

MEETING DATE: October 22, 2007

AGENDA ITEM : Discussion and Consideration of the Agreement between the City of Culver City and Patrick Moran (aka The Edge Swim Team),

ATTACHMENTS

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**SUMMARY OF INCIDENTS INVOLVING MR. MORAN & EDGE
2001-2007**

DATE	INCIDENT
9/19/01	Mr. Moran asked by staff to move workout chalkboard that was obstructing staff's view of the pool. Mr. Moran refused to comply so staff moved it instead. Mr. Moran moved the board back to where it was.
9/26/01	Mr. Moran refused to comply with staff's requests to assist with lane lines, as expected of all pool user groups.
10/10/01	Mr. Moran refused to comply with staff's requests to assist with lane lines, as expected of all pool user groups.
10/14/01	Mr. Moran gave an unauthorized private swim lesson in the pool during recreation swim; Refused to pay the admission fee.
10/15/01	Mr. Moran entered the Coordinator's Office without authorization to administer minor first aid to a child under his supervision. When told he may not enter the room and that only staff may administer first aid Mr. Moran ignored staff and proceeded to take first aid supplies without permission. The Coordinator then alleged Mr. Moran threatened him with physical violence. Staff witnessed Mr. Moran taunting the Coordinator after leaving his office.
6/29/03 (a)	Citizen complaint (e-mail to Council) – Citizen recounted an incident where Mr. Moran allegedly verbally harassed and threatened her (a member of the Santa Monica Swim Club) regarding her parking (legally) adjacent to the park near the pool. Citizen also corroborates complaint (c) below in her e-mail. The general complaint is that Mr. Moran took it upon himself to seize the parking around Vets Park and posted members of his team out on the sidewalks to tell people to park at Sony. If a person failed to comply, he allegedly threatened to have their car towed. This Citizen's husband checked Mr. Moran's right to have cars towed at the Police Department. He then returned with a Police Officer who informed Mr. Moran that he could not force people to move their cars.
6/29/03 (b)	Citizen Complaint (e-mail to Council) – Citizen recounted an incident where Mr. Moran allegedly verbally harassed and threatened a member of the Santa Monica swim club regarding her parking (legally) adjacent to the park near the pool, corroborating incident (a) above. The citizen then described an incident that occurred over a year ago where Mr. Moran verbally abused his wife and son in front of witnesses.
6/29/03 (c)	Citizen Complaint (e-mail to Council) – Mr. Moran allegedly harassed, threatened and aggressively grabbed a woman (a USA Swimming member) as she attempted to park her car on Barman Street. He insisted she must park at Sony. The woman was transporting a disabled family member. She stated that Mr. Moran was "...out of control and not qualified for the position he holds." She also recounts an earlier incident when she alleges that Mr. Moran "exposed his anger" to her and her child.
1/4/04 Swim Meet	Staff Log – Staff reported that he witnessed Mr. Moran acting "extremely belligerent" to a parent at the pool.
1/4/04 Swim Meet	Staff Log – Staff reported that Mr. Moran yelled at staff in public.
Nov 2001 to May 2006	NOTE: Files for the period November 2001 through May 2006. Therefore, documentation for this period is incomplete.

6/22/06	Mr. Moran was hostile toward staff for staff not having pool ready for his activity, though he was 15 minutes early. Mr. Moran made insulting comments to the staff person who was assisting him.
7/21/06	Mr. Moran was informed he could not set up diving blocks at the shallow end of the pool because it was dangerous. Mr. Moran went ahead and set them up anyway.
7/24/06	Mr. Moran made inappropriate comments in the main lobby area regarding the emotional/mental condition of an Aquatics staff member with whom he had a confrontation. Mr. Moran said he would not follow the direction of any staff members except the Recreation Manager or the PRCS Director.
9/13/06	Mr. Moran yelled at the Aquatics Coordinator at the front lobby in front of staff and customers, stating the lane lines were not in at the time he expected.
9/15/06	Mr. Moran used questionable disciplinary measures on a youth swimmer who used a bar of soap to graffiti the restroom mirror and then broke a light. Mr. Moran took the swimmer to the office by the wrist and yelled in the child's face and called him a "punk."
10/23/06	Mr. Moran scheduled a party at the pool without authorization and without proper permit. Mr. Moran brought food onto the pool deck, which is prohibited. When the Coordinator informed Mr. Moran of the policy and procedure he became started yelling at a staff member. The Recreation Manager had to be called in.
12/27/06	Mr. Moran was observed changing staff's written attendance log. Attendance log is for staff only. The attendance log was corrected and Edge administration was contacted via email and told not to tamper with City documents.
12/27/06	Mr. Moran yelled at Aquatics Coordinator at the front lobby. He pointed and screamed in her face in front of staff, children and customers. Members of another swim team were at the pool. The PRCS Director came over to talk and Mr. Moran yelled in his face. Several staff witnessed this incident.
3/30/07	Mr. Moran said he would "break the hands" of staff who moved his program flyers to the side of the Pool Manager's Office counter. A letter of warning to Mr. Moran was sent regarding his behavior.
4/4/07	Mr. Moran and Edge coach refused to comply with staff's requests to assist with lane lines, as required of all pool user groups.
4/28/07	Mr. Moran approached staff he had previously approached on 3/30/07 and asked them to change their story regarding the statements he made on 3/30/07. Coordinator informed Supervisor and Manager of incident.
6/5/07	Edge used more pool space than they reserved. Mr. Moran uncooperative with staff's directions to vacate lanes accordingly.
6/7/07	Edge used more pool space than they reserved. Mr. Moran uncooperative with staff's directions to vacate lanes accordingly.
6/12/07	Edge used more pool space than they reserved. Mr. Moran uncooperative with staff's directions to vacate lanes accordingly.
6/28/07	Edge staff observed giving unauthorized private swim lessons at Plunge. Water was too deep for beginner swimmers. Coordinator moved them over to shallower lanes and advised them their organization was not authorized to conduct private swim lessons.

7/10/07*	Edge staff broke short course flags while setting up water polo. Coordinator showed Edge staff how to properly set up flags.
7/10/07 to present*	Edge staff regularly observed giving unauthorized private swim lessons at Plunge even though they were advised by Coordinator that said lessons are unauthorized. Edge administration contacted and advised that said lessons are unauthorized.
7/12/07*	Edge staff ignored Coordinator's directions and broke short course flags a second time while setting up water polo.
8/18/07*	Edge administration sends e-mail stating City staff and lifeguards may not contact or speak to Edge coaches or administration regarding any business and all matters needed to be directed to their attorney.
9/10/2007*	Edge staff ignored the Pool Manager's directions to vacate 2 lanes assigned to another rental group. Recreation Supervisor called by Aquatics staff to handle situation. Edge staff again refused to follow directions. All participants ordered out of the pool until Edge agreed to comply.
9/24/2007*	Mr. Moran came to the plunge during the High School's rental period, apparently to collect edge equipment stored at the Plunge to take to another facility. During this time, staff observed him doing pull-ups on the high dive apparatus, push-ups on the bleachers, and ordering around the High School water polo players to help him.

* Incidents during current License Agreement term.

LICENSE AGREEMENT

WITH: PATRICK MORAN a.k.a. EDGE SWIM TEAM

FOR: LICENSE FOR TEMPORARY USE OF POOL AT VETERAN'S PARK

This License is made and entered into by and between THE CITY OF CULVER CITY, a municipal corporation, hereinafter referred to as "City", and Patrick Moran, a.k.a. Edge Swim Team, a California business, herein after referred to as "Licensee".

1. FACILITY LICENSED. City owns and operates the municipal pool, together with a locker room and showers at 4175 Overland Avenue, Culver City (collectively, the "Facility"). City agrees to grant Licensee permission to use the Facility for the sole purpose of conducting youth competitive swim practice and competition and youth water polo ("Activities"). As with other users of the Facility (hereinafter, "other users"), the schedule for Licensee to use the Facility shall be determined by the Parks, Recreation and Community Services Director or his/her designee ("Director") on a quarterly basis, based on availability. Quarterly means every three months based on the fiscal year of City, which begins July 1. The Quarterly reviews will take place on a date near, but sufficiently prior to, August 15th (for the Fall schedule), November 15th (for the Winter schedule), January 15th (for the Spring schedule) and June 1st (for the Summer schedule) to provide users of the Facility an ability to schedule their Activities; provided, that if the schedule for other users of the Facility is not reviewed on a quarterly basis, then the schedule of Licensee will not be reviewed on a quarterly basis. Notwithstanding the foregoing, Director shall have sole discretion to alter the times of the use of the Facility, during any quarter.
2. TERM OF LICENSE. Unless terminated as provided herein, the term of this License shall be from July 1, 2007, through June 30, 2008 (the "Term").
3. PAYMENT FOR LICENSE. In addition to the other consideration described below, Licensee shall, on or before the first day of each month ("Payment Due Date"), pay City \$4.72 per lane per hour for short course lanes and \$10.63 per lane hour for long course lanes, or portion thereof, for use of the Facility. Licensor shall invoice Licensee monthly on the second Thursday of each month prior to the Payment Due Date, and invoices shall be due and payable by the Payment Due Date. Any amount invoiced and not paid within thirty (30) days after the Payment Due Date shall be considered late and shall accrue compounded interest at the rate of ten percent (10%), per annum, for each month, or part thereof, the outstanding balance (plus interest, if any) remains unpaid. Failure of Licensor to provide the invoice shall not relieve Licensee of the obligation to pay the per lane fee, but shall relieve the Licensee from any obligation to pay interest on unpaid fees.
4. HOLD HARMLESS. Licensee shall be responsible for any and all injuries to or death of any person, and for any and all damage to any and all real or personal property, including the Facility, caused by or resulting from any acts, errors or omission of Licensee, its employees, officers, invitees or its agents arising out of

officers and employees from any and all liability claims, including costs, for damages to real or personal property, or personal injury or death, resulting from Licensee's, its employees, officers, invitees or agent's acts, errors or omissions arising out of or connected with this License.

5. INSURANCE. Without limiting its obligations pursuant to Paragraph 4 of this License, Licensee shall submit one or more duly executed certificates of insurance for Comprehensive General Liability in the minimum amount of One Million Dollars (\$1,000,000) single limit coverage (endorsed by an endorsement, approved by the City Attorney).
6. ASSIGNMENT; HYPOTHECATION. This License is for the specific benefit of Licensee and any attempt by Licensee to assign or transfer the benefits or burdens of this License without express prior written approval of City, in its sole discretion, shall be prohibited and shall be null and void. Licensee shall not mortgage, pledge, or otherwise hypothecate the Facility as security for the payment of any debt, for the purpose of securing funds for Licensee's use, and any such instrument shall be null and void insofar as the Facility are concerned.
7. DESTRUCTION OF BUILDING. If the Facility is substantially destroyed by fire or other means, or by acts of God, so as to make the Facility unusable, in the opinion of Director, then this License shall automatically terminate.
8. NO IMPROVEMENTS OR MAINTENANCE OF THE FACILITY. Licensee shall not make any improvements to the Facility without prior approval from Director. Licensee is not to conduct, or cause to be conducted, maintenance or repair of the Facility without the prior written approval of Director, nor shall Licensee in any way attempt to operate any controls associated with the pool filtration system or any other system at the Facility.
9. NO OBLIGATION TO CITY TO MAINTAIN FACILITY. City shall have no obligation or duty whatsoever to operate, maintain, repair or replace the Facility or to allow Licensee to do any of the same.
10. NO INTEREST IN FACILITY; PAYMENT OF PROPERTY AND OTHER TAXES. Licensee hereby acknowledges this is a license only and does not constitute a sale, lease or any interest in the Facility and is subject to termination pursuant to the terms, hereof. If any taxes are assessed based on this License or Licensee's use of the Facility, then Licensee shall be solely responsible for paying such taxes.
11. OTHER USE BY LICENSOR. Licensor, upon forty-eight-hours' (48-hours') advance notice to Licensee, shall have the right to permit revenue-generating filming activities in and at the Facility, which use shall be of precedence to Licensee's use.
12. POOL COVERS AND LANE LINES. Notwithstanding any other provision of this License and at no cost or expense to City, Director may require Licensee to assist City staff with the removal and replacement of the pool cover and lane lines.

13. APPLICABLE LAWS, CODES AND REGULATIONS. Licensee shall comply with all applicable laws, codes and regulations.
14. MODIFICATION OF LICENSE. This License may not be modified, nor may any of the terms, provisions or conditions be modified or waived or otherwise affected, except by a written amendment signed by all parties hereto.
15. RIGHT TO TERMINATE OR SUSPEND. Either party, in its sole discretion, may terminate this License at any time, with or without cause, on thirty-days' (30-days') written notice to the other party.

In addition, Director, at his/her sole discretion, due to circumstances, including, but not limited to, construction activities, emergencies or other unusual reasons, may determine it is in the best interests of City to suspend Licensee's use of the Facility for as long as the circumstances require; provided, that during that period of suspension, Licensee shall not have any obligation to pay the consideration set forth in Paragraph 3, above, except any obligations that have already been incurred and remain unpaid.

16. NOTICES. All notices given or required to be given pursuant to this License shall be in writing and may be given by personal delivery or by mail. Notice sent by mail shall be addressed as follows:

To City: City of Culver City
 Attn: Marty Nicholson, Recreation Manager
 4117 Overland Avenue
 Culver City, California 90230

To Licensee: Edge Swim Team
 Attn: Patrick Moran
 8939 S. Sepulveda #110-1013
 Los Angeles, CA 90045

17. WAIVER. If at any time one party shall waive any term, provision or condition of this License, either before or after any breach thereof, then no party shall thereafter be deemed to have consented to any future failure of full performance hereunder.
18. GOVERNING LAW. The terms of this License shall be interpreted according to the laws of the State of California. If litigation occurs, then venue shall be in the Superior Court of Los Angeles County.
19. CITY RIGHT TO ENTER FACILITY. City shall retain the right to enter the Facility at any reasonable time for the purpose of inspecting the Facility and Activities for compliance with the terms and conditions of this License Agreement.
20. LITIGATION FEES. If litigation arises out of this License for the performance thereof, then the court shall award costs and expenses, including attorney's fees,

to the prevailing party. In awarding attorney's fees, the court shall not be bound by any court fee schedule but shall award the full amount of costs, expenses and attorney's fees paid or incurred in good faith.

21. INTEGRATED AGREEMENT. This License represents the entire Agreement between City and Licensee for Licensee's use of the Facility during the term of this License, and all preliminary negotiations and agreements are deemed a part of this License. No verbal agreement or implied covenant shall be held to vary the provisions of this License. This License shall bind and inure to the benefit of the parties to this License, and any subsequent successors and assigns, if any are approved pursuant to this License. If any conflict arises between this License and any incorporated provisions of the proposal, then the terms of this License shall control.
22. SEVERABILITY. If any section, paragraph, sentence, clause, phrase or portion of this License is deemed invalid, then that invalidity shall not affect the validity of the remainder of this License.
23. EFFECTIVE DATE. The effective date of this License is the date of the Term, and it shall remain in full force and effect until the last date of the Term, unless this License is otherwise amended or terminated as provided herein; provided, that the indemnification and hold harmless provisions shall survive the termination.

Dated: 5/23/07

By [Signature]
EDGE SWIM TEAM
Patrick Moran

It's DIRECTOR

Dated: _____

By [Signature]
CITY OF CULVER CITY, CALIFORNIA
Jerry Fulwood,
City Manager

APPROVED AS TO CONTENT:

[Signature] mjm
William La Pointe,
Parks, Recreation & Community
Services Director

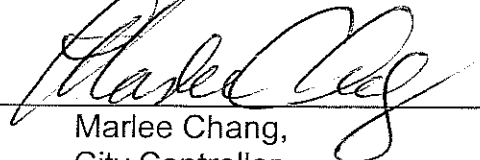
APPROVED AS TO FORM:

[Signature]
Carol A. Schwab,
City Attorney

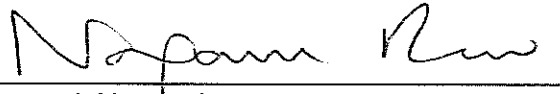
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APPROVED AS TO FINANCING:

APPROVED AS TO TAX CERTIFICATE



Marlee Chang,
City Controller



for Crystal Alexander,
City Treasurer

Culver CITY

Culver City Plunge Pool User CODE OF CONDUCT

This **Code of Conduct** has been established to ensure a positive pool environment and is in addition to all other posted City rules. All pool users shall abide by this Code at all times.

1. The following behaviors are strictly PROHIBITED at any time:

- a. Offensive, profane, obscene, vulgar language or inappropriate gestures toward anyone.
- b. Any derogatory comment or insult regarding another person's race, gender, ethnicity, age, creed, belief or other physical or mental characteristic.
- c. Any physical attacks or threats of physical violence towards anyone.
- d. Purchase, storage, or consumption of any alcoholic beverage or illegal substances on City property or intoxication or being under the influence of an illegal substance while on City property.

2. Cooperate with City Aquatics personnel and follow their authorized directions.

3. Treat all pool users with respect.

4. Use City facilities in a safe and clean manner, free from property damage, including graffiti.

If the alleged offender is a parent or participant of a permitted user of the Plunge, the alleged offender's organization will be notified by the City. The organization will take remedial action, if needed, and notify City staff regarding the action taken in order to prevent future problems. If no action was determined needed, the organization will notify City staff of the reasons such determination was made.

Failure of those responsible for an organization with a permit to use the Plunge to maintain proper conduct of the organization's parents/participants, or to take appropriate actions to prevent parents/participants from future infractions, will result in the following City Actions:

First Actual Offense:	Written warning to alleged offender with a copy to the applicable organization.
Second Actual Offense:	Up to one (1) month suspension from Plunge facility for the actual offender, with a written warning to the applicable organization. If suspended, then the actual offender must not appear within a 500-foot radius of the perimeter of the Plunge facility.
Third Actual Offense:	Actual offender permanently suspended from Plunge facility. If suspended, then the actual offender must not appear within a 500-foot radius of the perimeter of the Plunge facility.

Any City action described above will be imposed by the Pool Coordinator in consultation with his/her supervisor, after both have made a determination, based on substantiated facts, an actual offense has occurred. Any person or his/her organization who receives a written warning or order of suspension may appeal that warning or notice to the Recreation Manager responsible for the Plunge. The written letter of appeal must be received by the Recreation Manager's office within five City-working days after the City action has been imposed. The Recreation Manager (or his/her Designee) will review the facts of the matter, meet with the applicable City personnel and

the person(s) who received the warning or notice (or their representative) and the applicable organization's representative. The Recreation Manager (or his/her designee) shall render a final decision within five City-working days after the conclusion of that meeting.

The Plunge is a City owned and operated facility and City Management has the right and responsibility to approve and disapprove any and all contracts and agreements relating to the scheduling and operating of the facility.

I have read and understand the Code of Conduct. I agree to inform those in my organization of the personal conduct expected while at The Plunge. I, and all participants, parents, staff and spectators from my organization, if any, shall abide by its terms.

PATRICK T. MORAN
Name (Printed)

[Signature]
Name (Signature)

DIRECTOR, EDGE SWIM CLUB
Title

4/17/07
Date