

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

JOINT **REGULAR** MEETING

MINUTES

6:00 P.M.

Wednesday, July 11, 2012

CITY COUNCIL CHAMBERS
635 S. HIGHWAY 101,
SOLANA BEACH, CALIFORNIA

CALL TO ORDER AND ROLL CALL:

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

Absent: None.

Also Present: David Ott, City Manager
Johanna Canlas, City Attorney
Angela Ivey, City Clerk
Wende Protzman, Deputy City Mgr/Community
Development Dir.
Mo Sammak, City Engineer/Public Works Dir.
Marie Berkuti, Finance Manager
Dan King, Sr. Management Analyst

Mayor Kellejian called the meeting to order at 6:02 p.m.

CLOSED SESSION REPORT: (when applicable)

Johanna Canlas, City Attorney, stated that there was no reportable action.

FLAG SALUTE:

APPROVAL OF AGENDA:

MOTION: Moved by Campbell and seconded by Heebner. **Motion carried unanimously.**

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.

Cynara Velazquez, Citizens for Patient Rights, passed out a handout (on file), stated that they submitted a medical marijuana initiative with over 1600 signatures for the Registrar of Voters, reviewed some medical aspects of marijuana, procedurally what was going to happen, and Council's options.

Marcee Levin, Patient Care Association, stated that her company packaged for dispensaries, that she was out of work before starting with her current company, and that medical marijuana could create many jobs.

Scott Levin mentioned that the 2nd District Court of Appeals in California confirmed the legality of medical marijuana, and that it was the function of the local municipalities to approve and regulate these dispensaries.

COUNCIL COMMUNITY ANNOUNCEMENTS:

COUNCIL COMMENTARY:

A. CONSENT CALENDAR: (Action Items) (A.1. - A.10.)

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. Waive the reading of Ordinances.

Recommendation: That the City Council

1. Approve waiving the text reading of ordinances on this agenda pursuant to Solana Beach Municipal Code Section 2.04.460.

MOTION: Moved by Roberts and seconded by Campbell. **Motion carried unanimously.**

A.2. Minutes of the City Council.

Recommendation: That the City Council

1. Approve the Minutes of the City Council Meetings held March 28, 2012.

MOTION: Moved by Roberts and seconded by Campbell. **Motion carried unanimously.**

A.3. Register Of Demands. (File 0300-30)

Recommendation: That the City Council

1. Ratify the list of demands for June 2 - 15, 2012.

MOTION: Moved by Roberts and seconded by Campbell. **Motion carried unanimously.**

A.4. General Fund Adopted Budget for Fiscal Year 2012-13 Changes. (File 0330-30)

Recommendation: That the City Council

1. Receive the report listing changes made to the Fiscal Year 2012-2013 General Fund Adopted Budget.

MOTION: Moved by Roberts and seconded by Campbell. **Motion carried unanimously.**

A.5. Ad Hoc Committees: General Plan Update and Fire Department Management Governance and Organizational Evaluation. (File 0410-48)

Recommendation: That the City Council

1. Adopt Resolution 2012-084 re-establishing the General Plan

Update Ad Hoc Committee to expire on July 10, 2013.

2. Adopt Resolution 2012-085 re-establishing the Fire Department Management Governance and Organizational Evaluation [a1]Ad Hoc Committee to expire on July 10, 2013.
3. Re-appoint two existing members (General Plan: Campbell, Nichols) (Fire Department Management Governance and Organizational Evaluation: Kellejian, Roberts).

MOTION: Moved by Roberts and seconded by Roberts. **Motion carried unanimously.**

A.6. Salary and Classification Update, Memorandum of Understanding between the City and the Solana Beach Firefighters' Association, Marine Safety Unit, and Side Letter with Miscellaneous Employee Group. (File 0400-10, 0530-30, 0520-10)

Recommendation: That the City Council

1. Adopt Resolution 2012-116 approving the FY 2012/2013 Memorandums of Understanding between the City of Solana Beach and the Solana Beach Employees' Association-Marine Safety Unit.
2. Adopt Resolution 2012-117 approving the FY 2012/2013 Memorandums of Understanding between the City of Solana Beach and the Solana Beach Firefighters' Association.
3. Adopt Resolution 2012-118 approving the FY 2012/2013 Side Letter Agreement between the City of Solana Beach and the Solana Beach Employees' Association-Miscellaneous Unit.
4. Adopt Resolution 2012-119 approving the FY 2012/2013 Salary and Compensation schedules.

MOTION: Moved by Roberts and seconded by Campbell. **Motion carried unanimously.**

A.7. California Public Employees Retirement System (CalPERS) Employee Contributions and Tax Defer Member Paid Contributions (Final Installment). (File 0520-50)

Recommendation: That the City Council

1. Adopt Resolution 2012-112 approving members of the SBEA-Miscellaneous Unit and all unrepresented employees to pick up an additional 2.243% for a total of 8% of the CalPERS employee contribution effective the first full pay period in July 2012.
2. Adopt Resolution 2012-113 approving members of the SBEA-Miscellaneous Unit and all unrepresented employees to tax defer member paid contributions per provisions of section 414(h)(2) of the Internal Revenue Code.

MOTION: Moved by Roberts and seconded by Campbell. **Motion carried unanimously.**

A.8. Comprehensive Active Transportation Strategies Grant Application. (File 0390-35)

Recommendation: That the City Council

1. Adopt Resolution 2012-110:
 - a. Authorizing the City Engineer to submit an application to the San Diego Association of Governments (SANDAG) for the Fiscal Year 2011/2012 Active Transportation Grant Program. The proposed project would develop a Comprehensive Active Transportation Strategies Plan which would address bicycle and pedestrian access at a Citywide level, primarily to accommodate non-recreational bicycle and walking trips.
 - b. Acknowledging, if a grant award is made by SANDAG to fund a Comprehensive Active Transportation Strategies Plan, the City Council commits to providing no matching funds and/or in-kind contributions and authorizes the City of Solana Beach City Manager to accept the grant funds, execute a grant agreement with SANDAG with no exceptions and complete the Project.

MOTION: Moved by Roberts and seconded by Campbell. **Motion carried unanimously.**

A.9. Special Counsel Services for Municipal Elections. (File 0400-10)

Recommendation: That the City Council

1. Adopt Resolution 2012-111 approving and authorizing the City Manager to execute a Professional Services Agreement for Special Counsel Services for Municipal Elections between the City of Solana Beach and Burke, Williams & Sorenson, LLP

MOTION: Moved by Roberts and seconded by Campbell. **Motion carried unanimously.**

A.10.I.T. Technical Support Agreement with the City of Del Mar. (File 0400-10)

Recommendation: That the City Council

1. Adopt Resolution 2012-107 authorizing the City Manager to sign an I.T. support agreement with the City of Del Mar.

MOTION: Moved by Roberts and seconded by Campbell. **Motion carried unanimously.**

NOTE: The City Council shall not begin a new agenda item after 10:30 p.m. unless approved by a unanimous vote of all members present. (SBMC 2.04.070)

B. PUBLIC HEARINGS: (B.1. - B.3.)

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. Appeal of Determination of Incompleteness for Structure Development Permit (SDP), Application #573 - 215 North Rios Avenue, Applicant: John S. Murk and Kristin G. Hogue Murk. (File 0600-42)

Recommendation: That the City Council

1. Adopt Resolution 2012-115 Denying Appeal of Determination of Incompleteness for SDP Application # 573 - 215 North Rios Avenue.

Johnanna Canlas, City Attorney, stepped down from the dais and Lisa Foster, Deputy City Attorney, assumed the role as City Attorney for the item.

David Ott, City Manager, stated that additional time could not be donated to the appellant and suggested that Council consider allowing 30 minutes speaking time for the appellant.

Council consensus was reached to allow 30 minutes speaking time to the appellant.

Mayor Kellejian opened the public hearing.

Council reported their disclosures regarding their familiarity with the project.

Councilmember Heebner stated that the appellant, Mr. Murk had made some comments within some correspondence during a public hearing comparing her project to his. She stated that staff had addressed the issues in the staff report, that despite these issues she could be fair and impartial, and that she would participate in the item.

David Ott, City Manager, introduced the item.

John Murk, Appellant, presented a powerpoint (on file) reviewing the background of the project, his recollection of events of the project review, and discussions between Staff and himself regarding permit requirements. He stated that he and his wife disputed the Staff judgment of their Structural Development Permit (SDP) application. He stated that he was lied to by the City Manager and had several disputes with several Staff members. He stated that he was told by Staff that the drainage study of Councilmember Heebner's project had to be done at the building permit stage, that staff told him that he had to have a drainage study completed at the SDP stage, and that he felt that he was treated maliciously by the City. He stated that there was differential treatment between his project and Councilmember Heebner's project, that one difference between the two projects was that his project required a drainage study by a licensed engineer and that her project stated that the study could be done by an architect, and that there were 11 other differences between the two projects. He reviewed a list of correspondence and meetings that took place between the City Manager, Staff, and himself and reviewed incorrect project data that was included in the public

hearing notice and Staff report including square footage and the moving of the entry door. He stated that he was told by Staff to file an SDP and not a Development Review Permit (DRP), that he had read the code for zoning regulations, that only 2 neighbors had filed a View Assessment Application, and that both applications were withdrawn after negotiations with the neighbors. He reviewed site grading quantities he submitted to the City, incorrect data regarding grading that was in a report prepared by Aquaterra, the 3rd party consultant that was hired by the City to review the project, and that he had submitted updated numbers to the City which were not included in the Aquaterra report.

Kristin Hogue, Appellant, continued the presentation. She stated that she was Legal Counsel for a large public entity for over 30 years, reviewed details of her work duties within that entity, that she was an author of the Government Tort Liability Practice Chapters 9 and 10, and that her career centered on the interpretation of the Government Code and State and Federal Constitutions. She stated that public entities were largely given deference in the courts, that they were not given deference when they treated community members arbitrarily, that public entities were also not given deference when members of Staff were given special treatment, and that Councilmember Heebner's permits was expeditiously handled and brought before Council, and that she was given favored treatment. She stated that on the morning of Councilmember Heebner's project hearing that Mr. Murk had submitted to the City a list of 12 corrections that the City had required of their plans that were not required of Heebner's plans, that at the meeting Councilmember Heebner was sitting in the audience and asked Staff for a response to the differences of the requirements, and that the City Manager had stated at the meeting that he had not received the materials to comment. She stated that at the night of the meeting it was stated that it did not matter how one permit was compared in relation to another, that each permit was viewed on its own merit, and that other applications from a non-Councilmember would had received a different response of being incomplete. She stated that the application would have been incomplete on its own and not in comparison to another, that there should have been sensitivity to perception of favoritism to another Councilmember, that the City Manager saw that concerns were raised, that they were presented in ample time, and that no response was given as to why there were different requirements of both of the projects. She stated that it was not known at the time of the vote whether or not there was preferential treatment, that the project had passed, and that it was denial of equal protection under the law of a Council person and a regular citizen. She stated that the Permit Streamlining Act had been passed by the legislature which provided that there was a statewide need to provide a clear understanding of what was required in connection with the approval of development projects and to expedite decisions on those projects, that this act was applicable to all public entities, that any revisions in the permitting process could only be applied prospectively, such as

ordinance 433, and that an application made before the effective date of revisions to laws could not be deemed incomplete, that the agency had the responsibility to review the project and make an early determination, that there was an improper stringing out of their application by the City, and that the City did this to allow time for Council to enact an ordinance 433 for the purpose of denying their application. She stated that they had submitted a Public Record Request regarding ordinance 433, that the response from the City included a few sheets of paper and a letter stating other material would not be provided due to attorney-client privilege, that they had asked Johanna Canlas, City Attorney, for a privileged log, which was a list of documents to be reviewed so the requester could determine whether or not to dispute if there was attorney-client privilege attached to them. She stated that the City Attorney stated that she did not have to and would not provide the list, that if and when the matter went to court the applicants would demand for the protected documents to be made available, that the court would review the documents to determine if attorney-client privilege applied, that it was questionable whether a bulk of documents regarding a City ordinance would be protected, and that the work of the City Council was supposed to be conducted in the light of day. She cited a case law of land law in California that stated that any revisions could be applied prospectively only and could not be applied to an application submitted prior to the effective date of ordinance 433, that the assertion of the City Manager that each time a correction was required and a submission of corrections resulted in a new application was preposterous, that there was no support for this in the case law and that it would go against the streamlining permit law. She stated that the permit streamlining law provided 30 days from the date that the application was submitted for the City to seek corrections at which time if the application was deemed incomplete, that the agency shall specify which areas were incomplete, that the City would indicate the manner in which they could be made complete, that the City should list and provide a through description of specific information needed for completeness, that the applicant responded with corrections, that the City should state whether or not the application was adequate or allow for appeal, that there were 9 times of moving target that they were told by the City what was needed, and that the applicants made the corrections. She stated that the Permit Streamlining Act required that this permit be granted, that there was no requirement for a DRP, and that she welcomed the opportunity to explain further.

Randall Sjobolm, Legal Counsel, presented a powerpoint (on file) reviewing the history of the project application showing how Staff responded to each incomplete submittal, how Mr. Murk did not comply with requested requirements. He stated that the project was altered significantly in September 2011, Mr. Murk had received many incomplete determinations, that he had options to provide missing information to Staff, and that the applicant had 6 months from the time of

filing to submit corrections or the application would be deemed inactive and closed. He stated that another option would be to modify plans, and he cited case law that stated that after the applicant had received that an incomplete notice and those plans were modified, it would be considered a new re-submittal and another 30 days would apply. He stated that another option was to walk away from project or allow it to expire. He showed an example of an incomplete application process, reviewed how to correct the application, and reviewed an example of a re-submittal application. He stated that Mr. Murk submitted a re-submittal on September 29th, that elements were identified as missing, that a new law had gone into effect, that he had re-submitted an application on December 6th, the applicant had made modifications to the plans so it was considered a re-submittal, and that it was also missing some elements of the new law as well as elements requested by Staff. He showed a summary timeline of the project application, how often the applicant had modified and re-submitted his plans, and that grading had been an issue since day one. He stated that he did not submit requisites by Staff, that grading had been identified in each incomplete determination that was provided to him until the end, that the Dec 6th application was still incomplete, and he reviewed the project approval process. He stated that two requirements of a DRP were indicated in the project, that the DRP was triggered by the application, and reviewed a timeline of the project events. He stated that the first permit was submitted on November 8th, that there were 19 significant issues that were missing and that there was a lack of information on the proposed grading, that the applicant re-submitted plans several times that included changes to the plans, that letters of incompleteness were sent to the requester, that there was not adequate information to determine if grading was required, and that the applicant had gone back and forth a couple of months with Staff. He stated that the applicant continued to not provide information to the City, that he was trying to avoid the DRP requirement, and that City Staff had met with him regarding issues such as grading and drainage requirements. He continued to review correspondence sent to the applicant regarding these issues, reviewed project timeline, stated that the 3rd party reviewer determined that the grading required would trigger a DRP, which information was conveyed to the applicant, that the view applicants withdrew their applications, and that the applicant wanted to avoid processing the project as a DRP. He stated that the applicant had submitted revised plans to the City on September 29th with the neighbors modifications, and that the application was still incomplete, that the grading had not been resolved. He reviewed correspondence between Staff, City Manager, and City Attorney and the applicant regarding the missing information and grading issues with the project, that a DRP application was required and that instead the applicant submitted modified plans. He reviewed grounds for a DRP, stated that the applicant had not been treated differently, and that Councilmember Heebner had gone through the full DRP process and Mr. Murk had refused to go through the process.

Mo Sammak, City Engineer/Public Works Director, continued the presentation. He reviewed grading plans submitted by Mr. Murk. He stated that there were no grading quantities on the plans, which were included on site plans, that several additional submittals were made, that on all drawings the grading quantities were 45.86, and that there were a lot of changes to the project throughout the timeline. He stated that the applicant had provided no documentation for grading quantities, that the drawings were inadequate, and that the City had met with the applicant several times and clearly described the items needed, that the City followed up with a letter stating the deficiencies of his project, and that the applicant then proposed zero grading with no supporting documentation. He reviewed the correspondence with the applicant, that the applicant submitted a grading report from Pasquel Engineering that stated that 800 feet of detention basin was required, that grading quantities were revised to 38.1 cubic feet, that Mr. Murk refused to include numbers for the foundation of the structure, that an independent analysis had been done by a 3rd party reviewer, Aquaterra, who found 4 major issues with the project, that the drainage as proposed would result in storm water into the garage, that the drainage would by pass to the driveway to the side of the building with no provision for solutions which would result in excavation of 71 cubic yards and an embankment of 16 cubic yards, and that the detention basin as proposed would only provide 145 cubic feet and that 800 cubic feet was required by the applicant's report. He showed plans submitted by the applicant to show that a lack of information had been submitted, he continued to review grading issues regarding the plans, and concluded that grading calculations were inadequate and that the detention basin numbers were also inadequate after reviewing all information submitted by the applicant.

Mr. Sjobolm continued the presentation. He stated that due to Mr. Sammak's presentation it was clear that grading had been an issue since the beginning of the project submittal, and that a DRP was required since according to the City's review at least 50 cubic yards of grading was needed. He stated that a second reason for a DRP was that the re-submittal in December fell under new laws of the ordinance which went into effective in November, that the project contained a duplex that exceeded the 500 ft., and reviewed a flow chart out lining the history of the project application. Mr. Murk (rebuttal) stated that he had bent over backwards to do ridiculous things. Kristin Huges stated that the Orsy case stated that when the City did not respond within the 30 day time period the City was cut off, that once they responded after the 30 days the applicant cooperated with the City, it went to court and the permit was ordered to be granted because the City had taken longer than the 30 days to respond, and that the court stated that since the plaintiffs were cooperative with City that it should not preclude them from benefits of the act.

David DeLuccia (time donated by Ira Oppen) submitted a petition against the

approval of the project signed by neighbors. He stated that he was concerned with the size of the building on the lot, that he had reviewed a lot of things with the applicant and came to an agreement but was not happy about doing it, he read out loud the petition submitted to the Council which expressed concerns about the size of the building. He stated that it would impair his view, light, and privacy, that he had been informed that he would have to pay \$600 to submit for a view assessment, and that if he did not file for view assessment the project would be approved at the end of the 30 day review period. He said they filed for view assessment, he had asked the applicant why he was building a large building, the applicant stated that the larger the building the bigger the profit, and that the applicant had agreed to make some changes to allow some privacy for the neighbors. He stated that he was concerned about traffic that the project would create, that there was not another property on N. Rios that was similar in size to the proposed property, and that it was not comparable to other homes in the area. He stated that the homes were smaller in size than the proposed project, that the subject property had 2 apartments, which were 6,607 sq. ft. of living area, 140 sq. ft. of garage area, and that Mr. Murk was an engineer and should have known when he submitted his application for a building with 6 garages that tandem parking was not allowed for a 2 family house.

Gary Martin (time donated by Gerri Retman) stated that he was a resident who was interested in land use issues in the City, and that he had read all the material that was available for the issue. He stated that that appellants confused revisions and substantive changes to plans with corrections, that it was clear that there had been re-submittals of the projects, that the Permit Streamlining Act stated that when a re-submittal was submitted it was subject to municipal codes that were effective at that time, and that the December re-submittal would have been subject to the all codes. He stated that there had been a failure to provide information to determine if a DRP was needed, Mr. Murk as a professional who knew what he was doing and the information should have been provided to the City to determine if the DRP was needed, and that an independent 3rd party had stated that more than 50 cubic yards of grading was needed. He said that a DRP was needed, the clock restarted when there were modifications or re-submittal to the plans, there was a lot of effort to create camouflage for the issue of whether a DRP was needed, and that if the applicant re-submitted again that a DRP would be required under Ordinance 433. He stated that he looked through the appeal application, that on several occasions the applicant referred to plans as revisions or modification of application, and that the applicant admitted that it was a re-submittal. He said that there were other projects in the City that were impacted by Ordinance 433, the ordinance was not created to sabotage this project, that their appeal should be denied, and they should be required to get a DRP.

Council and Appellant discussed an email to the City Manager where the appellant had stated that the only impediment remaining was documentation of the grading quality, the appellant stated that it was his opinion that what he had

submitted for the grading prior to the email was sufficient, that he was not going to do a DRP, and that he was asked by Mr. Ott to submit grading document.

David Ott, City Manager, stated that he had no conversation with Mr. Murk prior to the email, and that Mr. Murk had sent an email to the City Manager and that the City Manager had responded to the appellant.

MOTION: Moved by Roberts and seconded by Heebner to close the public hearing. **Motion carried unanimously.**

Council discussed the issue that the appellant had not been asked to provide information that was not asked of others, that Staff reviewed information on the plans once they were submitted, that based on the review and project type additional information may be required to clarify or validate information, that once plans were reviewed Staff had determined that a drainage study was needed, that the extent of work was different on each project, and that based on Staff's review they determined if additional information was needed. Council continued to discuss that the project would be subject to Ordinance 433 requirements since modifications to the plans were submitted after the effective date of the ordinance, that a DRP was the only way to resolve the issue, that DRPs happened all the time, and that it was a very straight forward process. Council continued to discuss that the appellant chose to not submit information that was requested, that a house could not be moved without moving dirt, that the City took the Permit Streamlining Act very seriously, that information that was requested was not complete, the appellant chose to revise their plans instead of providing information to the City, that the City had to review for issues such as drainage because water from a property could not run on to the neighbor's property and erode others property, it looked like the appellant wanted to litigate, that a lot of people had gone through the SDP and DRP process, that these processes were intended to protect everyone, the applicants were very respectable members of the community, that it was clear that there could not be 0 grading on a project of this size, there had to be documentation to support the grading figures, that since this project had been so contentious the City hired an outside 3rd party opinion, that Council had to follow the rules that were in place, and there were no special exemptions.

Council continued discussion that unfortunately the Appellant and the City were in disagreement regarding laws and that it was unfortunate that this issue could end up in court.

Councilmember Heebner stated that she concurred with the other Councilmembers, that a DRP was needed, and that it was clear that the project fell under Ordinance 433. She addressed some allegations regarding favorable treatment and said that the statement was flat out wrong, that there were four differences between the two projects, 1) scope of project, her project was an addition to an existing home, that no additions were put on new concrete, and there was no change to the drainage, 2) that a DRP was required, she went through the process, and provided what Staff required, 3) that no omissions were on plans, and that she did not need a drainage

study because of the scope of the plan, 4) that it took a while for her application to be complete and it was not expedited, and that there she gave extra care to her submittals since she was a Councilmember. She stated that no favors were done in the City, she had complied of what Staff had required, and that she went through the process and was given approval like any other applicant.

MOTION: Moved by Roberts and seconded by Campbell. **Motion carried unanimously.**

Mayor Kellejian recessed the meeting at 8:02 p.m. for a break and reconvened at 8:10 p.m.

B.2. Conditional Use Permit (CUP) for a Modification to a Wireless Communications Facility at 1505 Lomas Santa Fe, Applicants: AT&T, Case # 17-11-28. (File 0610-60)

Recommendation: That the City Council

1. Conduct the Public Hearing: Open the public hearing, Report Council disclosures, Receive public testimony, Close the public hearing.
2. Find the project exempt from the California Environmental Quality Act pursuant to Section 15301 of the State CEQA Guidelines; and
3. That the City Council adopt Resolution 2012-109 conditionally approving a CUP to modify an existing Wireless Communications Facility on an existing mono-broadleaf simulated tree at 1505 Lomas Santa Fe, Solana Beach as mandated by the Section 6409 (a) of the Middle Class Tax Relief and Job Creation Act of 2012.
4. Direct Staff to evaluate the City's current regulations, policies and procedures pertaining to Wireless Communication Facilities and to present recommendations on how to address the recent changes in the law.

David Ott, City Manager introduced the item. Corey Johnson, Assistant Planner, presented a powerpoint (on file) reviewing the proposed project. She stated that the project was subject to the provisions of the Middle Class Tax Relief and Job Creation Act of 2012 and therefore subject to mandatory approval. Council and Staff discussed that there would be a 4 foot increase in diameter to the existing tree, that equipment cabinets would be added to the existing enclosure, that the addition of branches to the top of the tree made it look boxy, whether the applicant would consider adding branches to the bottom of the tree for

aesthetics, that the City's 3rd party reviewer requested that a condition be added to the project to address that issue, whether the new additions to the tree would be the same color as the original portions of the tree, and whether the branches could be distributed differently to look more natural.

Jonathan Kramer, 3rd party reviewer, stated that the antennas had to be at the top due to transmittal issues and the equipment that went behind the antennas, that the law had only been in effect since February 22nd, and that there was no case law to provide for guidance. He stated that the law talked about substantial changes in the physical dimensions of the project and that was how the project was reviewed, that the review did not include the symmetry of the tree, and that Council could discuss with the applicant whether they would work with the City regarding the symmetry of the tree. Frank Orosco, ATT, applicant representative, stated that the tree was fairly new, that there would be no change in color from the original tree, that they were willing to work with Staff on achieving symmetry, that there was no addition to the height of the tree, and that they stayed with the height that was originally approved.

Mayor Kellejian opened the public hearing. Council reported their disclosures.

Frank Orosco continued and stated that they concurred with all conditions of approval stated in the Staff report, that it was part of an upgrade to AT&Ts LTE 4G Network which would provide more service to the community.

Council and Applicant discussed working with Staff to make the look more symmetrical by make the bottom wider and narrower at the top so it looked more like a tree, and whether the words "as approved by the City" could be added to condition #5 regarding the aesthetics of the tree.

Johnathan Kramer, 3rd party review, asked to have the applicant formally accept the additional words that were being proposed to be added to condition #5.

Frank Orosco, Applicant, stated that they concurred with the additional words.

MOTION: Moved by Campbell and seconded by Heebner to close the public hearing. **Motion carried unanimously.**

Johanna Canlas, City Attorney, stated that based upon the discussion that another condition would be added to the resolution stating that the canopy be consistent in color with the existing branch colors and that the additional words of "as approved by the City" would be added to condition #5 and should be stated as being a part of the motion.

MOTION: Moved by Roberts and seconded by Nichols with modifications.
Motion carried unanimously.

Johanna Canlas, City Attorney, stated that a recommendation in the Staff report was to direct Staff to review and revise the City's policies on processing of wireless communication facilities due to the new law. Council discussed that it was a new Federal law, that it only gave the City the ability to affect visual impacts of projects, that Council would like more information on the law, and that there was Council consensus to review each project as they come before Council. Johanna Canlas, City Attorney, stated that she would work with the 3rd party reviewer to update the Council to provide Council with recommendations of the detrimental impacts if any, of the new law to the Council's ability to regulate it on the local issues.

B.3. Conditional Use Permit (CUP) for 111 S. Cedros Avenue, Applicant: Solana Beach Brewing Co., Case No. 17-12-12. (File 0610-60)

Recommendation: That the City Council

1. Conduct the Public Hearing: Open the public hearing, Report Council disclosures, Receive public testimony, Close the public hearing.
2. Find the project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 of the State CEQA Guidelines; and
3. If the City Council makes the requisite findings and approves the project, adopt Resolution 2012-108 conditionally approving a CUP for a small-scale brewery operation located at 111 S. Cedros.

David Ott, City Manager, introduced the item.

Catherine Lorbeer, Principal Planner, presented a powerpoint (on file) reviewing the project.

Council and Staff discussed that the applicant had requested that the City remove the condition regarding not allowing outdoor activities on the site due to the fact that they wanted to give public tours of the brewing process, that they wanted several doors to be left open to allow the public to see the brewing process, that this had to be cleared with the ABC (Alcohol Beverage Control), the applicant had made revisions to the application to reconfigure the parking so that an outdoor area would be available for public viewing, and that the City Manager

had notified the applicant that there would not be time to review their changes prior to this meeting. Discussion continued regarding that indoor seating was allowed with 2 tables and 8 chairs, that no food preparation was allowed on the site, that the applicant had not applied for an entertainment permit, and that rather than removing the condition regarding outdoor activities, it could be modified to state that no outdoor activities would be permitted with the exception of giving tours.

Mayor Kellejian opened the public hearing. Council reported their disclosures.

John Niedernhofer, Applicant, stated that he was representing other owners, Steve Regans and Dennis Williams. He stated that they had been working on the project for over a year, that he appreciated Staff's help, and that they had been a lot of community support for the business. He stated that they ran other successful businesses, that they were long time home brewers, there was a lot of public interest in the brewing process, and that they were passionate about bringing their home brew to the public. He stated that their location was separated by two buildings, a beer production area and a tasting area, that people wanted to see where and how beer was made, that the ABC a needed specific compliance plan to allow activity outside the premise, that ABC stated that if control was exerted over the outdoor area that it would be allowed, that that applicant had received this information just prior to the meeting, and that they were asking for the City to approve the business with the idea of allowing them to work with Staff and ABC on how to demonstrate control of the outdoor area to allow for public viewing. He stated that regarding Council's suggestion to modify the condition regarding limiting the outdoor activity to only tours would be difficult, that they wanted some opportunities to allow people to mingle outside, that they wanted to work with the City and maintain a positive reputation, and that they wanted to be a part of Cedros business community.

Council, Staff, and the applicant discussed the recent discussion that the applicant had with ABC, that the project could be approved stating that the applicant had to work with Staff on several issues, that the condition regarding the outdoor use could be left out of the approval to be evaluated by Staff, and that if the condition could be not resolved on a Staff level then it would be brought back to Council for further discussion and approval. Discussion continued regarding that there had been good community support for the project, that the applicant wanted to put tables outside by the back door, that prepared food would be offered at the site, they were interested in giving people access to simple food such as arranging for runners between restaurants, gourmet food trucks were a growing trend in these types of businesses, several issues needed to be worked out with the project, including how neighboring suites would have access to their businesses, parking concerns with other businesses, and that perhaps there could be a shared parking agreement. He said that there was a difference between tours and mingling, that with mingling it

could turn into a bar like atmosphere and that noise could be a concern, that gourmet food trucks could also bring other concerns, that the applicant should keep an open dialogue with Staff on these issues, and the applicant requested more flexibility of time to recycle waste products due to the fact that their plan of disposing waste within 24 hours may not be feasible.

Nancy King stated that she was speaking on behalf of the property owners Jim and Jane King, that since her dad retired he had turned down more tenants than he had rented to, that he had many long term tenants including Zinc, Mabels, and the Pearl Shop, and they had all been there more than 20 years. She stated that her dad took being a land owner very seriously, that the brewery was going to be a perfect fit for the Cedros area, it would be a long term benefit to the City, she had seen many changes to the businesses on Cedros, and that she felt it was a great project.

Carl Turnbull stated that the South Cedros Property Owners supported this venture, that it would add a lot to Cedros, and that it would be a positive venture on South Cedros.

Mark Hellickson stated that he supported the applicants, that he knew them personally and that they were upstanding citizens, and they were raising their children in the City. He stated that they were seasoned veterans in business and law, that the business lent its self to the variety that was necessary in the community, it was a perfect compliment to Cedros, and that there was not a lot offered on Cedros for after business hours activities. He stated that the weather in the City was a prized commodity and that he supported the opportunity for the outdoor experience.

Gary Martin stated that he supported small breweries, and questioned whether people could sit on the premise and drink after tasting and whether this would impact the use and parking. He asked that if customers stayed and drank would the business become a bar and need other parking requirements, and whether mingling outside would change parking requirements. He stated that if food was brought in from nearby restaurants it may be an incentive for people to stay and asked if this would increase parking requirements, and that he supported the project.

David Ott, City Manager, stated that ABC regulations determined what type of business it was, the City looked to them for regulations and the definition of tasting, that there were different licenses for tastings and bars, that the City looked at its regulations and the intent of the business, that bringing food on-site may be a quasi-restaurant idea, and that the City would have to review it for requirements.

Gerri Retman stated that it was a good idea, that she read the emails, that

people had told her that they rather stay in the City than go to Encinitas Ale House, which was a restaurant, that this would not be restaurant, and that she didn't want people to have this misunderstanding. She stated that the idea would be that people would taste beer and take it home, and that Staff was diligent about rules for projects.

MOTION: Moved by Campbell and seconded by Nichols to close the public hearing. **Motion carried unanimously.**

Council and Staff discussed that there were some concerns stated that needed to be worked out which included how the public would ingress-egress between the two buildings, parking, and ensuring that it would be a non-restaurant and operated as so, that Staff would review if those issues could be resolved at a Staff level and if not they would return to Council for discussion and direction.

Johanna Canlas, City Attorney, stated that another condition would be added stating that upon Staff review and determination for demonstration of the controlled area, as required by ABC, the CUP approved by Council may require modification and would be subject to Council approval.

Councilmember Campbell amended the motion to add another item to the list for the Staff to work on with the applicant which included adding "flexibility" of time for recycling of the organic waste.

MOTION: Moved by Campbell and seconded by Kellejian to approve with modifications. **Motion carried unanimously.**

C. STAFF REPORTS: (C.1. - C.2.)
Submit speaker slips to the City Clerk

C.2. Street Light Repairs, Bid No. 2012-03. (File 0400-10)

Recommendation: That the City Council

1. Adopt Resolution 2012-105:
 - a. Awarding the contract to CTE Inc., in the amount of \$66,140, for the 2012 Street Light Repairs Project, Bid No. 2012-03.
 - b. Approving the amount of \$9,860 for construction contingency.
 - c. Authorizing the City Manager to execute the construction contract on behalf of the City.
 - d. Authorizing the appropriation of \$177,700 to the Street Light Master Plan Capital Improvement Project Budget Unit.

- e. Authorizing the City Treasurer to amend the Fiscal Year 2012-2013 Adopted Budget accordingly.

David Ott, City Manager, introduced the item. Mo Sammak, City Engineer/Public Work Director, presented a powerpoint (on file) reviewing the project. He stated that the bids received ranged from \$66,000 to \$94,000, and that CTE was the lowest bidder. He stated that a total of 12 new lights would be added to the perimeter of the La Colonia Park field, that 2 wall mounted lights were proposed at the Center, and that 2 street lights would be replaced to provide additional illumination.

Victor Tostado stated that he urged the Council to approve the resolution.

Dianne Hardison stated that she supported the proposed lighting particularly the lighting at the Park. She stated that the increased lighting would discourage crime, enhance safety, and promote the proper utilization of the park, that the Boys & Girls club had an after school program at the park, that served 80 or 90 children, and that the additional lighting would be appreciated by the parents, staff, and volunteers. Manny Aquilar stated that he supported the proposal because they were getting a better handle on crime in the area by working with the City and Sheriff, that additional lighting was needed to make it safer place for children and family.

Lisa Montes stated that her family was one of the founding families of La Colonia/Eden Gardens area, that her Grandfather purchased property in 1931, and that she now owned the property. She stated that she was involved in the community, that she was involved in a non-profit to better the community, that the area needed adequate lighting, and that increased lighting would keep down crime and provide a safer place for children and family.

Tracy Weiss stated that she supported the lighting at La Colonia Park.

MOTION: Moved by Campbell and seconded by Heebner. **Motion carried unanimously.**

C.1. Introduce (1st Reading) Ordinance 437 related to plastic bags. (File 0230-55)

Recommendation: That the City Council

1. Adopt Ordinance 437 clarifying the City's prohibition of plastic carry-out bags as it relates to restaurants and adding subsection 5.04.040(d) to the Solana Beach Municipal Code.

Johanna Canlas, City Attorney stated on May 9th the City had introduced the item, and that since that time the City had made allowances for restaurants and the language chosen was not acceptable to certain opponents and that it was modified to provide for modified language.

MOTION: Moved by Heebner and seconded by Campbell. **Motion carried unanimously.**

Deputy Mayor Roberts said that the City needed to make it clear to businesses who it applied to who it did not affect.

Johanna Canlas, City Attorney, stated that in the outreach effort the the definition of what was reduced was clarified.

Chris Duggan, California Restaurant Association, asked that they approve this ordinance.

C.3. City Manager Employment Agreement First Amendment. (File 0400-10) - added 7-6-12

Recommendation: That the City Council

1. Adopt Resolution 2012-125 approving and authorizing the Mayor to execute the First Amendment to the City Manager employment agreement.

Johanna Canlas, City Attorney, introduced the item, and stated that the City Manager had volunteered when he returned to the City to come in under the new tier system, but that Calpers did not agree that he could do this and told the City that was mandated to work under the prior formula, and as a result Mr. Ott had volunteered to take a reduction in pay to make up the difference.

Council discussed and stated that it was counter productive to the purpose of pension reform, that this was a contractual obligation and suggested that it include a letter be sent to the Governor and Senators to point out this issue where a City was trying solve pension issues and maintain discipline and Calpers was preventing it.

MOTION: Moved by Campbell and seconded by Roberts to approve and prepare correspondence to the Governor, Assemblyman, and Senators clarifying why this type of issue is creating problems for cities to reform pensions. **Motion carried unanimously.**

COUNCIL COMMITTEE REPORTS:

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

- a. City Selection Committee (meets twice a year) - Roberts, Kellejian (alternate).
- 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, Nichols (1st alternate), Heebner (2nd alternate)
- i. Regional Solid Waste Association (RSWA) - Nichols, Kellejian (alternate).
- j. SANDAG - Heebner (Primary), Nichols (1st alternate), Roberts (2nd alternate) and any subcommittees.
- k. SANDAG Shoreline Preservation Committee - Kellejian, Roberts (alternate).
- l. San Dieguito River Valley JPA - Heebner, Nichols (alternate).
- m. San Elijo JPA - Campbell, Roberts (both primary members) (no alternates).
- n. 22nd Agricultural District Association Community Relations Committee - Heebner, 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. Parks and Recreation Committee - Heebner, Nichols
- e. Public Arts Committee - Roberts, Nichols.
- f. School Relations Committee - Roberts, Nichols.

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

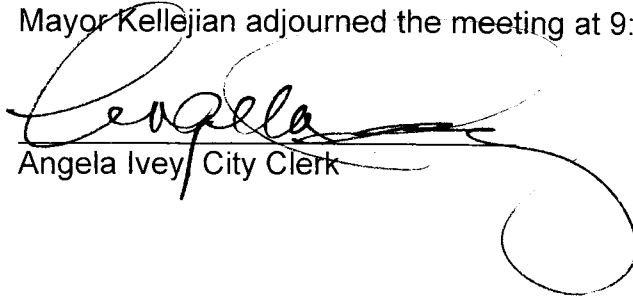
- a. Army Corps of Engineers & Regional Beach Nourishment - Kellejian, Campbell. Expires December 6, 2012.
- b. Development Review - Nichols, Heebner. Expires November 15, 2012.
- c. Environmental Sustainability - Roberts, Heebner. Expires December 6,

2012.

- d. Fire Department Management Governance-Kellejian,Roberts. Expires July 12, 2012.
- e. Fiscal Sustainability - Campbell, Roberts. Expires June 28, 2012.
- f. General Plan - Campbell, Nichols. Expires July 12, 2012.
- g. La Colonia Park - Nichols, Heebner. Expires May 10, 2012.
- h. Local Coastal Plan Ad-Hoc Committee - Roberts, Campbell. Expires February 7, 2013 or at the California Coastal Commission adoption.
- i. NCTD / Train Station Site Project Ad Hoc Committee - Heebner, Nichols. Expires January 10, 2013
- j. View Assessment - Nichols, Heebner. Expires October 21, 2012

ADJOURN:

Mayor Kellejian adjourned the meeting at 9:44 p.m.



Angela Ivey / City Clerk

Approved: August 22, 2012