CEQA) is being used against environmental issues. He felt that this is a marine environmental issue and stated his hope that a ban on plastic bags will be the first step in banning environmental hazards in Manhattan Beach. Councilmember Aldinger indicated that, while he could support charging a \$.25 fee for plastic and paper bags, banning them is the right thing to do.

Councilmember Tell pointed out that Manhattan Beach is a beach community with a litter problem, especially with plastic bags in the streets and the ocean, and that a great number of consumers in Manhattan Beach already use reusable bags. He highlighted the importance of recycling, changing behavior and encouraging residents to make the right choice, which is using reusable bags and banning plastic bags. He recommended that the next step be imposing fees on paper bags to further increase the use of reusable bags.

Stating his enthusiastic support of the proposed ordinance, Councilmember Ward said that Manhattan Beach must do all it can to keep the ocean free of contaminants such as plastic and suggested that the City do as much as possible to encourage the use of reusable bags.

Mayor Pro Tem Cohen recommended that local businesses be encouraged to make reusable bags available. She said that this issue is about protecting the Santa Monica Bay and decreasing litter and that there should be an aggressive campaign along these lines. She stated that the proposed ordinance is not about transitioning from plastic to paper, but transitioning away from both plastic and paper to reusable bags; that banning plastic bags could result in a temporary increase in the use of paper bags; that the community appears to generally support a ban on plastic bags; that she could support implementing a fee on paper bags; and that, as in San Francisco, "Reuse and Recycle" should be placed on paper bags.

Expressing his concern over the detrimental effects of plastic bags, it was Mayor Montgomery's opinion that the proposed ordinance should be adopted as a first step in addressing environmental issues. He explained that the ultimate goal is reusable bags; that consideration should be given to imposing a fee on paper bags; and that protecting the beach and the environment should be of paramount concern.

City Attorney Wadden read aloud the title of Ordinance No. 2115.

MOTION: Councilmember Aldinger moved to waive further reading and introduce Ordinance No. 2115. The motion was seconded by Councilmember Ward and passed by the following unanimous roll call vote:

Ayes: Ward, Tell, Aldinger, Cohen and Mayor Montgomery.
Noes: None.
Abstain: None.
Absent: None.

ORDINANCE NO. 2115

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, ADDING A NEW SECTION 5.88.010 TO A NEW "ENVIRONMENTAL REGULATIONS" CHAPTER 5.88 TO TITLE 5 OF THE MANHATTAN BEACH MUNICIPAL CODE PROHIBITING THE USE OF PLASTIC CARRY OUT BAGS

The Council commended the efforts of Assistant to the City Manager Coe-Juell in compiling the staff report.

RECESS AND RECONVENE

At 8:29 p.m. the Council recessed and reconvened at 8:48 p.m. with all Councilmembers present.

07/01/08-13. Consideration of Planning Commission Approval of a Use Permit for a Retail Drug Store, Walgreens, With a Drive-Thru Pharmacy at 2400 Sepulveda Boulevard

Associate Planner Dan Moreno presented the staff report on a Use Permit request for a 14,820 square foot retail pharmacy that would have a drive-through window open 24 hours per day and would not sell alcohol. With the aid of a PowerPoint presentation, he provided input on the requirements for the Public Hearing; noted the applicant's substantial efforts to address the Sepulveda Boulevard Guidelines; and reviewed site photos and surrounding uses.

The Council discussed the topography of this site and the proposed location of the building compared to that of a Rite Aid Pharmacy on Sepulveda Boulevard.

City Manager Geoff Dolan explained that the subject location is much bigger than the Rite Aid site, therefore, there were many more options for the location of the building; that a Variance would not be required; that the project meets the City's height requirements; and that the retaining wall on Site Plan 3 would be much lower than the one on Site Plan 1.

Associate Planner Moreno explained why Site Plan No. 3 is recommended by the Planning Commission and staff. He offered input on the articulation and height of the building, materials to be used, parking, ingress/egress, the location of trash facilities, the loading area, pedestrian access from Sepulveda Boulevard and 22nd Street and landscaping, including that it would be used to soften the appearance of the retaining wall on 22nd Street and could be added to soften the impact of the project from Sepulveda Boulevard. He verified that the project does not include an employee outdoor eating area; that it is Walgreen's policy not to sell alcohol; that it is in conformance with the Zoning Code and General Plan; that it meets most of the Sepulveda Corridor Guidelines and complies with the Findings for the Use Permit; and that staff recommends that the Planning Commission's approval be upheld.

Councilmember Aldinger discussed pedestrian safety and questioned if Site Plan No. 1 would be safer than Site Plan No. 3, which would have parking in the front. He compared this plan to the Rite Aid on Sepulveda Boulevard and questioned why the proposed building would not be closer to Sepulveda Boulevard.

Councilmember Tell recalled that, since Rite Aid was at an entrance to the City, it was desirable to put the building closer to the street to match others in the area.

Community Development Director Richard Thompson addressed the topographical differences between the subject site and the Rite Aid property and explained why Site Plan No. 3 is the most appropriate for the site. He also reviewed other developments along Sepulveda Boulevard and their proximities to the street.

City Manager Dolan advised that Site Plan No. 3 would result in a better project without a ten foot retaining wall, which would be required if the building was closer to the street.

Councilmember Ward voiced his desire for additional considerations on the 22nd Street side of the building to make it look more like a business, as well as landscaping to mask cars at the drive-through window.

John Peruzzi, Project Architect, discussed the Sepulveda Corridor Guidelines as they relate to this project, the difficult topography of this site and Walgreen's efforts to make the proposed design different than other Walgreen's with more articulation. He reviewed Site Plan No. 2 and related Walgreen's preference for Site Plan No. 3. He explained that the building would be less pedestrian friendly if it was pushed closer toward Sepulveda Boulevard; that, contrary to the information in the staff report, the average use of Walgreen's drive-through windows is approximately seven to nine cars per hour; and that the building was designed to soften impact and be sensitive to existing businesses.

Tre Liu, Walgreen's District Manager for the Los Angeles Area, shared information about Walgreen's studies on the viability of a 24-hour pharmacy at this location. It was his opinion that the number of drive-through customers cited in the staff report appears to be extremely high and that softening the appearance of the building from 22nd Street should not be a problem, but he must confirm with Walgreen's.

In response to a question from Councilmember Ward, **Mr. Liu** stated his lack of awareness pertaining to pill swapping allegations against Walgreen's in another state and related his understanding that this is not the case in California. He further indicated his intent to provide additional information on this matter to the City Council.

Community Development Director Thompson affirmed that landscaping could be added to both the front and the 22nd Street side of the building to lessen impact.

Mayor Montgomery opened the Public Hearing at 9:50 p.m.

Hearing no requests to speak, Mayor Montgomery closed the Public Hearing at 9:51 p.m.

Councilmember Ward stated that, overall, this project would be good. He explained that, while he is not generally a big fan of pharmaceuticals opening in Manhattan Beach, he appreciates Walgreen's efforts to address the issues; that articulation on the 22nd Street side of the building to help mask the drive-through window was incorporated into the design; and that he would be very happy to hear back from Walgreen's about the pill swapping allegations against a Walgreen's in another state.

Councilmember Tell spoke of the differences between this project and the Rite Aid on Sepulveda Boulevard; cited that he is comfortable with Site Plan No. 3; and that he would object to the retaining wall that would be required with Site Plan No. 2. As far as parking on Sepulveda Boulevard is concerned, he commented that this project would be consistent with existing establishments, but he would prefer that the drive-through window be away from Sepulveda Boulevard and nearby residences and the landscaping be taller to help mask the parking.

Mayor Montgomery stated his support for new businesses moving into Manhattan Beach and noted that this project would replace an existing “eyesore” and generate additional sales taxes. However, Mayor Montgomery questioned the need for a 24-hour drive-through window, in that he has not received any input from residents about problems obtaining pharmaceuticals at night and because there is a Walgreen’s with a 24-hour drive-through window in a nearby city.

Mayor Pro Tem Cohen welcomed Walgreen’s efforts to keep Sepulveda Boulevard viable and successful. She commented that the viability of another pharmacy in Manhattan Beach should be left up to Walgreen’s; that a sense of security for residents is provided with a 24-hour drive through pharmacy; that this project meets the Zoning Code, the General Plan and the Sepulveda Boulevard Corridor Guidelines; that the City’s Traffic Engineer has approved the design; and that landscaping could be required to lessen potential impact.

Councilmember Aldinger explained his lack of clarity between the topography on this site and that of the Rite Aid property, his continued confusion concerning how this project complies with the Sepulveda Corridor Guidelines and his belief that the proposed building should be closer to Sepulveda Boulevard. He pointed out that a building adjacent to the subject property could eventually be demolished; this project could set a precedent for placing buildings back from Sepulveda Boulevard; and that the Sepulveda Corridor Guidelines require parking on the street side.

Community Development Director Thompson advised that the City and the applicant spent much time on this project to ensure that all of the issues important to the Council and the Sepulveda Corridor Guidelines were addressed; that the same will be done with future projects; that each project is considered on its own merits; and that, if the topography permits, it is more pedestrian friendly to place buildings along Sepulveda Boulevard; but, if that is not possible, other options must be considered.

MOTION: Mayor Pro Tem Cohen moved to uphold the Planning Commission’s recommendation to approve a Use Permit for a Walgreen’s retail drug store with a drive-through pharmacy, at 2400 Sepulveda Boulevard. The motion was seconded by Councilmember Ward and passed by the following unanimous roll call vote.

Ayes: Ward, Tell, Aldinger, Cohen and Mayor Montgomery.
Noes: None.
Abstain: None.
Absent: None.

07/01/08-14. Public Hearing for the Annual Levy and Collection of Street Lighting and Landscaping District Maintenance Assessments for Fiscal Year 2008-2009

Finance Director Bruce Moe provided the staff report on the annual levy and collection of Street Lighting and Landscaping District Maintenance Assessments for Fiscal Year 2008-2009. He explained that the assessments have remained flat due to Proposition 218; that they fall short of the costs to operate the Districts; and that, in the past, it was not financially sound to administer an election, however, the more time that goes by, the more important it will be to take a Proposition 218 vote. He provided clarification regarding a correction pertaining to this topic in the narrative portion of the 2008-2009 Budget.

City Manager Geoff Dolan advised that, at some point, the Council might want to examine this issue along with several other general revenue items and combine them into one assessment.

Mayor Montgomery opened the Public Hearing at 10:07 p.m.

Hearing no requests to speak, Mayor Montgomery closed the Public Hearing at 10:08 p.m.

MOTION: Councilmember Aldinger moved to adopt Resolution No. 6150 providing for the annual levy and collection of Street Lighting and Landscaping District Maintenance Assessments for Fiscal Year 2008-2009. The motion was seconded by Councilmember Ward and passed by the following unanimous roll call vote.

Ayes: Ward, Tell, Aldinger, Cohen and Mayor Montgomery.
Noes: None.
Abstain: None.
Absent: None.

RESOLUTION NO. 6150

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, OVERRULING PROTESTS AND PROVIDING FOR THE ANNUAL LEVY AND COLLECTING OF ASSESSMENTS FOR CERTAIN STREET LIGHTING MAINTENANCE IN AN EXISTING DISTRICT, PURSUANT TO THE PROVISIONS OF DIVISION 15, PART 2, OF THE STREETS AND HIGHWAYS CODE OF THE STATE OF CALIFORNIA

GENERAL BUSINESS

07/01/08-15. Discussion of Recreation Programs Available After School for Manhattan Beach Children of Special Needs

City Manager Geoff Dolan introduced the item noting that it is a status report carried over from the Council's 2007-2008 Work Plan and that staff is hoping for input on this topic from the Council in the future. He acknowledged that the City can clearly do more to increase awareness and provide joint after school programs with outside agencies for children with special needs.

Parks and Recreation Director Richard Gill introduced Recreation Supervisor Michael Brooke, who provided the staff report. He explained the City's efforts to welcome, accommodate and include special needs children in Parks and Recreation Department programs; the City's plans to design the upper lot at Polliwog Park to accommodate special needs children; and Adventureplex's lack of after school programs for children with special needs.

The following individuals spoke on this item:

- **Jason Fuente, Program Director, Friendship Circle**
- **Dennis King, Former President of Manhattan Beach Little League's Challenger League**

The Council discussed the importance of exploring after school programs for children with special needs provided by outside agencies, making sure that the City does not duplicate these programs and looking into ways in which the City can augment them. The Council agreed that information about programs for children with special needs should be placed on the City's website with a link to the School District; that this information could be advertised in the City's newsletter; that the estimated cost of potential programs should be researched and provided to

the Council; and that this is about the after school needs of special needs children in Manhattan Beach, not those in the South Bay, because local needs should be addressed before others.

Mayor Montgomery asked staff to look into options and report back to the Council.

Hearing no objections it was so ordered.

ITEMS REMOVED FROM THE CONSENT CALENDAR

None.

AUDIENCE PARTICIPATION

None.

Note: Although “Audience Participation” was allowed at the beginning of the meeting after “Community Announcements”, Mayor Montgomery allowed the public a second opportunity at this time.

CITY MANAGER REPORT(S)

None.

OTHER COUNCIL BUSINESS, COMMITTEE AND TRAVEL REPORTS

07/01/08-19. Councilmember Tell Re Reconsideration of Culligan’s Tree Permit

Councilmember Tell introduced the idea of entertaining a motion to reconsider the Culligan’s Tree Permit Appeal. It was his opinion that reconsideration would be appropriate as a technicality occurred and fairness is of the utmost importance. Councilmember Tell explained his understanding that, according to City Attorney Robert Wadden, the appeal could be reconsidered because the City ordinance requiring certification by the Councilmember making a motion was violated. He pointed out that since Councilmember Aldinger did not certify why he pulled the item, his vote should not have counted and that would have resulted in a tie vote with the Planning Commission’s determination being upheld. He further explained that a majority vote of the Council is necessary to reconsider this matter; however, Council’s reconsideration of this item would violate Roberts Rules of Order.

MOTION: Councilmember Tell moved to reconsider the Culligan’s Tree Permit Appeal. The motion was seconded by Mayor Montgomery.

Discussion continued with Mayor Montgomery relating his confusion pertaining to this matter. He explained that, following the Council’s consideration of the Culligan’s Tree Permit application, he communicated by e-mail with City Attorney Wadden and was informed that he could not bring this matter back on an appeal because of the City ordinance.

City Attorney Wadden explained that, at the time of Mayor Montgomery’s inquiry, he was unaware that, according to the City Code, if the Council fails to adhere to Roberts Rules of Order, the action they take will not be considered invalid or illegal.

The Council extensively discussed the possible precedent-setting nature of reconsidering the Culligan’s Tree Permit Appeal.

Councilmember Ward voiced his opinion that due diligence to ensure the Council has acted appropriately lies with applicants and the Council should not have to go back and help this particular applicant. He expressed his concern that a technicality such as this could be construed as a way to obtain the Council's reconsideration of previous decisions; that doing so could erode the Council's integrity and the integrity of the Council's decisions; and that the perception for many could be that Councilmember Tell was extending preferential treatment to the Culligan's.

City Attorney Wadden advised that it was necessary for Councilmember Aldinger to certify that he was appealing and pulling the item for general purposes, not personal bias and that, according to the City's ordinance, Councilmember Aldinger would be prohibited from voting unless he did so. He added that it is unlikely a lawsuit would be filed based on something like this because the remedy is easy and would only cause a brief delay.

City Manager Geoff Dolan affirmed that this situation would also be true for other items where certification was not made.

Councilmember Aldinger affirmed that he could have provided reasons why an approval would have been for the public good and that is why he originally appealed the Tree Permit application. He stated his concern that the statute of limitations under State Law would be violated should the item be reconsidered.

City Attorney Wadden advised that Roberts Rules of Order prohibit placing the Council's reconsideration of an item on an agenda; that Roberts Rules of Order provide a means to reopen a matter that has been fully considered; and that a motion to reconsider would have to be made by a Councilmember who voted in the majority.

Mayor Montgomery explained his concern that the Council not following proper procedures is a greater concern than the possibility of setting a precedent and that the situation should be remedied.

Mayor Pro Tem Cohen related her concern over the possibility of setting a precedent and noted that a different outcome is not likely should the matter be reconsidered. She stated that she was pleased that this issue was raised, even though she is troubled by it, and emphasized the importance of the Council being aware of proper procedures to help prevent situations such as this from occurring in the future.

City Attorney Wadden clarified that State Law provides for a 90-day statute of limitations from the date of a decision for it to be challenged.

Councilmember Tell provided detailed information as to how this matter came to light. He certified that reconsidering the Culligan's Tree Permit Appeal would be in the best interest of the public.

MOTION: Councilmember Tell moved to reconsider the Culligan's Tree Permit Appeal. The motion was seconded by Mayor Montgomery.

Discussion prior to roll call vote continued with Mayor Pro Tem Cohen stating her intent to vote against reconsidering the Culligan's Tree Permit Appeal in that doing so would open up the potential for previous appeals to be reconsidered. She stated that even though she was initially in the minority and was unhappy with the outcome, she is "not happy" that the Council violated a City ordinance and further stated that the 90-day statute of limitations for the applicant to appeal the decision ran out. Notwithstanding the probability of the outcome of a

re-hearing, Mayor Pro Tem Cohen noted the importance of treating all applicants equally.

MOTION: Councilmember Tell moved to reconsider the Culligan’s Tree Permit Appeal. The motion was seconded by Mayor Montgomery and failed by the following roll call vote.

Ayes: Tell and Mayor Montgomery.
Noes: Aldinger, Ward and Cohen.
Abstain: None.
Absent: None.

Councilmember Aldinger highlighted the importance of reviewing Council procedures.

City Attorney Wadden confirmed his intent to provide the Council with a summary of appeal procedures, as well as procedural direction in the future.

07/01/08-20. Mayor Montgomery Re US Conference of Mayors

Mayor Montgomery reported on his attendance at the recent U.S. Conference of Mayors.

07/01/08-21. Councilmember Aldinger Re Fourth of July Holiday

Councilmember Aldinger encouraged everyone to be safe and enjoy the Fourth of July Holiday.

ADJOURNMENT

At 11:05 p.m. the meeting was duly adjourned, in memory of Brian Sweeney, to the 6:30 p.m. Joint City Council/Parks and Recreation Commission Meeting on Tuesday, July 8, 2008, in the Police/Fire Conference Room, 400/420 15th Street, in said City.

Wendy Weeks
Recording Secretary

Richard Montgomery
Mayor

ATTEST:

Liza Tamura
City Clerk

**CITY OF MANHATTAN BEACH
MINUTES OF THE CITY COUNCIL
ADJOURNED REGULAR MEETING
JULY 1, 2008**

The Adjourned Regular Meeting of the City Council of the City of Manhattan Beach, California, was held on the 1st day of July, 2008, at the hour of 6:10 p.m., in the City Council Chambers of City Hall, at 1400 Highland Avenue, in said City.

ROLL CALL

Present: Ward, Tell, Aldinger, Cohen and Mayor Montgomery.
Absent: None.
Clerk: Wadden (Acting).

CLOSED SESSION

The Council recessed into Closed Session at 6:10 p.m. and moved to open session at 6:28 p.m.

ADJOURNMENT

The meeting was duly adjourned at 6:28 p.m.

Robert V. Wadden, Jr.
Recording Secretary

Richard Montgomery
Mayor

ATTEST:

Liza Tamura
City Clerk