

# CITY OF SOLANA BEACH

SOLANA BEACH CITY COUNCIL, SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY,  
PUBLIC FINANCING AUTHORITY, & HOUSING AUTHORITY



## MINUTES

Joint REGULAR Meeting

Wednesday, April 11, 2018 \* 6:00 P. M.

City Hall / Council Chambers, 635 S. Highway 101, Solana Beach, California

**Minutes contain a summary of significant discussions and formal actions taken at a City Council meeting.**

- City Council meetings are video recorded and archived as a permanent record. The video recording captures the complete proceedings of the meeting and is available for viewing on the City's website.
- Posted Reports & Supplemental Docs contain records up to the cut off time prior to meetings for processing new submittals. Complete records containing meeting handouts, PowerPoints, etc. can be obtained through a [Records Request](#).

### CITY COUNCILMEMBERS

Vacant, Mayor

David A. Zito, Deputy Mayor

Jewel Edson, Councilmember

Judy Hegenauer, Councilmember

Lesa Heebner, Councilmember

Gregory Wade  
City Manager

Johanna Canlas  
City Attorney

Angela Ivey  
City Clerk

### CALL TO ORDER AND ROLL CALL:

Deputy Mayor Zito called the meeting to order at 6:30 p.m.

Present: David A. Zito, Jewel Edson, Judy Hegenauer, Lisa Heebner

Absent: None

Also Present: Greg Wade, City Manager  
Johanna Canlas, City Attorney  
Angela Ivey, City Clerk,  
Mo Sammak, City Engineer/Public Works Dir.  
Marie Berkuti, Finance Manager  
Corey Andrews, Principal Planner  
Dan King, Assistant City Manager

### APPROVAL OF AGENDA:

**Motion:** Moved by Councilmember Heebner and second by Councilmember Edson to approve. **Approved 4/0.** Motion carried.

### ORAL COMMUNICATIONS:

This portion of the agenda provides an opportunity for members of the public to address the City Council on items relating to City business and not appearing on today's agenda by submitting a speaker slip (located on the back table) to the City Clerk. Comments relating to items on this evening's agenda are taken at the time the items are heard. Pursuant to the Brown Act, no action shall be taken by the City Council on public comment items. Council may refer items to the City Manager for placement on a future agenda. The maximum time allotted for each presentation is THREE MINUTES (SBMC 2.04.190). Please be aware of the timer light on the Council Dais.

Deputy Mayor Zito announced that the meeting would be adjourned in the memory of Chuckles Hernandez who recently passed away.

Lisa Montes spoke about her mother's cousin, Robert Chuckles Hernandez, who passed away, his history in Solana Beach and La Colonia/Eden Gardens, his stories were included in a publication 'Early Solana Beach' written by his friend Jim Nelson, that he was well-respected in the community, the Tree of Life tiles of the founding families that arrived in the 1920s, the Veterans' Photo Memorial, and a college scholarship established by the Civic and Historical Society to honor his legacy and dedication to the community.

Mary Jane Boyd spoke about Lesa Heebner being the best person for the Council Vacancy, thanked Ginger Marshall for her service, and that serving on Council was a difficult job.

Richard Risner spoke about being a landscape architect and that April was Landscape Architect Month, they were working towards cleaner and healthier cities, that the Park Pledge involved bringing communities closer to open space and park projects, and passed out a handout.

**COUNCIL COMMUNITY ANNOUNCEMENTS / COMMENTARY:**

*An opportunity for City Council to make brief announcements or report on their activities. These items are not agendaized for official City business with no action or substantive discussion.*

**A. CONSENT CALENDAR:** (Action Items) (A.1. - A.3.)

Items listed on the Consent Calendar are to be acted in a single action of the City Council unless pulled for discussion. Any member of the public may address the City Council on an item of concern by submitting to the City Clerk a speaker slip (located on the back table) before the Consent Calendar is addressed. Those items removed from the Consent Calendar by a member of the Council will be trailed to the end of the agenda, while Consent Calendar items removed by the public will be discussed immediately after approval of the Consent Calendar.

**A.1. Register Of Demands.** (File 0300-30)

Recommendation: That the City Council

1. Ratify the list of demands for March 10 – 23, 2018.

**Motion:** Moved by Councilmember Edson and second by Councilmember Heebner to approve. **Approved 4/0.** Motion carried.

**A.2. General Fund Adopted Budget for Fiscal Year 2017-2018 Changes.** (File 0330-30)

Recommendation: That the City Council

1. Receive the report listing changes made to the Fiscal Year 2017-2018 General Fund Adopted Budget.

**Motion:** Moved by Councilmember Edson and second by Councilmember Heebner to approve. **Approved 4/0.** Motion carried.

**A.3. List of Projects for Fiscal Year 2018/19 to Receive Road Maintenance Rehabilitation Account Funding as Required by Senate Bill 1 and Establishment of the Senate Bill 1 Streets & Roads Fund.** (File 0850-35)

1. Adopt **Resolution 2018-037**:
  - a. Authorizing the City Engineer to establish a project list for the 2018 Local Streets and Roads Funding Program using funds from the Road Maintenance and Rehabilitation Account and designating the 2018 Annual Pavement Management Program, as identified in the City's FY 2018/19 Capital Improvement Program list, to receive the funding from this new program.
  - b. Authorizing the City Engineer to submit the project list to the California Transportation Commission for the 2018 Local Streets and Roads Funding Program using funds from the Road Maintenance and Rehabilitation Account.
  - c. Approving the establishment of the SB 1 Streets & Roads fund (#247) in the City's FY 2017/18 Adopted Budget.

**Motion:** Moved by Councilmember Edson and second by Councilmember Heebner to approve. **Approved 4/0.** Motion carried.

**B. PUBLIC HEARINGS:** (B.1.)

This portion of the agenda provides citizens an opportunity to express their views on a specific issue as required by law after proper noticing by submitting a speaker slip (located on the back table) to the City Clerk. After considering all of the evidence, including written materials and oral testimony, the City Council must make a decision supported by findings and the findings must be supported by substantial evidence in the record. An applicant or designees for a private development/business project, for which the public hearing is being held, is allotted a total of fifteen minutes to speak, as per SBMC 2.04.210. A portion of the fifteen minutes may be saved to respond to those who speak in opposition. All other speakers have three minutes each. Please be aware of the timer light on the Council Dais.

**B.1. Public Hearing: 235, 241, 245 Pacific Avenue, Applicants: DeSimone, Schragger and Jokipii, Case 17-17-27.** (File 0610-60)

Recommendation: That the City Council

1. Conduct the Public Hearing: Open the public hearing, Report Council disclosures, receive public testimony, and close the public hearing.
2. Find the Proposed Project exempt from the requirements of CEQA pursuant to 2018 State California CEQA Guidelines §15269 as emergency conditions exist onsite.
3. Adopt **Resolution 2018-039** conditionally approving a Conditional Use Permit to construct a bluff retention device to support the lower bluff and reconstruction of portions of the upper bluff with soil, geotextile and landscaping against imminent bluff failure along the bluffs adjacent to 235, 241 and 245 Pacific Avenue, Solana Beach.

Leslea Meyerhoff, Staff Consultant, presented a PowerPoint (on file).

Deputy Mayor Zito opened the public hearing.

Council disclosures.

Bob Trettin, Applicant representative, suggested that one word be changed on the Resolution, item number 14 (XIV), to read "The Applicants or their Contractor shall post ..." because their particular contractor's bonding firm would not post the bond without it. He spoke about a referenced 1989 photo that was actually from 1972, the photo comparisons showed how the three properties had little change between 1989-1972, and that the 2002 photo showed the entire bluff face failed as a result of the 1997-98 el Niño because of the wave activity that increased the undercut and stripped the sand. He spoke about the material placed on the bluff in the 1960s under 235 Pacific by the County of San Diego who had controlled and owned the bluff at the time and not by the homeowner, the proposal would be removing most of the material except the last upper portion because the process of pulling out that material would pull the bluff with it, color treatment to conceal visibility, that 241 Pacific had a caisson system approved by Council in 2007 which was financially and physically impractical to put a 50 ft. seawall between two 50 ft. gaps since the middle property did not want to participate, the caissons had now been exposed for a number of years and the new property owner wanted to solve the problem, that they would be rebuilding the bluff and not creating a bluff wall which was the Council's preferred solution in the LUP, the 2014 approved project at 245 Pacific and the discrepancy with the California Coastal Commission initially recommending an amendment to withdraw a portion of the 245 area that would be covered by a wall and extend the wall to the north at 249 to 24 ft. across 245 Pacific even though there was a deed restriction at 245 Pacific, and then recommended it should be considered when it could be presented as a three property permit preventing a 50 ft. gap between the properties that would create accelerated erosion.

Rick Schrager, Applicant for 241 Pacific Avenue, said the purpose was to protect homes, families, neighbors, the community and visitors who frequented the beach, that no one could prefer eminent catastrophic destruction and possibility of severe injury or loss of life to an aesthetically pleasing wall that would blend in with the existing ones along the majority of the stretch of Solana Beach, that it would be a beautified upper bluff instead of a concave upper bluff, would be professionally landscaped and more representational of Southern California's natural scenery, and removing the lien the City had on the property requiring improvement of the upper bluff. He said it would be counterproductive to agree to the improvements at 235 and 241 but not at 245, creating a cave-like hole that would result in a target effect at 245 and the adjacent properties to the north and south, that visitors to the beach were in serious jeopardy and asked the Council to allow them to move forward with their project.

Bob DeSimone, homeowner at 235 Pacific, said he supported the project and did not want his house to fall into the ocean and urged Council to approve the project.

Mr. Trettin concluded, asking for Council's support for the draft Resolution that he had been working on for the past nine months, which would still have to go to the California Coastal Commission.

Diane Garber said she lived south of the project and fought for 15 years to get their seawall built, that this project was in even more dire circumstances than it was five years ago when she built her seawall, the amount of erosion that had occurred created more safety problems on the beach, and encouraged the Council to approve the proposal.

Kristin Brinner said she was a homeowner on Via de la Valle and co-chair of the Beach Preservation Committee for the San Diego Surfrider chapter, that the deed restriction transcended the Coastal Act, the previous owners decided to redevelop their home so close to the edge of the bluff and accepted the chance that it was going to be too close and waived any right to a seawall, and that they still had the option of moving back the portion of the home that was unsafe. She said when the Coastal Commission made them change the permit in 2014 to protect 249 Pacific the Commission respected the deed restriction and asked the Council to respect the deed restriction as well. She said that if this permit application was approved there would be no incentive for development to be performed at a responsible distance from the bluff resulting in seawalls all along the bluffs in Solana Beach, and asked the Council to consider the long-term consequences.

Bob Trettin, Applicant, rebuttal, spoke about leaving a 50 ft. gap in the bluff, that the California Coastal Commission had suggested the deed restriction wording that a seawall could not be built to protect that section of the home at 245 Pacific that was within 40 ft. of the top of the bluff, but that it could be built if it were necessary for other purposes, and that it was done twice in Solana Beach before. He spoke about there being no precedent set and urged Council to approve the project.

Council, Applicants, and Staff discussed that the Coastal Commission provided the prior owners of 245 Pacific an option to build with a setback of 40 ft. with no deed restriction or a 25 ft. setback and accept a deed restriction to not protect areas of the house between the top of the bluff and the 40 ft. setback, that a seawall at 245 Pacific would be required to prevent bluff failures on each side at 241 and 249 Pacific which also protected 245 Pacific, that the LUP (Local Coastal Plan/Land Use Plan) did include policies that contemplated how development could proceed and the type of maintenance required to constitute protecting properties with a deed restriction or any improvements they may request, and that the 40 ft. setback option was a Coastal Commission requirement.

Discussion continued regarding concerns with existing deed restrictions and tracking them, that each project was evaluated on its own merits and the evidence presented to Council, that the deed restriction in this case was not a condition of approval by the City but by the Coastal Commission who would be the regulator of that restriction, that the City was in a difficult position because the City did not have a certified LCP so the final permitting authority would not lie with the Council but with the Coastal Commission who imposed this deed restriction, that conditions of approval were contingent on obtaining all other approvals necessary including the Coastal Commission, that the deed restriction would be considered by the Coastal Commission who would apply the requisite Coastal Act provisions and whether or not it outweighed the previous condition placed on the project, and that the Coastal Commission required local approval before they would review projects.

**Motion:** Moved by Councilmember Heebner and second by Councilmember Hegenauer to close the public hearing. **Approved 4/0.** Motion carried.

Council discussed that all criteria of the City's LUP appeared to be met, that it there were a little uncomfortable with the deed restriction stipulated on the property in the middle, that the gap situation would be dangerous, and that the deed restriction required by the Coastal Commission being upheld would be up to them.

Greg Wade, City Manager, stated that a standard condition of approval to require irrigation for the upper bluff portion in order to set the landscaping and then disconnect it after 24 months was missing in the resolution and would be added.

**Motion:** Moved by Councilmember Heebner and second by Councilmember Edson to approve modifying the change to Section b. 14. adding language requested regarding contractor making payment and the inclusion of the standard irrigation condition. **Approved 4/0.** Motion carried.

**C. STAFF REPORTS:** (C.1.)

*Submit speaker slips to the City Clerk.*

**C.1. Demand to Transition From At-Large To District-Based Council Member Elections.** (File 0430.05)

Recommendation: That the City Council

1. Discuss the demand letter and consider options in response.
2. If desired, adopt Resolution 2018-042 declaring the City's intent to transition from at-large to district-based elections, outlining specific steps to be undertaken to facilitate the transition, and estimating a time frame for action.
3. Adopt **Resolution 2018-043**, approving and ratifying agreement with Marguerite Leoni of Nielsen Merksamer Parrinello Gross & Leoni LLP as Special Legal Counsel.

Johanna Canlas, City Attorney, stated that the City had approximately 8,500 registered voters who would be divided into districts within the City in a district-based election system, that each district would elect their own representative to the Council for a four-year term, and that the candidates for election would be residents of the identified districts.

She spoke about Assembly Bill 350, that the City had received the demand letter providing 45 days of protection from litigation to assess the situation, that if the City adopted a resolution declaring the councils' intent to transition and outlined specific steps and timeframes within 45 days the potential plaintiff would be precluded from filing litigation for an additional 90 days, the City received the demand on February 20, 2018 and shortly after had a vacancy on Council, that the 45 days to take action would expire Friday, that a full Council would be preferred to consider and take action on the issue, that subsequent to the preparation of the Staff Report there had been another vacancy on the Council, that the four remaining council members would have to take action to take advantage of the Safe Harbor rule, and that the additional 30-45 days would not be enough time to hold the

required public hearings and meet the San Diego County Registrar of Voters deadline for getting the issue on the 2018 election.

Roger Boyd said he lived in Solana Beach and asked for a serious consideration of an expedited schedule to go through developing maps and meetings to meet the 2018 timeframe, that holding one public hearing per week would end the process on May 23<sup>rd</sup> and permit the City to reap the full benefit of the Safe Harbor period, and that there was a fiscal advantage to doing it sooner rather than later.

Gary Garber stated that he spoke with attorneys and that it could be done sooner if Council wanted to make it happen by conducting three meetings a night in order to be ready for November 2018.

Jane Morton stated that she hoped the City moved forward as quickly as possible whether 2018 or 2020, that she heard 2022 after the next census had been suggested, that waiting would only add more expense, and that she would rather see the City get ahead of the issue.

Kelly Harless stated that the issue should be a thoughtful process with much discussion because the ramifications were big for the City, that over the past few years the Council had done a good job of taking a global perspective while protecting each neighborhood, that the City was less than four square miles and would not want a situation where neighbor was pitted against neighbor, and that it should be considered very carefully before launching forward.

Mali Wood-Drake stated that she worked for a labor union and had worked with Shenkman in the past, that she represented workers at Tri-City Hospital which had three districts, that they had moved forward with a lawsuit against the hospital to redistrict the Board to better represent the different demographics of the community, that Tri-City's Board rushed the process and jammed in the meetings, that she recommended taking time to get it done right allowing for community input, and that she felt the best thing to do was wait until 2022.

Council discussed that it was important to look at what was right for Solana Beach, what all needed to be done, that the demographics may result in no way to create a majority-minority district in the City, to not rush it for 2018 election and instead take time to do it correctly with the necessary public feedback, the process outlined by the state should take three months but could it be done properly within that short time frame, that the most important thing for government was to be inclusive and transparent and that would not be possible if the process was rushed, rushing it would not give people time to participate, and that if it was done incorrectly that it could result in years of pain.

**Motion:** Moved by Councilmember Heebner and second by Councilmember Edson to approve and adding additional whereas statement in the resolution regarding the newest Council vacancy. **Approved 4/0.** Motion carried.

**C.2. Consideration of the City Council Vacancy Created by the Resignation of Former Mayor Ginger Marshall.** (File 0410-85) – Added 4-5-18 (2:30pm)

Recommendation: That the City Council

1. Discuss the options outlined above in filling the vacancy and provide Staff with direction.

Johanna Canlas, City Attorney, spoke about the late date of the resignation for a possible June election, that there were topics approaching that would need a full Council to consider, and that this was the reason for a short application time period in or order to make the appointment as soon as possible.

Council discussed the application timeline, the need to move forward since it was not a normal situation, and to use a similar process as the last appointment.

**Motion:** Moved by Deputy Mayor Zito and second by Councilmember Heebner to approve the process and the application period opening April 12<sup>th</sup> at 12:00 p.m. (noon) and closed April 19<sup>th</sup> at 5:00 p.m. **Approved 4/0.** Motion carried.

**COMPENSATION & REIMBURSEMENT DISCLOSURE:** None

GC: Article 2.3. Compensation: 53232.3. (a) Reimbursable expenses shall include, but not be limited to, meals, lodging, and travel. 53232.3 (d) Members of a legislative body shall provide brief reports on meetings attended at the expense of the local agency at the next regular meeting of the legislative body.

**COUNCIL COMMITTEE REPORTS:**

**Regional Committees: (outside agencies, appointed by this Council)**

**Standing Committees: (All Primary Members) (*Permanent Committees*)**

**ADJOURN:**

Deputy Mayor Zito adjourned in the memory of Chuckles Hernandez at 8:15 p.m.

Angela Ivey, City Clerk

Approved: October 10, 2018