

SOLANA BEACH CITY COUNCIL
REDEVELOPMENT AGENCY AND PUBLIC FINANCING AUTHORITY

JOINT **SPECIAL** MEETING

MINUTES

WEDNESDAY, MAY 27, 2009
5:00 P.M.

SPECIAL

The City Council acts as the City of Solana Beach Redevelopment Agency and the Public Financing Authority.

CALL TO ORDER AND ROLL CALL:

Mayor Nichols opened the meeting at 5:30 p.m.

Present: Nichols, Campbell, Heebner, Kellejian, and Roberts.

Absent: None.

Also Present: David Ott, City Manager
Johanna N. Canlas, City Attorney
Angela Ivey, City Clerk
Wende Protzman, Dir. Admin. Services/Deputy City Mgr
Dennis Coleman, Finance Director
Tina Christiansen, Comm. Dev. Dir.
Mo Sammak, City Engineer

FLAG SALUTE:

APPROVAL OF AGENDA:

C. STAFF REPORTS:

Submit speaker slips to the City Clerk

C.1. Proposed Revenue Enhancement Action to Address Current Fiscal Emergency and Long-Term Sustainability. (File No. 0390-90)

Recommendation: That the City Council

1. Adopt Resolution 2009-064, declaring a fiscal emergency.
2. Approve a business tax calculation based on Model 1.
3. Adopt Resolution 2009-049, calling a special mail ballot election for August 25, 2009.
4. Adopt Resolution 2009-050, directing the City Attorney to prepare an impartial analysis of the measure and authorize written arguments.

David Ott, City Manager, presented a powerpoint reviewing the state fiscal issues, the past meetings that narrowed the focus to a proposed revenue enhancement action of a business tax, the City's general fund and fiscal threats to cause potential shortfall. He reviewed various options of methods of administering the taxation including square footage, number of employees, fixed fee, or gross receipts.

Council and City Manager discussed the current business certificate which had an initial first year cost of \$70 and \$15 for each renewal year, potential state hold backs could happen around July, and that the controller had stated they needed to adopt a budget in the next 45 days.

David Ott, City Manager, stated that some recent steps already taken by the City to balance the budget had included reductions of vacant positions, supplies and materials, training and travel, some services, and delay or hold on some projects.

Council and City Manager discussed the need for a business tax to be simple, equitable, and the least administrative for the City.

David Ott, City Manager, reviewed that the professional business category included attorneys, engineers, architects, dentists, and doctors. He reviewed other cities stating that Carlsbad charged by a per employee fee for the profession, the City of Vista administers it by a gross receipts range in the professional category but other categories had different criteria and multipliers, and that City of Del Mar's formula had gross receipts on tier levels. He showed an overhead in the powerpoint to compare similar types of businesses in different cities.

Gary Turnbull asked that the City set a sunset provision if the tax was set, that he would not mind helping in an emergency if it was temporary and when the City

had positive cash flow then the sunset clause would kick in, that some small businesses could not afford a \$100 an employee, asked how much of the million dollar loss had gone into a rainy day fund, that many businesses had already stopped IRA contributions because they were not possible, the business community wants to support, that the City had not told us how much it had cut, that the business community wanted to support the City, that it was unfair that only residents could vote since they were not the only ones paying, and that when the City was formed that they were told that there would be no business tax.

David Ott, City Manager, responded to comments stating that the City had been addressing a million dollars of cuts, that all discussions were during public meetings and were recorded, and that the City had already dipped into reserves.

Johanna Canlas, City Attorney, stated that a tax be before the voters of the City of Solana Beach and that there was no provision under which outside business owners could take part in a municipal election.

Councilmember Roberts stated that everyone needed to keep the facts straight, that the City had no pay raises over the past year, had many cuts, that recently they had difficulty finding toner because of the caution in ordering supplies, that the City had 35 employees not counting public safety, that all positions were frozen, that some services had been reduced, that this was an effort to propose an area that is needed and did not penalize any one part of the community, that the law sets who votes which are the registered voters of the City, that they have had to talk about keeping the streets paved.

Becky Herzberg said that she was concerned about potential business if people were already struggling, that Solana Beach was diverse and had a lot to offer to tourists and residents, that if it was passed it was least impactful to potential businesses coming to rent in the City presenting a flat business environment, whether this was really the avenue to maximize the revenues, whether the City had compared all ways to tax including taxing residents and utilities.

David Ott, City Manager, was asked to respond, stated that other potential avenues were discussed at public meetings including taxes on utilities such as phones, that the increase to the fire benefit fee had been discussed that had a ceiling on it but that it was now only supporting 14% of the expenditures rather than 27% in the past, that a retail tax was also discussed, and that finally a business tax was discussed with some provisions regarding those already paying sales tax or TOT.

Councilmember Kellejian said that he did not want business to leave the City, that 13 cities in the county have a business tax, and asked City Manager to review those with receipts of \$500,000 and the various fees for various models.

David Ott, City Manager, said that under the retail model the fee would be \$30, model 2 would be \$120, next was \$125 max, and the next model was \$185.

Dan Chambers said that it was an informative presentation and yet it was complicated, to consider a sunset clause, that the math may not be entirely correct, that it was a complicated issue, and that he understood that they may act on the ordinance and then call an election that would be left to the voters.

Mayor Nichols stated that Council did not take the car allowance, that the City had saved two million but was still down a million, that tonight would be the time to act for the August ballot otherwise it would be aimed for March.

Jim King stated that this was the first time in a long time that Cedros had vacancies, that the tax was anti-business, and that he urged Council to not vote in favor.

Christine Nottingham stated that she owned a business on Cedros, that her business was down 50%, that the landlord had re-negotiated their rent, whether the tax would apply to those earning \$100 a year, that it was a difficult decision for Council, that there was a definite difference in sales tax now, that paying \$125 in a business tax for her would be the difference of whether she could pay for music on Thursday night which was a marketing event even though it may not be much to some, and that she was concerned that residents who would vote could understand the ins and outs of running a business.

David Ott, City Manager, responded to questions by Council of her costs depending on the models. He said that based on the flat tax since she was in the retail tax category and \$100,000 the tax would be \$100-\$125 and if using the gross revenue model the tax would be approximately \$33.

Allen Frisch stated that some residents had been watching the budgets for many years and that this was not a surprise, that the perfect storm had come, that he supported it, that the City had to look at its sources of revenue that it had, that the cuts that were made last year and next year are fact, that the citizens in this City need Council to take action on a hard decision, that the situation in the state was going to get worse, that the City does not have many other choices, that the illustrations presented seemed simple not complicated, and that most revenues will come from outside of Cedros businesses.

Peter Lambrou said that he was a home based business owner, that he was concerned about the long term affect and impact, to not just react to what is happening statewide and nationally, and that he would rather the Council not rush this through now and consider it over a few days.

Johanna Canlas, City Attorney, stated that if a sunset provision was set, that in order to remove it a vote by the voters would be required and that the body can collect less than what was voted on but not more.

Council and Staff discussion ensued regarding when the tax would be collected, that the ordinance would be effective 10 days after the certification of the vote but implemented January 1, 2010, that the City would have the ability to collect less without a sunset clause, that after a 60 day grace period a business would be obligated to file, and that a significant amount of education about the new law and compliance and the due date would be provided.

Terry Wardell stated that he was not opposed to it if it was needed, that the City cut 4% out of your budget and he cut 30% out of his own budget as a business owner, that on the gross sales model he assumed that he would have to have his CPA prepare it minus his costs of subcontractors, that he thought this was submitted quickly with nearly no notification and no public workshop even though he is a resident and business owner, and that most business owners do not live in town.

David Ott, City Manager, responded to comments stating that \$24 million of the budget are restricted on things like sewer and could not be spent on most issues, that they would fill out a form providing some clarity of how to calculate, and that cities are not allowed to charge income tax and can only charge on gross value or revenue.

Tracy Weiss said that Terry recalculated and that the City had cut 8%, that she learned about it recently and that business owners had not heard about it, and that she urged Council to wait until March if proceeding.

David Ott, City Manager, stated that 35% of the City's budget would include cuts into serious services including Fire department and operations including maintaining roads, parks, permits, regulatory mandated inspections.

Councilmember Kellejian said that the City had about 50 employees in the past and that today it had the same or less, that the City had passed a resolution of economic hardship, and that Council had a reason to do it.

Tim Coughlin did not answer when called.

Ira Oppen said that he was in favor of helping out but was opposed to the method or the fast track, that there was not a justification for taxing gross sales, that there was not a business plan and how to pay back like a regular business would be required to do, that there were hidden costs in the receipt tax, that a large portion of his income came from foreign sales and he would have to have his CPA determine what was exempt and the CPAs time could exceed the tax, that as a

privately held business his gross sales were his private business, asked what controls would the City have to ensure the privacy of his records, asked what would be provided as an appeal process with the penalty proposed, how would the process work with law enforcement being able to enter the business demanding the books, and that he would support waiting on proceeding and scheduling workshops to review the plan further to answer further questions and review the plan for the public.

Council and Staff discussion ensued regarding that all entities that pay taxes to the City would have privacy by law, could or could not require that any review by a CPA outside of the City, that the only inspection of records would be in the case of the need of an audit and that would be usually when a business was asserting that a good portion of their work was done outside of the City and it was of question, and that any changes to the policy once drafted would be required by a vote of the people.

Charlene Shrader said that she had many concerns that most other people had, not a good representation if known about the issue, that it was too important of an issue since that they did not know the actual percentage or structure of the tax, and asked Council to delay it until March.

Gary Martin (Nancy Brown donated additional time) said that the staff report recommending approval and vote the first time real numbers were discussed, that there was limited resources to get the information together, that it did seem like there was enough time for people to review it, that he did not see an impact analysis in the report, that if it was considered that he would like to help in relation to the impact to the City.

Johanna Canlas, City Attorney, stated that staff recommended Model 1 and that the CPI would not reflect on gross receipts in this model.

David Ott, City Manager, stated that the City could opt to provide a third party instead.

Johanna Canlas, City Attorney, said that a regulatory fee requires that the impact is quantified and that is what the business certificate model is based on currently. This proposed vote is for revenue generating and is not tied to quantification.

Council and City Manager discussed the explanation that the current business certificate was for the cost of the processing of the permit and could not be tied to the business being conducted.

Deputy Mayor Campbell stated that he recollected that this was needed in order to determine the impact because businesses were using City resources

and not contributing to the costs and that there needed to be some way of trying to determine the issues of the broad impacts in order to tax appropriately.

David Ott, City Manager, reviewed the model variation and rational for professional business versus those bringing in heavy trucks through the City.

Gerri Retman stated that the current problem was not due to poor management or a problem of spending, that not everyone attends all the meeting or watches them online so they do not know exactly the status of things, that this did not mean that they were going to vote yes to something they did not understand, to consider holding workshop so that the public could provide some input, that she liked the idea of the sunset clause, that she wanted the benefits of a smaller city and she understood that it came at a price, and that the Council should give the community an opportunity to be a part of the solution.

Deputy Mayor Campbell stated that he did not like the idea at first but that he had no problem paying to the point that his business had an impact, the staff had looked at a lot of approaches, that the City can not charge businesses because of the deficit, that he had heard some thing to consider, if deferred to March election would make it effective at a different date, and that there are more issues to address.

Councilmember Roberts stated that the community demands quality services, that the City had cut the budget, that he did not like taxing apartments over 5 units because some are on fixed income and they will have the tax passed onto the renters, that he thinks they do need to proceed, to consider proceeding with the fiscal emergency tonight and delaying the calling of an election until more work and perhaps workshops are done to address the rest, to consider not using the rainy day fund because it was needed for basic services for true emergencies and not to balance budget, and that all segments of the community needed to be considered and that fairness was allocated.

Mayor Nichols said that he heard a strong reality regarding the state issues affecting the City, that rainy day fund will be in place soon when the loans hit, that he supported a business tax, that he was not in favor of moving too quickly, that there were some ideas to review, and that he recommended working further with the public.

Councilmember Heebner said that she agreed that they should further engage the public, review the models and hold some workshops.

Councilmember Kellejian stated that because it was a technical matter it was best for the City to bring the solution that was best for the community and the City rather than having so many plans and options. He asked if everyone could join in the 'save your city' campaign due to the attack by the state

legislature.

MOTION: Moved by Campbell and seconded by Roberts to approve the Fiscal Emergency Resolution only. **Motion carried unanimously.**

WORKPLAN COMMENTS:

(Adopted June 25, 2008)

COMPENSATION & REIMBURSEMENT DISCLOSURE:

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)

- a. City Selection Committee - Roberts (meets twice a year).
- b. County Service Area 17 - Campbell, Nichols (alternate).
- c. Escondido Creek Watershed Authority - Nichols, Roberts (alternate).
- d. League of Ca. Cities' San Diego County Executive Committee - Roberts, Kellejian (alternate) and any subcommittees
- e. League of Ca. Cities' Local Legislative Committee - Roberts, Kellejian (alternate).
- f. League of Ca. Cities' Coastal Cities Issues Group (CCIG) - Kellejian, Roberts (alternate).
- g. North County Dispatch JPA - Nichols, Campbell (alternate).
- h. North County Transit District - Roberts, Heebner (alternate).
- i. Regional Solid Waste Association (RSWA) - Nichols, Kellejian (alternate).
- j. SANDAG - Heebner (Primary), Roberts (1st alternate), Nichols (2nd alternate) and any subcommittees.
- k. SANDAG Shoreline Preservation Committee - Kellejian, Roberts (alternate).
- l. San Dieguito River Valley JPA - Roberts, Nichols (alternate).
- m. San Elijo JPA - Campbell, Roberts (both primary members) (no alternates).
- n. 22nd Agricultural District Association Community Relations Committee - Campbell, Roberts.

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

- a. Business Liaison Committee - Roberts, Campbell.

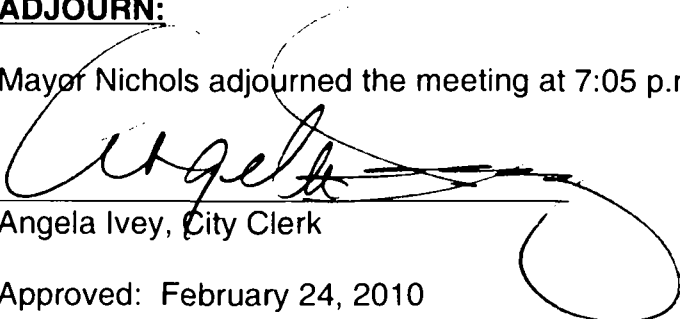
- b. Highway 101 / Cedros Ave. Development Committee - Nichols, Heebner.
- c. I-5 Construction Committee - Heebner, Roberts.
- d. Public Arts Committee - Roberts, Nichols.
- e. School Relations Committee - Roberts, Campbell.

Ad Hoc Committees: (All Primary Members) (Temporary Committees)

- a. Army Corps of Engineers & Regional Beach Nourishment - Kellejian, Campbell. Expires December 9, 2009.
- b. Development Review - Nichols, Heebner. Expires November 18, 2009.
- c. Environmental Sustainability - Roberts, Heebner. Expires December 9, 2009.
- d. Fletcher Cove - Campbell, Heebner. Expires November 18, 2009.
- e. La Colonia Park Needs Assessment - Nichols, Heebner. Expires June 10, 2009.
- f. Local Coastal Plan Ad-Hoc Committee - Roberts, Campbell. Expires February 10, 2010 or at the California Coastal Commission adoption.
- g. NCTD / Train Station Site Project Ad Hoc Committee - Nichols, Heebner. Expires January 13, 2010.
- h. View Assessment - Nichols, Heebner. Expires August 26, 2009

ADJOURN:

Mayor Nichols adjourned the meeting at 7:05 p.m.



Angela Ivey, City Clerk

Approved: February 24, 2010