



California

# CITY OF OCEANSIDE

## JOINT MINUTES OF THE: CITY COUNCIL SMALL CRAFT HARBOR DISTRICT BOARD OF DIRECTORS COMMUNITY DEVELOPMENT COMMISSION

OCTOBER 20, 2010

**REGULAR MEETING                      3:00 PM                      COUNCIL CHAMBERS**

**3:00 PM - OCEANSIDE CITY COUNCIL (COUNCIL),  
HARBOR DISTRICT BOARD OF DIRECTORS (HDB), AND  
COMMUNITY DEVELOPMENT COMMISSION (CDC)  
- REGULAR BUSINESS**

**Mayor**  
**HDB President**  
**CDC Chair**  
Jim Wood

**Deputy Mayor**  
**HDB Vice President**  
**CDC Vice Chair**  
Vacant

**Councilmembers**  
**HDB Directors**  
**CDC Commissioners**  
Esther Sanchez  
Jack Feller  
Jerome M. Kern  
Charles Lowery

**City Clerk**  
**HDB Secretary**  
**CDC Secretary**  
Barbara Riegel Wayne

**Treasurer**  
Gary Felien

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**City Manager**  
**HDB Chief Executive Officer**  
**CDC Executive Director**  
Peter Weiss

**City Attorney**  
**HDB General Counsel**  
**CDC General Counsel**  
John Mullen

For this regular and joint meeting, the Council sat as all 3 governing bodies [Council, HDB, and CDC] simultaneously but took action as the respective agency for the jurisdiction covered by each item. Council titles only will be used for brevity throughout the entire meeting.

The regular and joint meeting of the Oceanside City Council (Council), Small Craft Harbor District Board of Directors (HDB) and Community Development Commission (CDC) was called to order by Mayor Wood at 3:02 PM, October 20, 2010.

**3:00 PM - ROLL CALL**

Present were Mayor Wood and Councilmembers Kern, Sanchez and Feller. Councilmember Lowery arrived at 3:03 PM. Also present were City Clerk Wayne, City Manager Weiss and City Attorney Mullen.

City Attorney Mullen titled the following items to be heard in closed session: 2, 3A and 3B. Item 1 was not heard.

**NOT OFFICIAL  
UNTIL APPROVED AT SUBSEQUENT  
MEETING BY CITY COUNCIL**

[Closed Session and recess were held from 3:02 to 4:00 PM]

**CITY COUNCIL, HDB, AND CDC CLOSED SESSION ITEMS**

Closed Session to discuss litigation, property acquisition, labor relations and personnel matters

**1. [CONFERENCE WITH LABOR NEGOTIATOR ON STATUS OF NEGOTIATIONS PREVIOUSLY AUTHORIZED IN OPEN SESSION (SECTION 54957.6)]**

CONFERENCE WITH LABOR NEGOTIATOR – Negotiator: City Manager; employee organizations: Oceanside Police Officers’ Association (OPOA), Oceanside Firefighters’ Association (OFA), Oceanside Police Management Association (OPMA), Management Employees of the City of Oceanside (MECO), Oceanside City Employees’ Association (OCEA), Oceanside Fire Management Association (OFMA), Western Council of Engineers (WCE), and Unrepresented]

**No closed session held**

**2. CONFERENCE WITH REAL ESTATE NEGOTIATOR (SECTION 54956.8)**

Property: Property bounded by Pacific Street, Myers Street, Seagaze Drive, and Civic Center Drive (APN 147-261-01 through 12; 147-076-1, 2, 3, 10, 11, 12); Negotiating Parties: SD Malkin Properties; Negotiator for the City: Jane McVey, Economic and Community Development Director, Delmar Williams and Paul Marra; Under Negotiations: Terms of Disposition Agreement and Lease

**Discussed; no reportable action**

**3. LITIGATION OR OTHER ADVERSARY PROCEEDING (E.G., ADMINISTRATIVE HEARING, ARBITRATION) (SECTION 54956.9)**

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION (SECTION 54956.9(a))

A. City v. Dow Chemical Company et al, San Francisco Superior Court Case No. CGC-05-439807

**Discussed; no reportable action**

B. Hirst v. Garcia, City, Superior Court Case No. 2010-00101050-CU-PO-CTL

**Discussed; no reportable action**

**4:00 PM – ROLL CALL**

Mayor Wood reconvened the meeting at 4:02 PM. Present were Mayor Wood and Councilmembers Feller, Kern, Lowery and Sanchez. Also present were City Clerk Wayne, City Manager Weiss, City Attorney Mullen and City Treasurer Felien.

**CLOSED SESSION REPORT**

**4. Closed Session report by City Attorney**

**CITY ATTORNEY MULLEN** reported on the items discussed in Closed Session: [See Items 2, 3A and 3B above. There was no discussion on Item 1].

**CONSENT CALENDAR ITEMS** [Items 5-16]

The items listed on the Consent Calendar may be enacted by a single vote. There will be no separate discussion of any Consent Calendar items unless requested by members of the Council/HDB/CDC or the public through submittal of a Request to Speak form prior to the commencement of this agenda item.

**CITY CLERK WAYNE** announced that Items 8 and 14 have been removed from Consent Calendar for discussion by the public.

**COUNCILMEMBER LOWERY** requested Item 7 be pulled for discussion.

The following Consent Calendar items were submitted for approval:

5. City Council/Harbor/CDC: Acceptance of Joint Minutes of the Small Craft Harbor District Board of Directors, Community Development Commission and City Council of the August 18, 2010, 3:00 p.m. Regular Meeting
6. City Council/Harbor/CDC: Approval to waive reading of the text of all ordinances and resolutions considered at this meeting and provide that ordinances shall be introduced after a reading only of the title(s)
7. **Removed from Consent Calendar for discussion – Councilmember**
8. **Removed from Consent Calendar for discussion – public request**
9. City Council: Approval of Amendment 1 [**Document No. 10-D0798-1**] in the amount of \$48,120 to the professional services agreement with Maddaus Water Management of Alamo, California, for preparation of the Oceanside Water Conservation Master Plan, for additional technical engineering services requested by the City; and authorization for the City Manager to execute the amendment
10. City Council: Approval of Amendment 3 [**Document No. 10-D0799-1**] in the amount of \$21,816 to the lease agreement with R.J. Land Co., LP., as landlord, for use and operation of the Mesa Margarita Resource Center at 521-B Vandegrift Boulevard, for a rent adjustment during FY 2010-11; approval of a budget transfer in the amount of \$23,976 from Personnel in Parks and Recreation (offset by an early retirement) to Resource Centers (rent), for rent and common area maintenance charges; and authorization for the City Manager to execute the amendment
11. City Council: Approval of a professional services agreement [**Document No. 10-D0800-1**] with Buccola Engineering of Oceanside in the amount of \$10,500 for the preparation of construction plans and specifications for reconstructing the intersections of Missouri Avenue and Nevada Street, and Missouri Avenue and Freeman Street; and authorization for the City Manager to execute the agreement
12. City Council: Approval of a professional services agreement [**Document No. 10-D0801-1**] with Infrastructure Engineering Corporation of Oceanside in an amount not to exceed \$87,952 for the preparation of the 511 Pump Station Siting Study for the Mission Basin Desalting Facility Expansion project; and authorization for the City Manager to execute the agreement
13. City Council: Approval of a new traffic signal on Cannon Road at Shadowridge Drive and approval of a budget transfer in the amount of \$195,000 from the existing traffic signal account for Canyon Drive at Carey Road
14. **Removed from Consent Calendar for discussion – public request**
15. City Council: Adoption of **Resolution No. 10-R0803-1**, "...accepting Federal Safe Routes to School Program funds in the amount of \$63,320 for the SRTS-Lincoln/Palmquist schools project" awarded to the City of Oceanside for traffic-calming improvements on California Street for Lincoln Middle School and Palmquist Elementary School, and approval to appropriate these funds to the Development Services Department
16. City Council: Adoption of new City Council Policy 200-12, Internal Controls Policy,

establishing proper financial internal control procedures to safeguard the City of Oceanside's financial assets

**COUNCILMEMBER SANCHEZ** moved approval [of Consent Calendar Items 5, 6, 9 and 10-13, 15 and 16].

**COUNCILMEMBER KERN** seconded the motion.

**Motion was approved 5-0.**

**Items removed from Consent Calendar for discussion**

7. **City Council: Approval of Change Order 1 [Document No. 10-D0795-1] in the amount of \$163,764.53 to KIP Inc., of Murrieta for construction of the remaining walls for the El Camino Real Detention Basin project, for additional work required by the unforeseen quantity of rubble and unacceptable soils, and authorization for the City Engineer to execute the change order; and approval of Amendment 2 [Document No. 10-D0796-1] in the amount of \$8,500 to the professional services with GeoPacifica, Inc., of Oceanside for geotechnical services for the project, for further services related to the additional work, and authorization for the City Manager to execute the amendment**

**COUNCILMEMBER LOWERY** stated it's frustrating that the City takes a multi-million dollar bid on a project and then the company that's doing the bid comes back with an increase in the costs later on. These change orders are overruns. It's not unusual for businesses to pad their bid. Even though they ran into unforeseen issues in this case, they can still tell us as a City what their total amount of money is going to be. They can build it up and then Council can accept the same bid from all of the different bidders and we should be able to save money on these projects. He hopes to work with the City Manager to have it become something that we're more strict about instead of it being routine. They were not the lowest bidder if they are going to add this much money to it later. Although he will approve this item, he is concerned that Council routinely approves \$163,000 items and doesn't question the value.

**MAYOR WOOD** stated it's not uncommon to get these changes.

**CITY MANAGER WEISS** stated in this particular case the unforeseen conditions are that as excavation was occurring the design had to be changed to dig deeper and further apart because of the materials that were encountered. Staff can work with Council to get some additional information to see how we can address this in the future.

**Public input**

**JIMMY KNOTT**, 127 Sherri Lane, stated this project runs into the Loma Alta Creek area and he appreciates the work the City is doing for that community. Council may want to consider looking at this to see if it's really an unforeseen encumbrance. If it isn't, Council may want to consider putting this company on a list that prohibits future contracts or awards them last.

**Public input concluded**

**COUNCILMEMBER SANCHEZ** discussed this with the City Manager because it was unusual and he explained what happened. She **moved** approval of this item.

**COUNCILMEMBER KERN** seconded the motion.

**COUNCILMEMBER FELLER** thinks this is the worst thing we can do. We have an opportunity to say yes or no to anything right here; we should not be involved in such matters when we have professional engineers and staff doing this; our place is

here to say yes or no to this, not to be consulted with as to whether this soil is the best or the worst. Information to Council is fine, but we shouldn't be consulted about digging the soil out of that detention basin.

**Motion was approved 5-0.**

8. **City Council: Approval of Amendment 1 [Document No. 10-D0797-1] in the amount of \$6,800 to the professional services agreement with Stack Traffic Consulting, Inc., for the plans and specifications for improvements to the City's traffic signal communications system, increasing the number of locations for closed-circuit television cameras and length of fiber-optic cable; and authorization for the City Manager to execute the amendment**

**JIMMY KNOTT**, 127 Sherri Lane, wanted to disclose that the Telecommunications Committee was not consulted on this item.

**CITY MANAGER WEISS** stated that is correct, but it did go through the Transportation Commission because it is more of a traffic management project than a telecommunication project.

**COUNCILMEMBER SANCHEZ** moved approval of the item.

**COUNCILMEMBER KERN** seconded the motion.

**Motion was approved 5-0.**

14. **City Council: Adoption of a resolution authorizing application to the State of California Land and Water Conservation Fund for competitive grant funds in the amount of \$400,000 for the Alex Road Skatepark project**

**REX MARTIN**, 306 Benevente Drive, stated it appears from the staff report that the City will have to match \$380,000 in funds out of the Parks & Recreation budget or Public Works Department for a total project cost of \$800,000. He asked if that is the case and what the actual contribution the City is committing to for a skateboard park.

**CITY MANAGER WEISS** responded the money is going to be allocated from the Capital Improvement Program (CIP) funds, which is actually developer fees that are set aside to build new parks.

**MAYOR WOOD** is the liaison to the Parks & Recreation Commission and this was a unanimous vote of that Commission. They were concerned about several things; including some problems at Martin Luther King Park. They thought this would take some pressure off the other 2 parks.

**COUNCILMEMBER SANCHEZ** moved approval [adoption of **Resolution No. 10-R0802-1**, "...approving the application for grant funds for the Land and Water Conservation Fund for the Alex Road Skatepark project in the amount of \$400,000"].

**COUNCILMEMBER KERN** seconded the motion. He has some real concerns. Council gets a lot of complaints about skateboard parks. We're building it for the youth but then you have 20-30-year-olds using the parks that are forcing the kids out. If we don't come up with a management plan for the skateboard parks down the line, then we are just building problems. If we go forward with this park, he would like to see direction to staff in perhaps 30-45 days for some type of management plan regarding hours of operation, use of helmets, smoking, drug use, etc. If you drive by the skateboard parks in the middle of the school day there are school-aged kids skating there instead of attending school so we need to control that. Otherwise we are just creating attractive nuisances.

**MAYOR WOOD** appreciates the concerns on this; the Parks & Recreation Commission had some of the same concerns. We seem to have all of the complaints at one park in particular. The Police Department has issued about 80 tickets for violations including helmets, etc. This isn't necessarily something he wants to see the police doing.

**EILEEN TURK**, Neighborhood Services Division Manager, stated we did receive a letter in August addressing some of the complaints that Councilmember Kern just mentioned. We are looking at different solutions and have been talking to different recreation departments around the County on how they are handling similar problems. We are hoping when they build the Alex Skateboard Park that it will reduce crowding from Martin Luther King. We've had no problems at Melba Bishop. We've been working closely with the neighborhood police team over the last 7-8 months to increase the helmet compliance. The Water Department held an event there in September where about 100 kids came and picked up trash around the park and painted a tile that was affixed to trash cans to give the youth ownership of the park. She visited the skateboard park 3 times in September and observed how many were wearing helmets and the demeanor of the kids. This is a work in progress. Staff may not have an answer in 30-45 days but we are continually looking at ways to make it a positive experience for everybody at the park.

**COUNCILMEMBER FELLER** has been at those parks and we could probably fund our whole budget just on fines for not wearing helmets; they disregard it totally. It would be much better if they all just behaved responsibly. He is close to not voting for this because of the irresponsible actions of the more adult children that occupy these parks. He's been to both parks and they are both famous for violating the rules. Our neighborhood police team is very active and he hopes that as time goes on the children and adults will act responsibly. He looks forward to staff's new ideas.

**COUNCILMEMBER SANCHEZ** stated we have been having this dialogue since before we opened our first skateboard park regarding compliance and how to get the kids to understand that we want to provide recreational activities but we need some level of compliance. It seems to be a few bad apples who are spoiling it for the rest of the kids. The kids do appreciate these venues and it's important to have them. This new park with help relieve the high demand at the other parks.

**MAYOR WOOD** agrees that a few people do spoil it for the rest. He has said from the beginning that if there is going to be problems at the parks, then we will close them. Staff is looking into senior volunteers, etc. to supervise and help out instead of tying up police officers.

**Motion was approved 5-0.**

Mayor Wood determined to hear Item 18 at this time.

#### **GENERAL ITEMS**

18. **City Council: Approval of a Memorandum of Understanding (MOU) with SANDAG in an amount not to exceed \$600,000 for the Regional Beach Sand Replenishment Project II; approve of a budget appropriation in the amount of \$600,000 from the General Fund Contract Fee Revenue Account (allocated from the Waste Management \$1 million contract award fee) to finance the remainder of the project; and authorization for the Mayor to execute the MOU**

**FRANK QUAN**, Harbor & Beaches Coordinator, stated in 2001 SANDAG's Regional Beach Sand Project I placed 2,100,000 cubic yards of sand on the region's beaches. Oceanside received 420,000 cubic yards in that project. In 2008, SANDAG received a grant from the California Department of Boating and Waterways for 85% funding for a second project. This grant is an opportunity to place sand on our beaches at a greatly reduced cost to the City. The sand level on our beaches is very low. The

sand is important for the protection of oceanfront structures and for tourism. Transient Occupancy Tax (TOT) represents over \$3,000,000 to the City's General Fund. The availability of sand on the beaches is an asset that assists our hotels, particularly the coastal hotels, in achieving that TOT.

In January of 2009 the Council approved an MOU between SANDAG and the cities of Oceanside, Carlsbad, Encinitas, Imperial Beach and Solana Beach to fund the preliminary design of the project. Oceanside paid our share of \$48,000 in July of 2009. Our share for the next 2 phases of the project was originally a little over \$700,000 over 2 years. We've negotiated with SANDAG to lower our cost and the sand amount to \$600,000 for 300,000 cubic yards and SANDAG will allow us to pay that amount in three \$200,000 payments over 3 years. We were originally scheduled to receive 420,000 cubic yards of sand placed between Wisconsin and Cassidy streets. This lower quantity of sand is still expected to make a significant impact on the beach for more than 5 years. The project is scheduled to have the sand put on the beach in the spring of 2012.

**JOE KELLEJIAN**, Councilmember from Solana Beach, is a member of the SANDAG Shoreline Preservation Working Group and is here with Chris Webb, Manager of the consulting team for SANDAG, as a resource to the Council to provide information and answer any questions. He has been involved with the shoreline protection and beach replenishment for more than 18 years. He asked Council for their support for this regional beach sand project plan for construction in 2012.

Almost 10 years ago the region worked together to implement the Regional Sand Replenishment Project, which was a success. Sand was placed on regional beaches from Oceanside to Imperial Beach. In 2001, the project was a pilot project funded by the U.S. Navy and the California Department of Boating and Waterways. Realizing ongoing nourishment is needed to insure healthy beaches, the region has partnered with the California Department of Boating and Waterways to implement a second project. The main difference between the project in 2001 and the upcoming project in 2012 is the need for financial support from each of the coastal cities.

He knows these are very challenging financial times, but this is an extraordinary effort that will only happen once in a decade to take advantage of funding of 85% of the project from the State. We've already received the first 2 increments of \$6,500,000 and will be receiving the rest of it soon. Oceanside has already provided funds for the first phase of the project and he hopes Oceanside will consider continuing the support for this important project.

#### Public input

**JIMMY KNOTT**, 127 Sherri Lane, stated per all the reports there are 3 main reasons why we don't have a lot of sand on our beaches. One is a curtailment by the waterways of the dams and other different features that man has put in. The San Diego County Water Authority (SDCWA) is mainly responsible for that and should be paying a huge amount of these costs. There are also people from all over Southern California who use our beaches and we have to figure out how to charge them for the use of the beach. Another problem is when people shore up the walls on the beaches for their homes, there is a natural slough off of the wall so no sand is coming down. Should they pay for that. The jetties and harbors block and alter the lateral flow. There is also climate change, which has caused a volatility of the weather and wave action. He disagrees with using the funding mechanism that will support this. We should look at other funding – mainly SDCWA, etc.

**NADINE SCOTT**, 550 Hoover Street, supports this item 100%. There has been some talk in the press of doing jetty's, etc., and she would oppose that based on environmental grounds; it doesn't improve the overall quality of our beaches, water and surfing. She hopes Councilmembers continue to support our beach sand replenishment as our beaches are critical. Earlier this year we had some washout at the end of The

Strand because there was no sand left to hold the rip-rap back. The Strand is a valuable assets; it's there for public safety and tourism.

**LARRY BARRY**, 3973 Brown Street, stated California is broke and he was wondering if there could be a 1-year moratorium on this. The 85% funding from the State is great but until we cash the check we shouldn't trust anybody. \$600,000 isn't a lot of money when you consider the budget. He believes the Army Corps of Engineers has a long-term contract with the Defense Department to dredge the marine side of the base, which is where we get a lot of our sand. He asked if this funding would be coming out of the 'big gift' that Waste Management is giving the City. 90% of the people in Oceanside don't use the beach regularly and would like to see the Waste Management money go toward the infrastructure of the City.

**CORA FROLANDER**, 1931 South Pacific Street, asked where Project II ends. She lives past Cassidy and sometimes feels that they are the forgotten residents of Oceanside. The Army Corps of Engineers said 35 years ago that they were responsible for the erosion on our beaches and that they would take care of it. They haven't taken care of it. Building the basin at Camp Pendleton took the sand, as well as the Harbor, etc. We interfered with nature.

Public input concluded

**MR. QUAN** stated the project is between Wisconsin and Morse streets. He believes there is eel grass south of Cassidy Street which cannot be covered up by sand.

**COUNCILMEMBER SANCHEZ** has served on the SANDAG Shoreline Preservation Working Group who are trying to find a regional solution. This is not a permanent solution but it is part of a larger project to address erosion of our beaches, which is critical to our residents and our businesses. She has been contacted over the years by people who are concerned about how terrible our beaches look, especially after the bad storms. We also need to continue as a City and a region to search for that more permanent solution. The City Attorney has included some language so we are not precluded from trying to go after the Federal Government to reimburse these costs if we are able to finally get them to take responsibility for their actions.

She **moved** approval of the item [including the Memorandum of Understanding (MOU) **[Document No. 10-D0805-1]** with SANDAG in an amount not to exceed \$600,000 for the Regional Beach Sand Replenishment Project II.

This is critical to our City, not just for tourism but for public safety and protection of our infrastructure. The Strand got covered by the ocean last year and we need to insure protection of our infrastructure. The bluffs also replenish the sand on our beaches, but we have built on those bluffs and that does not contribute to sand replenishment. We have to come up with ways to keep sand on our beach. She would love to see an old battleship sunk off of Oceanside as an artificial reef.

The sand we are getting is a little coarser and will stick longer. The information we've received from the first phase is that sand has stayed on the beach, even after the bad storms.

**MAYOR WOOD seconded** the motion. He isn't sure how the citizens feel about this as a priority in this economy but it is for him. He had a conversation with Deputy City Manager Hadley and City Attorney Mullen regarding this because we have a situation with the Federal Government regarding the Harbor. They have put on Congressional records that they are the cause of the beach erosion in Oceanside. They take sand out of the Harbor yearly and put it on our beaches but it gets washed away. He's gone to Washington DC for 7 years and can't get this funded by the Federal Government. They are still looking at it. We need to have a study to come up with a solution on how to keep the sand on the beach. They don't address the entire beach but just to a certain point. Not the beach all the way to St. Malo. It's hard to sue the

Federal Government unless they agree to be sued. He wanted to make sure this project wouldn't impact the dredging in our Harbor or any dealings we have on record with the U.S. Government.

**CITY ATTORNEY MULLEN** stated there is nothing about this agreement that could impact other remedies that the City may have against other parties. That language is not in the draft in front of Council right now but the draft has not been finalized and he can add that point. He doesn't think any of the parties at SANDAG would have a problem with adding that.

**MAYOR WOOD** is surprised that the State has agreed to pay 85% of this because they have taken \$14,000,000 from our budget with the economy. For the money over a 3-year period it's probably a good deal.

**COUNCILMEMBER KERN** asked if the guarantee by the State is a done deal.

**MR. KELLEJIAN** responded this money comes from a boater tax; it is not General Fund money so they can only use it for specific things and this is one of them. There have already been 2 increments that have been paid of \$6,500,000 each. The money is dedicated and can't go to anything else so we're assured that we're going to get the funding.

**COUNCILMEMBER KERN** had staff point out the streets where the project will occur. He stated it doesn't address Mrs. Frolander's property because she lives south of Cassidy. What's the projection of the sand moving down to that area.

**CHRIS WEBB**, Moffatt & Nichol Engineers, stated there has been modeling done with the computer to predict the movement of sand along the beach. The sand in South Oceanside spreads in both directions, but primarily spreads to the south. There is an accentuated dispersion to the south toward St. Malo. There is also sand placed in North Carlsbad that spreads in both directions on the south side of the Buena Vista Lagoon and it comes toward Oceanside. There is a widening of the beach from between Oceanside Boulevard down through St. Malo that's fairly significant and looks to be a long-term effect on the order of 5 years.

**COUNCILMEMBER KERN** stated because the funding source is from Waste Management, which is paid by the rate payers, he believes it should stay within that fund for rate stabilization. He also believes it is subject to Proposition 218.

**CITY ATTORNEY MULLEN** responded it is his opinion that this is a lawful use for these funds. The question is whether the signing bonus that Waste Management is providing under this contract, which Council will be considering later, is constrained by Proposition 218. There has never been a reported case holding that, under the circumstances of the deal that we've structured, trash rates by a private company that are set by a private company are subject to Proposition 218.

There are certain attributes to this deal that make it different from, for instance, water rates. With regard to the provision of water, the City provides that service and sets the rates. With the Waste Management deal, a private company is providing the service and setting the rates. There is a maximum rate that is established in the contract, but the actual rate will be established by Waste Management. One of the key differences is that the private company can charge profit, which the City cannot charge when it is providing a property-related service. For those key reasons it is likely a court would find that this is not constrained by Proposition 218. Even if it were to be, the amount of money that's being used is not generated from rates; it is a signing bonus that's been paid to the City for the right for exclusive negotiations. If you did not capture that revenue through this contract, it would otherwise stay with Waste Management as their profit. For all of those reasons he believes it is a permissible use.

**COUNCILMEMBER KERN's** real problem with this is that we don't have a plan

to retain the sand. We're spending \$600,000 and we may be back here 5 years from now with beaches the same way they are now. We can't predict what the weather is going to be like and what's going to happen. Councilmember Sanchez is a member of the Committee but she hasn't been going and she hasn't told her alternate that she hasn't been going, so he is only getting information from memos and the numbers keep changing. He did his own investigation and found out today that there is a retention pilot study done by Army Corps down in Solana Beach. He asked about that.

**MR. WEBB** responded there is a study being done by the Army Corps to determine whether or not it's appropriate and effective to put a sand retention device in the vicinity of Fletcher Cove in Solana Beach. The initial feasibility conceptual level study indicated it is appropriate, which tells the Army Corps to keep moving forward if they have the money and the Army Corps is trying to secure funds to do additional engineering design studies to confirm whether or not that's effective.

What SANDAG has done as part of this project regarding sand retention is at the outset of the project sand retention was included as a possible component. So we hired some experts to come and assist with looking at that and Oceanside was one of the sites where we wanted to put a sand retention device, if possible. As we proceeded down the road of considering them, what became clear is that the level of study required to prove to everybody's satisfaction that a sand retention measure will work and not cause an alternative effect that you don't want was cost prohibitive and very time consuming. SANDAG decided, in order to keep this sand project on track, to separate the sand retention component out as a separate project and move it forward at a parallel track as fast as it could go, and then proceed with the sand project without sand retention. But we directed the consulting team to find sand that would stay in place as long as possible without retention.

We were tasked to go out to the ocean and take samples at appropriate relic beaches and we found 2 good ones; one off of Del Mar and one off of Cardiff. The sand from these old beaches is coarser than the sand that Oceanside has on its beach today. We've done a grain size analysis on every beach in the County and we know that the sand in the offshore relic beaches is at least twice as large in grain size as the sand that's on the beach here. That means it's harder to move and will stay in place longer than the existing beach sand, and particularly longer than the sand dredged out of the Harbor mouth and placed on Oceanside beaches. There is a natural retaining effect by using better quality sand. SANDAG has been applying for money to do a sand retention study and the State denied the request. However the State suggested how to secure funds with another request, a subsequent re-proposal. SANDAG has partnered with Scripps and some other entities to re-propose doing sand retention throughout the region in appropriate places, including possibly Oceanside.

**COUNCILMEMBER KERN** stated this is the first time he's heard of the \$600,000. The memos from Mr. Quan in June and September had no mention of \$600,000. How did we come up with that figure?

**MR. QUAN** responded originally for our next 2 years the amount was a little over \$700,000; \$84,000 this year and \$615,000 next year. We negotiated with SANDAG and they lowered that considerably, but that was a tentative agreement with just their representative, Shelby Tucker – Project Manager. She took that off the table and at our final meeting with her, they came up with the \$600,000.

**COUNCILMEMBER KERN** has a hard time spending \$600,000 based on a 3-page staff report. We needed more information over a long period of time from our representative. It feels like we're rushing this through now. Since all we are doing tonight is allocating the money and not writing the check, he will support this. He would like to see more of the back-up material on how we got to the \$600,000 and more of a report on the retention program. He requested the information be sent directly to Council since we aren't getting feedback from our representative.

**COUNCILMEMBER FELLER** stated it's a misnomer that the sand has been washing off our bluffs long before there was a boat basin. There wasn't much sand washing off the bluffs into the ocean and it's not even washing off into the parking lots now. There are littoral cells out off of Oceanside that are huge pockets of sand and he believes that there has to be a system that could replace sand regularly for Oceanside since most everything works its way south and ends up in La Jolla.

This is like burning money, although it's a great deal as far as how much the sand costs. Government doesn't have money until they take it out of our pockets so that's where the other money is coming from. He's going to approve this because it's important for the future of our tourism, but we have to start doing something about retention. This has to have a resolution. What is the total price of this?

**MR. WEBB** responded \$25,000,000.

**COUNCILMEMBER FELLER** stated if we're going to throw \$25,000,000 at a project every 5 years, let's throw it at some sort of retention.

**MR. KELLEJIAN** stated earlier speakers mentioned that this isn't our fault. We've dammed up our rivers and our lagoons don't have tidal flush action that it should have. We've also put Interstate 5 across lagoons and railroad berms, etc. Man has created this and we don't get the proper amount of sand that goes out into the beach. The problem is that even if you have a retention device, SANDAG's modeling says that you still have to replenish the sand every 10 years. If you don't have that retention device, it's every 5 years just to keep up with where we're going. This is an opportunity that we have here now in that the State is putting up 85% of the money. The parallel path that Mr. Webb talked about of going forward with sand retention at the same time as going forward with the sand project is very important to all of us.

**COUNCILMEMBER LOWERY** thinks we're missing the point that we need the sand on the beach. There is no sand on the Wisconsin Street beach. The total cost of the project is \$23,000,000; it might be a little more but it's never going to be less. We are going to have the State paying \$19,500,000; of that we are going to pay \$600,000. That is an excellent value for the money and he is excited that Councilmember Feller suggested when we initially approved the Waste Management contract that we might be able to use some of that money to put sand on the beach and here we are using some of that money. This is a win-win for everybody in Oceanside because this is a beach town and without a beach we would not be that.

He wants people to realize that when the Army Corps of Engineers and the Federal Government built the boat basin at the Harbor for the military base, that's when the sand stopped coming back. Years ago there was research done by our City, in conjunction with the Army Corps of Engineers and the Army Corps of Engineers admitted that they were responsible for that. Now we need to start dogging them for that money. He suggested that in the first quarter of 2011 we start going after that on a routine basis. We have to meet with our Congressional representative, Darryl Issa, and ask him to help us get the money for this sand restoration.

**COUNCILMEMBER SANCHEZ** stated there have been pass-through memos from staff, who have been attending the meetings. That report has been going to Councilmembers so she was shocked to hear Councilmember Kern describe the lack of information. We were stalled; we didn't have a source of funding. As soon as the money got into place for the hauler contract, she scheduled a meeting with Shelby Tucker of SANDAG and our staff to see if this was a high priority for the City. We have a finite extra amount of money and a huge wish list. The City Manager told her this is a high priority for the City. This meeting took place about 2½ weeks ago when we realized we were going to have the extra money from the Waste Management contract. Previously we did not have the funds and there was nothing to report on the sand retention. In the 10 years she wasn't on SANDAG she never got a report from other people or staff. It isn't appropriate to point fingers here. We need to focus on this

important project. We seem to have a united Council on this beach sand replenishment project and we are going to hopefully continue to aggressively find a more permanent solution.

**MAYOR WOOD** stated when this first came up at SANDAG it was a countywide issue. It wasn't just the beach cities because the inland cities benefit from the beaches and tourism as well. At that meeting when they wanted to get funds from Oceanside to do a study, we gave \$40,000 but he openly put on the record that Oceanside has a unique situation in that the Army Corps and Federal Government indicated they are to blame for our sand loss and we didn't want to interfere with or hinder that agreement. Oceanside is a beach community and if you look at the beaches right now they are bad.

**Motion was approved 5-0.**

[Recess was called from 5:11 to 5:32 PM]

**5:30 PM – ROLL CALL**

The meeting was reconvened at 5:32 PM with all Councilmembers present. Also present were City Clerk Wayne, City Manager Weiss, City Attorney Mullen and City Treasurer Felien.

**INVOCATION** – Pastor Carl Souza

**PLEDGE OF ALLEGIANCE** – team members

**PROCLAMATIONS AND PRESENTATIONS**

Presentation – MarLado Highlands Park Tree Planting Day, October 23  
 Presentation – Mayor's Youth Sports Recognition and Appreciation Award – Soccer Club of Oceanside – Breakers - Girls under 9  
 Off-Agenda – update on the Trauma Intervention Program (TIP) celebrating 25 years  
 Presentation – Employee Service Awards

<b><u>20 year award</u></b>	<b><u>Department</u></b>	<b><u>Hire Date</u></b>
Ken Gow	Police	4/22/90
Yancy Blackwell	Police	4/22/90
Mark D. Rowe	Fire	7/15/90
Luz L. Rodriguez	Library	7/23/90
Douglas K. Baxter	Police	7/29/90
Frank A. Grana	Neighborhood Services	7/30/90
Steve Sotro	Police	8/05/90
Angie Hanifin	Neighborhood Services	8/06/90
Kathy Zamora	Human Resources	8/20/90
Scott Prestie	Fire	9/02/90
Yolanda Stewart	Human Resources	9/25/90

<b><u>25 year award</u></b>	<b><u>Department</u></b>	<b><u>Hire Date</u></b>
Kelan P. Poorman	Police	8/11/85
John M. Laser	Police	8/11/85

<b><u>30 year award</u></b>	<b><u>Department</u></b>	<b><u>Hire Date</u></b>
James B. Bartolini	Water Utilities	8/20/80

<b><u>35 year award</u></b>	<b><u>Department</u></b>	<b><u>Hire Date</u></b>
Peggy A. McCauley	Police	9/14/75

<b><u>40 year award</u></b>	<b><u>Department</u></b>	<b><u>Hire Date</u></b>
Rosalio Lopez	Public Works	7/01/70

**Presentations were made**

**GENERAL ITEMS** – Continued

19. **City Council: Approval of a 13-year Solid Waste Franchise Agreement between the City and Waste Management of California, Inc., with a contract term beginning January 1, 2011, and terminating December 31, 2023; and authorization for the City Manager to execute the agreement**

**CITY MANAGER WEISS** stated several weeks ago Council approved the base terms and conditions associated with the new franchise agreement with Waste Management. This item is the actual contract, which is over 120 pages and goes into a lot of detail with regard to how all of the services are going to be provided and the various remedies that each party has. He had the consultant review the highlights.

**ENRIQUE VAZQUEZ**, Sloan Vazquez LLC, stated we were directed to finalize the agreement with Waste Management about 1 month ago and we've been busy working through the details of that contract, which is before Council. We think it is an excellent contract that is a win-win for everybody. The contract significantly enhances residential services, brings you up to date with the best practices in the industry and introduces a 3-cart automated system that's going to be phased in over several years. That will include new vehicles that are alternative fuel, moving away from diesel and going to compressed natural gas (CNG).

The basic service for residents will be the three 96-gallon carts. There will be an alternative for low volume producers that can use a 35-gallon cart. The 96-gallon cart might seem daunting but is very easy to maneuver and has wheels. Additional containers are available for a fee. For recycling you can have up to 3 containers at no charge, and for green waste you can have up to 2 containers at no additional charge. There will be 3 free bulky item pick-ups a year, with a maximum of 5 items per pick-up for both multi-family and single-family residents. On top of that there will be 2 annual clean-ups per year, spring and fall, with unlimited bulky item pick-up for single-family and multi-family. There will be an on-call e-waste so people can get rid of their e-waste. There will be an on-call cell phone and household battery program as well, and a medical sharps program that will allow people to take their sharps to one of 7 locations throughout the City. In addition, there will be a household hazardous waste program.

There are quite a few features that are part of this new program. It will enhance the commercial and multi-family recycling. Waste Management will be making a \$17,000,000 investment and the rates are going to be kept the same. They will not be entitled to a rate increase until July 1, 2012, and the rate adjustment formula has been significantly defined and constrained to strictly a Consumer Product Index (CPI) percent, either national or San Diego, whichever one is higher. There are other features that are technical in nature. Waste Management worked well with us to make sure we brought you the best proposal.

Public input

**JIMMY KNOTT**, 127 Sherri Lane, has a number of questions still to be answered regarding how this reduced rate structure will work in the mobile home community since we have dumpsters, not regular bins. We should look into converting our solid waste into bio-diesel and other forms of energy. We're paying to give our solid waste to Riverside, who will eventually turn it into gold. A lot of people don't realize the value of recyclables.

**NADINE SCOTT**, 550 Hoover Street, stated everything in this contract is a plus for the residents and businesses of Oceanside. A lot of her neighbors have worried that this would be more expensive for them but she has assured them that because most of them are small producers of trash their bills will be going down. She is thrilled that we negotiated a franchise fee as most other cities get and that's money we can use for either rate stabilization or divided up between rate stabilization and the General Fund.

The City has deserved this for a long time. Some Councilmembers have disputed this and called it a tax but the City Manager and City Attorney have both said it is not a tax; it is a value-added option for the City. It's a franchise fee, which is legally allowable. The City Treasurer has insisted in many forums that this is a tax but that's preposterous.

**LARRY BARRY**, 3973 Brown Street, stated all of the money that's acquired is based on the taxpayers paying into this. None of the money is coming from Waste Management. He commended Waste Management for working to get this deal done. We're in changing times and the word profit is a bad word, but if you don't make a profit you don't stay in business. The citizens are paying this in their rates and then they are giving the money to the City to dispose of it how they wish. He asked if hazardous materials like paint will still be done the same. Also, when the prices of CNG go up, who's going to pay that increase in the fuel charge?

**CHARISSA McAFEE**, Waste Management, thanked Council and staff for working with them on this new contract to service Oceanside with enhanced services. She commented on Waste Management's commitment to supporting the City's zero waste goals, increasing diversion and promoting recycling in Oceanside homes and businesses. One of the first steps is the construction of the new CNG fueling station. After construction is completed, we will begin the process of rolling out automated service, starting with residential recycling, and will work closely with City staff to make sure residents are informed of each step along the way. We value our relationship with Oceanside and are committed to continuing to listen to the City and to meet the needs and expectations.

**JERRY SALYER**, 3667 Harvard Drive, expressed his personal political views and thanked the Council for approving this contract initially. He was glad City staff was able to work with Waste Management to come up with a good contract. This is not a tax.

Public input concluded

**MAYOR WOOD** stated this had been a long process and we're getting a lot of new things coming to the citizens. Waste Management is spending \$17,000,000 on new equipment, which benefits all of us. We're also getting \$23,000,000+ out of the contract over the years, including the \$1,000,000 signing bonus. He thought we could get a better contract for the citizens and we did. He acknowledged Ken Ryan, the Director of Waste Management in Oceanside, for his hard work.

**COUNCILMEMBER SANCHEZ** stated Waste Management is the largest company in the world, she believes, and with the help of a consultant they have given us a cutting edge contract. It's a great deal for the rate payers. We have rates frozen for 2 years and we already have a rate stabilization fund. We're moving to CNG and toward zero waste. She thanked the Integrated Waste Commission for helping her learn this and be an active player. She went to a couple of conferences and asked about the franchise fee that we had never gotten before. When there is an exclusive contract, every city that she talked to up and down the State had a franchise agreement. Oceanside is now in line with other cities throughout the County in looking forward to what the future is in terms of zero waste.

She understands that they are changing where the trash is taken. It is going to their Corona facility, which is also owned by Waste Management, so there are some savings to be had by Waste Management. We are going to be working with Waste Management and staff regarding implementation for mobile home parks and commercial. We are going to be learning together on how to do this the best and most efficient way to get towards that zero waste because one thing about this contract is that we will be revenue sharing on the recyclables. Above and beyond what is being collected now, all of the extra will go to the City.

She **moved** approval [of the 13-year Solid Waste Franchise Agreement (**Document No. 10-D0806-1**)] between the City and Waste Management of California,

Inc., with a contract term beginning January 1, 2011, and terminating December 31, 2023; and authorization for the City Manager to execute the agreement].

**COUNCILMEMBER FELLER** seconded the motion.

**COUNCILMEMBER LOWERY** stated we all voted 5-0 to approve this a few weeks ago and then there is all this discussion about it being a tax when it's clearly not a tax. For about 30 years Waste Management chose to give us nothing back to help maintain our streets, etc., then we just asked for it and they gave it to us. They are all over the world and this is just a small little dot on their map. We are in a partnership with them and they decided to step up to the table and give Oceanside some money and we're going to put that money to work. Earlier we all voted 5-0 to use that money to replenish the sand on the beach. That's great progress for the City.

Just yesterday an addendum was added to the contract that assures Waste Management will do an annual clean-up of the Loma Alta Creek area, and they will also do routine maintenance to make sure that area is not contaminated with trash. This is a bonus that they weren't doing before but we asked and they agreed.

We will continue to have our bulky item pick-up. The bills will not go any higher until July of 2012. Additionally, we're getting a lot of other benefits, including new 96-gallon waste containers; up to 5 of them. If you need less, you can get the 35-gallon containers. You can save money by using less and recycling more. This is a very progressive and green step forward for the City. We will all benefit from this.

**COUNCILMEMBER KERN** thinks the contract is a good deal but he would like to make a motion that we take the \$1,700,000 and keep it in the trash fund for future rate stabilization for the benefit of the rate payers because they need to receive some benefit from this new agreement also. This money is coming from the rate payers. Whether you call it a fee or a tax; this is \$1,700,000 that the rate payers are paying that's added on. We could have done this contract and lowered it by \$1,700,000 and given that money back to the rate payers now.

The rate doesn't stay stable for 2 years because July 1, 2012, is less than 2 years away. By the time this goes into effect, that's only an 18-month rate stabilization. That money should stay in that fund and stay with the trash contract for future rate stabilization.

**CITY ATTORNEY MULLEN** stated we would have to have the maker of the motion and the second agree to that as an amendment to the motion.

**COUNCILMEMBER SANCHEZ** responded no.

**CITY ATTORNEY MULLEN** stated after everyone has had their chance to speak Council could vote on the main motion and if Councilmember Kern wanted to bring a motion at that time that would be timely.

**COUNCILMEMBER KERN** isn't sure that the \$1,700,000 signing bonus isn't going to be subject to Proposition 218 in the future so we need to keep it within that fund.

**CITY ATTORNEY MULLEN** stated there are 2 issues that arise under Proposition 218. One is a procedural issue in terms of how do you go about raising rates. Obviously that's not in front of you and that issue is moot because you won't be raising rates any sooner than 18 months, but even then you may not be raising rates for CPI purposes because the City has a rate stabilization fund.

As noted earlier, this is significantly different than a typical Proposition 218 property-related fee because we're dealing with a private company providing a service and setting the rate. The contract provides a maximum but is also clear that the rate is

ultimately determined by the contractor. The contractor can include profit, which is expected. There has been no reported case where a fee of this nature would be subject to Proposition 218. Of course a court could determine that and then we would have to limit how the funds are used. The General Fund has certainly born the expenses of having Waste Management trucks on its streets, the National Pollutant Discharge Elimination System (NPDES) program and other related costs, so an analysis would have to be done whether it's appropriate to reimburse the General Fund for all of those costs.

At this point it's somewhat premature because Council is not expending those funds for general governmental purposes, at least through the action tonight. It may be a consideration in the future and if it were the will of the Council, we could keep that money in the Enterprise Fund.

**COUNCILMEMBER KERN** thinks in an abundance of caution we should keep it in the Enterprise Fund until at least July 1, 2012, and maybe by that time we'll have a clearer idea of what the courts are going to do. He doesn't want to go back and repay this if the courts go the other way.

**COUNCILMEMBER FELLER** stated in our contract City facilities get collection service at no charge currently. In the new contract it says we're going to save \$813,000. What do we currently pay?

**CITY MANAGER WEISS** responded even under the current contract we do not pay. Those services are valued under this contract at \$800,000. In the current contract that we're operating under, through the benchmarking process, he believes that value was about \$1,800,000, but it also included the cost of bulky item pick-up.

**COUNCILMEMBER FELLER** stated there is still the bulky items pickup. There is no discount for the 64-gallon container but the 35-gallon does have that available. He asked about multi-family properties, such as mobile home parks and apartments, etc., for green waste and recycling are going to be worked out.

**MR. VAZQUEZ** responded that with the multi-family, if it's a complex that can't be serviced at curbside, they would make arrangements with the property manager/facility to accommodate the right number of containers and the location at which they are going to be picked up.

**COUNCILMEMBER FELLER** stated under 4.04.3 it says holiday tree recycling. Is that so anybody can put any tree out during those 3 weeks or is it just for Christmas trees.

**MR. VAZQUEZ** responded it would be Christmas trees. It's become customary language to use holiday trees instead of Christmas trees.

**COUNCILMEMBER FELLER** stated under household hazardous waste and universal waste there are 2 options and it says either/or. Picking up hazardous waste curbside is going to be an unbelievable challenge so how is that going to work out.

**MR. VAZQUEZ** responded the curbside program will be a call-in program, so customers will call in and make arrangements and will be given instructions on how to containerize it and when and where to put it, etc. It is not a weekly service.

**COUNCILMEMBER FELLER** asked if all of the different kinds of household hazardous waste can be picked up on one truck.

**MR. VAZQUEZ** responded yes.

**CITY MANAGER WEISS** stated right now that's shown in the contract as an option. We had elected at a staff level to continue with the existing household hazardous waste program where people take their material in. Maybe in the future it's

something we would want to consider but we have serious concerns about people putting antifreeze out in the right-of-way and someone on a skateboard knocks it over and now it is a bigger issue. So, we are not at this time electing to do curbside pick-up of hazardous waste; it's going to continue to be the existing program as we have now.

**COUNCILMEMBER FELLER** asked if the CNG fueling facility will take about a year to build.

**CITY MANAGER WEISS** responded it does require a Conditional Use Permit (CUP) so, should Council this evening approve that contract, we would work with Waste Management to start the siting and application processes. That would require a separate public hearing process.

**COUNCILMEMBER FELLER** thinks it would behoove us to be proactive on putting that through because that's what the rest of it hinges on. The contract says that the actual implementation of the system can keep being pushed back until the CNG is up and running.

**MR VAZQUEZ** responded correct.

**COUNCILMEMBER FELLER** questioned people moving out and leaving piles of stuff on the curb. What is the process for such a pick up?

**CITY MANAGER WEISS** responded we would treat that as we do now – as a special pick-up. We have the ability to direct Waste Management to take certain actions and we would use that as an opportunity or we would look at billing the actual property owner if it was a rental.

**COUNCILMEMBER FELLER** asked Waste Management what their complaint history is for the last 5 years.

**CHARISSA McAFEE** handles customer experience for Waste Management so on a daily and weekly basis she reviews any types of complaints or issues that come through. We have 2 systems, internal and external, for communicating with our customers. We have a very good record in Oceanside; we hold ourselves to a standard of 1 missed pick-up per 1,250 customers and the team here regularly meets or exceeds that requirement. She also gets daily, weekly and monthly updates from JD Power & Associates, who are our external providers of customer service surveys, and we have very high scores.

**COUNCILMEMBER FELLER** stated under 8.03 there is \$80,000 for beverage container recycling. What is that for?

**MR. VAZQUEZ** responded that is the CRV (California Redemption Value) reimbursement that Waste Management receives from that material. That is a benchmark of what they've received and anything over and above that amount will be contributed to the City.

**COUNCILMEMBER FELLER** stated that's their number right now and they are hoping to do much better.

**MR. VAZQUEZ** stated with the introduction of the automated service and the 96-gallon container for recycling, experience shows that the recovery of recycling materials significantly increases. There will be an increase for sure.

**COUNCILMEMBER FELLER** stated the contract says the schedule of future adjustments the contractor may request, so the only way they'll get an increase is if they request it.

**MR. VAZQUEZ** responded that is correct. If they fail to submit a request by a

specific date, they will forego the increase.

**COUNCILMEMBER FELLER** asked if it is possible to have a decrease in rates.

**MR. VAZQUEZ** responded yes.

**COUNCILMEMBER FELLER** asked what happens after 13 years; are there extensions, or a negotiating period, etc.

**MR. VAZQUEZ** responded this contract doesn't specifically address that but you would clearly want to look at it a few years before the expiration and decide if you want to renegotiate.

**COUNCILMEMBER FELLER** asked if the extra trash container costs \$2.23 and if that is the amount for every container thereafter, i.e. if they chose to have 3.

**MR. VAZQUEZ** responded yes.

**COUNCILMEMBER FELLER** asked if people can have 3 green waste containers free.

**MR. VAZQUEZ** responded they can have 2 green waste containers and 3 recycling containers free.

**COUNCILMEMBER FELLER** stated all along he has been supportive of Waste Management and has always been aware that there are franchise fees. Every city that Waste Management serves that asks for a franchise fee they are glad to do that, but they can't do those things without long-term contracts. This is a fee that we are charging the residents. It came to us as a fee and was written in a chart that we received that said 9%. It's important that we be clear that the rate payers are paying these fees. We are going to benefit from it in whatever we spend the money on and it's important to spend that money on the citizens. He supports the idea but he's more interested in capital improvements for the citizens than putting this in the General Fund.

**CITY MANAGER WEISS** stated the action Council is taking this evening does not include allocating any of the money. That is something that we will bring back to Council in the future. We don't have any of the money yet. We do have a priority list that we have put together and will bring that back as we move forward throughout the next year or so going into budget situations. The use of some of this money for capital improvements that are affected by the trash trucks or trash in general would be better served. We will bring options forward in the budget process.

**COUNCILMEMBER FELLER** stated we cannot designate the money tonight. He wants to approve the contract because it is important. This is a very large contract.

**MAYOR WOOD** stated Councilmembers Kern and Feller and Treasurer Felien are trying to make lemonade out of lemons and this is why we have this contract dispute. The local press doesn't give the citizens the accurate information on a lot of things.

He was very offended that other Councilmembers called this a tax. A while back Councilmember Feller brought up an item to give Waste Management up to a 7-year contract renewal with zero to the City. At that time we were up for negotiations with Waste Management and he'd checked with surrounding cities and they were making millions off of their franchise contract. He questioned why Councilmember Feller would want a multiple year continuation with zero to us and that was backed by Councilmember Kern and former Councilmember Chavez. He and Councilmember Sanchez, with some recent help from Councilmember Lowery, came up with a \$20,000,000+ contract that benefits the City. It has everything that everybody has asked for and now that we're getting it, they call it a tax.

When we first brought this up to continue the contract and the Mayor made the complaint about the Attorney General's office, Waste Management came back and said they would give us a multi-year contract and \$1,000,000 a year for 5 years. Councilmembers Kern and Feller and Treasurer Felien indicated that they would accept it and it was a good deal. I guess it wasn't a tax when they wanted it. Now that he and Councilmember Sanchez got a better deal, it's a tax. They want us to put it in a fund to pay down the fees that the citizens pay; but they're already at one of the lowest levels in the County. That money that's coming back to the City should be used in the best way it can and should be up to staff and management to make that decision. Council gets to vote on it anyway. Tonight they are saying they want to set the money aside for rate stabilization which is foolish.

He commented on the political views of other Councilmembers and the fact that this is an election year for some – Councilmember Kern and Treasurer Felien for Council.

**COUNCILMEMBER SANCHEZ** stated that this is the 4<sup>th</sup> proposal and the first one was zero; at that time there was no discussion about how to spend the money. In fact, we were talking about putting it in the General Fund. Every city that she has talked to, and there are dozens at the conferences, does not restrict themselves on this money. Oceanside has been subsidizing the impact of the trash trucks all of these years with the General Fund and there's no reason to restrict the funds. Also, we have another franchise agreement with Cox Cable and we do not try to pay the customers of Cox Cable money that the City gets for the franchise fee for the exclusive right to allow Cox Cable to be in Oceanside. This would be unprecedented to put it all into one fund or to restrict ourselves. That is not appropriate.

**COUNCILMEMBER KERN** reminded everyone that the \$23,000,000 comes out of the rate payers' pocket. This is a good deal and a good contract. He is here to protect the rate payers and tax payers as much as possible. He doesn't like the attitude of since we're government, we need the money. The rate payers need the money just as badly as we do. He is only asking that the money be held in a fund that benefits the rate payers. Hopefully in the future we will talk about that.

**COUNCILMEMBER FELLER** commented that there is a lot more to this whole story than was just heard. There is the other side to the story.

**Motion was approved 5-0.**

[Recess was called from 7:12 to 7:20 PM]

Mayor Wood determined to hear Item 17 at this time.

17. **City Council: Approval of a two-year professional services agreement with the San Diego Humane Society in the amount of \$1,577,340 and use of City-owned real property for animal sheltering and animal control services; and authorization for the City Manager to execute the agreement**

**DOUG EDDOW**, Real Property Manager, stated staff would like Council to approve a 2-year professional services agreement with the San Diego Humane Society. The contract price is \$805,783 per year, slightly higher by \$17,114 than we paid last year. That difference will be made up by allowing the Humane Society to use a portion of a City vacant parcel for parking purposes that is adjacent to the Humane Society. The second year is subject to a CPI increase. The services are basically the same as last year and they do satisfy the State mandates regarding animal sheltering and animal control.

**MARK GOLDSTEIN**, Executive Director of the San Diego Humane Society, 550 Gaines Street, San Diego, has said from the time that we merged with the North County Humane Society that we will be continually in pursuit of doing as much as we can for the animals and community of Oceanside.

He showed a video made by the San Diego Humane Society. The Humane Society hopes to have a unanimous vote in support of this tonight. He promised they would do more than their fair share to fulfill the contract.

Public input

**KRIS NELSON**, 2593 Fire Mountain Drive, stated we now have a deadline; San Diego Humane will pick up our strays for a little less than 2 years and then we are on our own again. This is the time for animal lovers and Oceanside citizens to come together for our animals. San Diego Humane took our only animal shelter when they took over North County Humane Society and we can't get the building back. But we have a moral and legal responsibility to the State and the citizens to offer stray animal pick-up and housing and we must find homes for as many of these animals as possible.

A new shelter will cost upwards of \$7,000,000. Today she is asking San Diego Humane to donate \$4,000,000 toward that goal. With their \$48,000,000 in assets, plus the recent bequest of \$20,000,000, this is a reasonable request; \$2,000,000 per year. We can make a matching grant, dollar-for-dollar up to \$5,000,000 and the City will donate the land. Seasoned and experienced professionals have volunteered to serve on our advisory board. We are ready; we only need funding. She asked for an answer today from Dr. Goldstein and the other San Diego Humane staff members. Consider what has been said tonight and in the press releases regarding the human/animal bond and consider what will happen in 21 months when 5,000 strays will be running around Oceanside with no place to be housed.

A new shelter in Oceanside will provide a start at curbing pet overpopulation with a robust, low-cost spay and neuter clinic, outreach to rescues, a humane education program for schools, enthusiastic marketing for adoptions and a welcoming volunteer program. We can make things right. She urged animal lovers and citizens to join her in making this dream come true.

**ALLAN BLACKMORE**, 1811 Aston Avenue, Carlsbad, is the newest member of the Board of Trustees at San Diego Humane Society. Through all of the meetings we have had there has never been a bad word spoken about Oceanside. We are looking for Council's support in moving this project forward. There has been a lot of damage done in the local newspapers and on television by people who are trying to tear an organization apart. He urged Council to support this organization for the next 2 years.

**LISA HAMILTON**, 655 Benet Road, Hospital Administrator at Mission Animal & Bird Hospital in Oceanside, also does an animal rescue, is an approved adoption partner with several of the animal control and humane societies in the area, and has a unique opportunity of seeing how these organizations run. A lot of people who do this work are very passionate about it and sometimes those passions lead us down a road that is not best served for the animals. Keep in mind that it's for the animals. Since we've been working with San Diego Humane, after merging with North County Humane, they have been asking us to take stellar care of their animals. There is never an issue anymore of there's not enough money so euthanize it. They do what needs to be done and abide by our doctors' requests for care. It makes her sad to see some of the fighting that's going on now because it's not serving any of the animals. She asked that everyone keep that in mind.

**CYNTHIA MITCHELL**, Senior Veterinarian for San Diego Humane Society, stated over the last years we've saved over 2,000 kittens from shelters that would not have otherwise had a chance at life. These are neo-natal or orphaned kittens and we have a full staff that nurses them and brings them back to health in order to find them homes. Most of those kittens this year came from North Campus. A box of puppies that were found in a dumpster in Oceanside were nursed back to health and placed in homes. Kittens born without eyelids don't get euthanized; they get reconstructive surgery. She talked about other pet rescues she has assisted with.

We do a lot of good work and for the first time in 10 years North Campus has a full veterinary staff and we are up and running. The answer is not just spay and neuter or putting more animals in the same space; the answer is to show and teach people how to take care of animals and that's what we want to do. We want to lead by example and show people how to take good humane care of the animals. She urged Council to consider this contract.

**FRED BARANOWSKI**, 11170 Collegio Drive, San Diego, Chairman of the Board of Trustees of the San Diego Humane Society, offered the full support of the Board of Trustees. The Board has full confidence in this organization's ability to not only serve the stray population of Oceanside, but also bring many enhancements to the citizens and animals that the community will be very proud of. We will continue to provide quality programs and services to kids and adults, quality animal care and quality staff and volunteers who tirelessly work on behalf of the animals day in and day out. He urged Council's support of this measure.

**KATHERINE MULDERRIG**, 4771 Marblehead Bay Drive, is an animal advocate and a tax payer. Her issue is not with the medical treatment at the San Diego Humane Society. She was a major financial supporter before it became San Diego Humane and she is hoping that with this new contract, the new San Diego Humane Society will be more compassionate and cooperative with the rescues that are working very hard to save the animals that do not fit the criteria of treatment or behavior of the Humane Society. Their testing a lot of times is devoid of common sense. She is asking for a little more cooperation from them in allowing the rescues to evaluate on their own and take the responsibility. We have a contract to sign saying we take this responsibility. Then we can start saving more pets one at a time. That is our only goal.

**BOB CARTIN**, Owner of Mission Animal and Bird Hospital in Oceanside, is proud to say that we've adopted out probably over 100 animals each year for the last several years. He has a unique perspective on the Humane Society in that he came here in 1988, has been on the Board there in the early 1990's, has been an advisor for the Board and has donated over \$500,000 over the last 20 years to the Humane Society for veterinary care. When he arrived here animal control literally put animals to sleep on the street if they were sick or injured. We worked to change that. He's been with them through the good and bad periods. It's been tough over the last 5 or 6 years; donations are down for a variety of different reasons. He was elated when he heard San Diego was coming on board to merge with North County. San Diego Humane Society enjoys a wonderful reputation with animal care givers, veterinarians and animal rescue groups. They provide professional, humane and rational care for their pets. Being fiscally stable, they are able to give better care to the pets. The euthanasias have gone down considerably since San Diego Humane came on board last year. They have also used their expertise and resources to provide medical care. They have educational programs to help the community. Council is not settling for a group by choosing San Diego Humane; they are a wonderful group. He asked all factions to put their egos aside and do what is best for the animals.

**JIMMY KNOTT**, 127 Sherri Lane, stated if San Diego Humane wasn't assigned this by the Council, it would fall on the Police Chief, according to City Code, to take care of the animal situation. He asked for the exact source of funding for this. As an outsourced service this should pay for itself to the fullest extent possible. He would like to see that written into the contract. He would also like to see licensing for cats, not just dogs, and an audit of the Humane Society as to what portion of this will be paid with their income.

**LARRY BARRY**, 3973 Brown Street, asked how much the City gets from fees, fines, costs, etc. He thought it was great when San Diego Humane took over this facility. He has adopted 3 animals from the Humane Society. He wondered if a fee can be charged to veterinarians around the City because they seem to be doing very well and they can help pay for a new building. Once we turn this over to the Humane

Society, we lose control of this. He would like to see a cost analysis of this and have everyone work together.

**GEORGE COLES**, member of the Board of Trustees of the San Diego Humane Society, has served on the Board for 4 years. He has been a crusader against wasteful spending and a long-standing advocate of ethical business practices. The San Diego Humane Society is an ethical, high quality organization dedicated to serving animals and teaching the community through positive examples of responsibility, commitment and compassion. The citizens of Oceanside are getting much more than simply animal control with this contract.

**CONRAD HERRING**, 7137 Alicante, Carlsbad, is in favor of the new services agreement. He is a former Board member of the North County Humane Society and is a member of a unanimous Board that voted to approve the merger with San Diego Humane. The City has been a valuable friend. Many people are aware of the dog park, which was a joint project between the City and the Humane Society. Maintenance of the dog park is under the control of the Humane Society now and some very exciting things are going to be happening at the dog park. This is a partnership that goes well beyond the contract.

**BOB GLEISBERG**, 1936 Palmer Drive, joined the Board of Directors of the North County Humane Society; they had some difficulty getting people to become members of their Board. They were going through some rough times when he came aboard. It was difficult to get people to donate money because it had such a bad image. Our cash flow problem was austere. We had negotiations forthcoming with Oceanside and Vista and our accounting system couldn't differentiate between the animal control and animal sheltering. We knew we had to focus on it so we brought in new accounting systems and had outside auditors make sure that what we were presenting to the 2 cities reflected reality. The objective was not to make money on it but simply to break even.

The decision was made to renegotiate and subsequently in good faith we negotiated with Oceanside and got a contract. Concurrent with that was the issue of an ongoing behind-the-scenes renegotiation for a merger agreement with the San Diego Humane Society. We found that one of the issues was that San Diego Humane didn't do animal control. Their willingness to take on animal control took them to a higher level because they were willing to take on an issue, a cost and function that is very difficult to quantify and provide. You have the right chemistry of people in the right place doing the right thing at the right time and he is expecting Council's approval.

**TONY SAWYER**, 2545 Glebe Road, Lemon Grove, is a lieutenant with the San Diego Humane Society's Animal Rescue Reserve (ARR), which is a team of trained volunteers dedicated to assisting people during disasters by safely evacuating horses, livestock and household pets. ARR also works throughout the County to rescue domestic animals or livestock that are trapped and cannot free themselves. Many people are not aware that the San Diego Humane Society provides this important service to the community. The San Diego Humane Society and SPCA saw the need to organize the ARR after the Laguna fires of 1970 so that animals could be safely evacuated from dangerous situations. After 40 years of service, the ARR is recognized as part of the County's official disaster team.

Public input concluded

**MAYOR WOOD** was sold on Oceanside going over to the San Diego Humane Society and this being a North Campus. However, he started getting feedback from pet and animal lovers that confused him because they were from people who are normally very supportive of the Humane Society. They weren't complaining about the process or money being available, they were complaining about euthanizing animals. He's had meetings with people from the San Diego Humane Society about how they selected or picked animals that were going to be euthanized. His complaint was only involving that

one issue from animal lovers.

Some of the rescue groups were wondering why when an animal has to be euthanized they couldn't be given to their groups to let them take care of them. They had a hard time getting information about those animals. These are people who are all animal lovers who are fighting each other. It seems so simple that if there are other people out there willing to take these animals that are going to be put down, then they should be given that opportunity. It seemed to be so easy to address but it got out of hand and it isn't in the best interests of the animals. If we didn't have a contract, it would take us multiple years to get a new facility, even with other agencies/cities. He thinks it's reasonable to let the groups that want to take care of these special animals take care of them, as long as there is no liability to San Diego Humane and no hindrance to the community.

**COUNCILMEMBER FELLER** asked how we deal with dead animal pick-up and response times.

**MR. EDDOW** responded we have a separate service contract that handles dead animal pick-up. As far as response times, we've been told by the Humane Society that they should not suffer significantly. They should be able to address the animal issues as we previous had.

**COUNCILMEMBER FELLER moved** approval of staff's recommendations [for approval of a two-year professional services agreement (**Document No. 10-D0804-1**) with the San Diego Humane Society in the amount of \$1,577,340 and use of City-owned real property (2905 San Luis Rey Road) for animal sheltering and animal control services; and authorization for the City Manager to execute the agreement – commencing July 1, 2010 through June 30, 2012].

**COUNCILMEMBER KERN seconded** the motion.

**COUNCILMEMBER SANCHEZ** has been very aware of the problems that the City Manager's been having in communicating with the Executive Director of the San Diego Humane Society, Mark Goldstein, in trying to get a contract out. She was asking about it because we had, for the first time in her 10 years on the Council, been receiving a huge number of complaints about the treatment of our animals in Oceanside by the San Diego Humane Society. She got a call from Executive Director Goldstein making an appointment to meet with her, as he was with the other Councilmembers, and he stood her up. She then got an angry message through her aide that Mr. Goldstein wanted to terminate the contract and there was no way he was going to contract with Oceanside. Then within a half an hour the Vice Chair left a message through her aide saying they didn't want to work with Oceanside but they would give us 6 months to try and find an alternative.

She is disappointed the San Diego Humane Society took over North County Humane Society since it's always been a great part of the community. For whatever reason, this past year everything came undone.

This contract is for 2 years as of July 2010, so it is down to 18 months now. It's clear to her from what she's seen in the last few months that this could end up being a very antagonistic relationship. She continues to get complaints. She has had real frustrations with staff trying to get an accounting of how they would use our money. There has been a refusal to do that. We need to start creating alternatives for our citizens.

She will be adding to the next agenda a request to establish a citizen's committee to start looking at this. She doesn't want to be in the same situation where we are held hostage by one provider because the County won't provide the service to us. We are not the reason for the black eyes that San Diego Humane has been getting in the press. This citizen's committee will work with staff to get an alternative for

Oceanside or perhaps work with some other cities in the region. She is calling on the citizens to help contribute to a new foundation for a shelter in Oceanside. She is sad that the situation has been so terrible for the people who care about the animals themselves. She is really disappointed.

**COUNCILMEMBER LOWERY** is relieved that the San Diego Humane Society stepped up to the plate to help us bridge this gap in service. We have to have coverage for the City. They are helping us get a little bit of time so we don't have to go into a panic. We have to get something together in the next 18 to 21 months.

**COUNCILMEMBER KERN** has had a completely different experience with San Diego Humane Society than Councilmember Sanchez. They have always been forthcoming. He has talked on the phone with Dr. Goldstein several times. Making comments that hurt the Humane Society and the animals was not a good thing to do. We need right now to help the animals in Oceanside. We have 18 months to figure this thing out. Hopefully, the Humane Society will continue with animal control. They weren't in field services or animal control when they came up here. It was probably a steep learning curve for them. Hopefully in the next 18 months we can come to some conclusion that they continue that relationship with Oceanside. Staff can evaluate that contract and those services to see if there is something else we can do or if we want to continue.

**Motion was approved 4-0;** Councilmember Sanchez – abstained.

[Recess was called from 8:14 to 8:22 PM]

Mayor Wood determined to hear Item 27 at this time.

**6:00 PM – PUBLIC HEARING ITEMS**

Public hearing items are "time-certain" and are heard beginning at 6:00 p.m. Due to the time-certain requirement, other items may be taken out of order on the agenda to accommodate the 6:00 p.m. public hearing schedule.

27. **City Council/CDC: Adoption of an urgency ordinance or introduction of an ordinance for Zone Amendment (ZA-10-00001) amending the Zoning Ordinance by adding Article 39 – Wireless Communications Facility, Satellite Dish, and Antenna Standards – to the current Oceanside Zoning Ordinance, as well as the Oceanside Zoning Ordinance in effect on May 8, 1985, repealing Section 3025 – Reception Antennas and Communication Facilities from the current Zoning Ordinance, for implementation Citywide, with the exception of the Redevelopment Area; and adoption of a resolution approving a Local Coastal Program Amendment (LCPA-10-00001) and Negative Declaration establishing Article 39 as zoning regulations to be applied within the Coastal Zone – Telecommunications Ordinance – Applicant: City of Oceanside**

- A) Mayor opens public hearing – hearing was opened.
- B) Mayor requests disclosure of Councilmember and constituent contacts and correspondence – Mayor and Councilmembers reported contact with public emails, staff, correspondence from attorneys and vendors.
- C) City Clerk presents correspondence and/or petitions – letter from attorney for T-Mobile and emails addressed to "Council".
- D) Testimony, beginning with:

**JERRY HITTLEMAN**, City Planner, stated we started this process a year ago when Council directed us to update the Telecom Ordinance and start an ad hoc committee comprised of 2 Planning Commissioners and 2 Telecommunication Committee members. Starting in February of this year we formed that ad hoc committee and we had Robert Ross, Jimmy Knott, Jay Schrivener and Tom Rosales as the members. He acknowledged staff members, consultants and community members, including HAM operators, who also worked on this. There was a lot of input from the public as well.

The purpose behind the ordinance (Section 3901) is to:

- Establish development standards for wireless communication facilities and satellite dish antennas.
- Require all wireless communication facilities to be as unobtrusive as possible.
- Allow wireless communication facilities to be constructed and operated in a responsible manner in conformance with all State, local and federal laws and regulations.

Regarding applicability (Section 3903), we do have some exempt facilities through federal and State regulations, i.e. communication facilities in the railroad right-of-way for NCTD (North County Transit District) as they are under the Public Utilities Commission's (PUC) jurisdiction, radio and television antennas, citizen band (CB) antennas as long as they are under 36' in height in a residential zone, amateur radio antennas within the height limit and City antennas for our emergency operations (police, fire, etc.).

A Conditional Use Permit (CUP) (Section 3904) will be required for wireless facilities located on private parcels in any zoning district. Amateur radio antennas that exceed the height limit for the zone will be required to get a CUP. Right now these antennas in a residential zone can only be 12' tall. If they are above 12', they have to get a CUP or a variance. Now, with these standards, they are allowed up to 36'. There is an Administrative CUP process (Section 3905) for wireless facilities that are located on City owned or controlled property; for temporary Cell on Wheel (COW) facilities that are used sometimes by the industry; and also for facilities that are co-located on an existing antenna.

Certain findings (Section 3907) will have to be made for each facility: that it is necessary; it demonstrates a reasonable attempt to minimize stand-alone facilities since we want them to co-locate and in certain cases go on industrial/commercial buildings where they are hidden behind a parapet; prove a claim for gap coverage; any additional height will require CUP findings that the additional height is reasonably necessary for co-location, so if they are going to go higher with the facility we want to make sure that there are other users or companies that could go on that facility with that extra height and that they need the height for their facility; the height finding would not be applicable to stand-alone facilities if they exist at the effective date of this ordinance. If they did expire or come back in for a permit, we'd try to get them to improve their facility so it's more camouflaged and meets some of, if not all of, the standards within this ordinance.

With respect to facility standards (Section 3911): it requires camouflage for facilities and requires that co-located facilities meet the same camouflage standards. He used a computer graphic to show some examples of camouflage (like trees, church towers, light standards). The ordinance requires that any facility that is in the public right-of-way has to have an encroachment agreement approved by the Council and they will be required to meet some of the findings of this ordinance; the 3 main findings. He showed an example of an amateur radio antenna that is 75' in height and we will be limiting those to about 36'. Anything above that would require a CUP.

We do have locational siting criteria. The number one type of property we'd like to see these facilities on are City owned or controlled properties. Right now we only allow stand-alone facilities on our water tank properties, but not on the tank itself for security reasons. The ordinance does not prohibit that but after 9/11 we stopped doing that because of security reasons. We would like to see them sited in industrial zone districts, commercial, public and semi-public zone districts (typically churches), open space districts, agricultural zone districts and residential districts are our last priority.

The Planning Commission had a number of recommendations. They

recommended that Council adopt this tonight as an urgency ordinance, so staff is recommending that Council adopt it as an urgency ordinance, which means it will go into effect tonight. The reason for that is because we have quite a few projects pending and we need to have them under the umbrella of this new ordinance to insure that they are good facilities. The Planning Commission recommended a set back from residential districts. If a stand-alone facility were to be sited near a residential district, it would have to be located in a fall zone away from there, that means that if a tower is 100' tall and it were to fall down, it would have to be 100' plus an extra 10% away equals 110 feet from the residential district for safety purposes and health reasons. They also recommended a penalty for expired cell sites. We're recommending that we just go through the normal Code Enforcement administration remedy procedures that are in place. Finally, they recommended a reduced permit fee for amateur HAM radio operators. We would be coming back to Council at a separate hearing with a reduced fee resolution if Council chooses to adopt the ordinance tonight.

In summary, the ad hoc committee drafted the ordinance with a lot of input from the public and industry representatives. The Telecommunications Committee recommended approval of the ordinance in June. The Planning Commission recommended approval in August with the suggestions just discussed. Staff recommends approval as an urgency ordinance tonight and approval of the Negative Declaration. The Coastal Commission will need to approve a Local Coastal Plan Amendment (LCPA) for this ordinance to apply to areas within the Coastal Zone.

**CITY ATTORNEY MULLEN** stated Council will probably get a lot of discussion from the public about specific applications or specific facilities and he wanted to reiterate that while of course Council can consider any comments from the public, the Council is not deciding on any specific applications. Council is deciding on whether to adopt rules that are applicable to all in the future.

#### Public input

**JIMMY KNOTT**, 127 Sherri Lane, sat on the ad hoc committee and stated there are a couple of items missing from staff's presentation. The IT Division is putting together a mapping system that will be put into effect and available to the public and the telecom providers once this is passed so they can co-locate. He showed an example of a map. He also provided a copy of our proposed ordinance to an expert to review and was told it was one of the best the expert has read.

**CHRIS BUTLER**, 12-year old, had never thought about cell towers until he found out some were proposed for the roof over his classroom. Article 39 needs to put schools and neighborhoods on a least preferred status list and not let cell towers be put on public right-of-ways to get around that. He has learned a lot about cell companies during the past 6 months helping to fight the cell towers proposed for his school. The proposal for his school has been withdrawn but tomorrow there could be a new one. He needs to know that his school is safe from radioactive fields right over his head and we need Article 39 to say so.

He is depending on Council to keep the kids safe. If the cell company figures are wrong, he stands a good chance of getting brain cancer sitting under a radioactive field all day. Even if the FCC says it's not so, plenty of doctors across the world think so. He doesn't want that to be his future.

**PHYLLIS CHUTUK**, 1603 Laurel Road, uses her cell phone all the time. She has heard her friends, who live by a church in South Oceanside, complain about all the cell towers that keep going up on a particular church. They can't figure out why they should be exposed to such a thing in their neighborhood. She would ask on their behalf for churches and other places like schools and preschools not to be sites for cell towers. She asked the Council to please consider additions to Article 39 that protect people's right to live in their own home without having cell towers as neighbors. Not allowing public right-of-way for this is also something that belongs in Article 39. Lastly, the City

needs to stay on its toes around technology. Trust and verify is the best policy. She would like some radio frequency (RF) engineers checking those studies that say her friends have nothing to worry about.

**LARRY BARRY**, 3973 Brown Street, belongs to an organization called Community Emergency Response Team (CERT) and the HAM operators are critical with their repeaters. When we had various fires all of the cell towers broke down and it was the HAM operators using repeaters that were able to communicate in and out. Before we start putting these mandates into effect, we need to remember that they are a vital part of disaster relief when everything else goes down.

**BOB BERG**, P.O. Box 942, Carlsbad, whose father is a HAM radio operator stated that in a disaster HAM radios are the secondary or third primary communication tool for the County and can communicate all over the world. The height of the tower is critical.

**TOM ALLEN**, 5448 Blackberry Way, urged Council to pass Article 39. His family has been directly impacted by the proliferation of these cell towers and antennas. Members of his family have been made quite ill by these structures and he asked that they be disfavored for residential areas, schools and community centers. This is a looming public health issue that other communities around the country and around the world are responding to. Article 39 is a sensible first step in controlling the proliferation of these towers.

**LISA HAMILTON**, 323 South Ditmar, is representing the Oceanside Coastal Neighborhood Association (OCNA) and our main concern is safety and the proliferation of these cell phone towers. We strongly support mapping and having those maps readily available to the public. We'd also like to more readily obtain data on the safety of individual sites. She was standing near one of these sites that had a warning on it that it may exceed FCC recommendations, but it didn't say what to do about it. We strongly support treating the HAM radio operators separately. We hope Council will pass this tonight.

**EILEEN COSTA**, 3621-91 Vista Campana South, stated Oceana residents are concerned about the excessive amount of wireless proliferation into the residential zones and would strongly urge including churches in the list of non-preferred places for cell towers. She asked that Council enact Article 39 as an urgency ordinance and that it enforces FCC regulations. San Diego Gas & Electric (SDG&E) can come to people's homes and test for excessive electricity and emission, so why can't we assign them to regularly monitor spots that have emissions from the cell and microwave towers.

We would like our citizens to be adequately informed of danger zones. The wireless cell and microwave emissions are a new science. There are as many or more scientist and doctors who warn of danger to the human body as there are those who say it's safe. The FCC rules and regulations need to be enacted. The FCC is supposed to make the City go along with the cell companies; however, in the event that they are not obeying the FCC rules, the City does have to right to go after them.

Oceana sent Council a petition with 74 signatures opposed to the Clear Wire microwave tower in the roof of the church in the middle of Oceana.

**SHARON NEWBERRY**, 1212 Vista Way, personally urged Council to vote yes on Article 39 as an urgency ordinance. There are areas that need some slight modification. We were told that this is an ordinance that can grow. Something needs to be built into this ordinance that says should the State, local or federal laws change, we don't have to go through this long process but we can change it in accordance with the laws. The mapping system is very important for future sitings. She asked when the mapping system will be finished and available to the public.

**LAURA POPE**, 3685-58 Vista Compana North, stated our fears are not

unwarranted. Prevention magazine, January issue, had an article on this and among the risks they indicated come with cell towers and microwave emissions are an increased risk of brain cancer, dementia and heart disease. She recommended that Council do this on an urgency basis to cover all of the applications that are coming in and she hopes that it does require that cell phone installations meet all regulations and guidelines.

**SUE ALLEN**, 5448 Blackberry Way, understands the issue of the health hazards of electromagnetic radiation because she is an engineer who in the past has worked for Northern Telecom, a multi-billion dollar international telecommunications company. She is also a mother of 4 children and she follows health issues. She urged Council to look at the exposés that are being published in scientific journals and popular magazines, such as Time and GQ, that speak to the health hazards of wireless. The science is hardly settled. There is vast evidence that wireless radiation is a health hazard. Numerous other countries have implemented laws to protect their citizens and she asked Council to protect our citizens. She asked that Article 39 be passed to list specifically as disfavored the proliferation of towers, masts and antennas in residential areas, schools, daycares and churches.

**DENNIS BACA**, 659 Arthur Avenue, is an FCC licensed amateur radio operator and this ordinance is covering wireless cell communications and amateur radio communications, which are 2 totally different operations and need to be addressed as separate issues and with separate ordinances. Amateur radio antennas vary in height because of different bands. It's a hobby and recreation but it also comes into public service occasionally, such as during the fires and with Hurricane Katrina. He asked Council to separate the ordinance from commercial and non-commercial and consider amateur radios as a different section for the ordinance.

**FRED ATCHLEY**, 4872 Cardiff Bay Drive, stated what's wrong with Article 39 is that it mixes the non-profit amateur radio service with for-profit common carriers, even though their operational requirements are drastically different. It even redefines amateur radio service as a telecommunications facility in spite of the fact that Congress, the FCC and the State refer to us as amateur radio service. California regulation Section 65850.3 states in part any ordinance adopted by the legislative body of a city or county that regulates amateur radio structures shall allow those structures to be erected at heights and dimensions sufficient to accommodate amateur radio service communications. This guidance has been pretty much set aside. City Planning is aware of the physical design requirements and yet this fact is never addressed. A recent public records request review proves how the old 5-page zoning ordinance discouraged application for antenna permits. Only 1 permit exists but there are over 350 amateur radio operators in Oceanside. The new Article is 21 pages and is going to be about 4 times as draconian as the old one. The proposed Article is a missed opportunity for Oceanside as hundreds of radio amateurs and numerous emergency organizations are eager to serve and instead of reaching out to this proven resource, it stifles it. He asked Council to call for a separate zoning ordinance for the amateur radio service.

**TIMOTHY MCGOWEN**, 5706 Shetland Court, is a licensed amateur radio operator, a member of the Amateur Radio Relay League, which is a national organization, and Vice President of South Orange Amateur Radio Association in South Orange County. There should be a separation between a commercial enterprise that makes money and can afford fees, as opposed to private entities and individuals. He spent 31 years in public safety and has worked alongside amateur operators where it was an invaluable service when his public safety radio was not. Police and fire communication is a short-range form of communication that can and has failed, i.e. during the recent firestorms. Amateur radio operators speak farther distances. Not only is amateur radio for public service but it's also a hobby and an avocation. He would like to enjoy doing that full time when he retires and with the ordinance as proposed, he can't get full enjoyment and can't provide full emergency service because shorter antennas won't accommodate that.

**DON JOHNSON**, 1418 Panorama Ridge Road, has been an amateur radio operator for 37 years and his problem with the ordinance is the antenna heights. The higher the antenna, the less power is required to transmit reliable communications. The lower the antenna, the higher the exposure you have on the surrounding people because it takes more power to cover the same distance. An example is an antenna that is at the proposed 37' would probably require a kilowatt of power thereby exposing the neighbors of the amateur to much more radiation exposure than if the height was at 70', where he would only require about 300 watts of power to have the same operational capabilities. The same is true of cell towers.

**HOLLY HARGETT**, 1220 Vista Way, would like to make sure that Council enacts an urgency ordinance tonight. Also, we need a motion for some amendments in the Article. One is non-residential – as a definition we have churches, schools and daycares. These are predominantly in the residential districts and such a definition could permit a wireless site to enter the residential district creating a co-location site, which will create excessive wireless proliferation. We also need a motion to amend Section 3911, which staff created as a fall zone and was a recommendation from the Planning Commission. However, it does not address the citizen's concerns, which are not for stand-alone facilities but to address the commercial rooftop mounted antennas adjoining residential properties. Another example is a telephone pole, which is usually about 30' tall, so with the fall zone the height limit only has to be 33'. That's not very far from her property line.

She showed examples of 4 residential areas that are neighbors to co-locating sites mounted on rooftops. Most have 15 antennas and want to add more. The placement of one wireless antenna on top of a building through a discretionary review creates a co-location site, creating excessive wireless placement.

She wants a motion to amend Section 3912, location siting standards. They exclude residential public right-of-ways so we're having residential districts listed as least preferred but we're excluding residential public right-of-ways, which doesn't make sense. She would like the public right-of-ways and residential areas to be included and have Council strike the facilities designed as stealth facilities as that means it's going to be sneaky. It will allow wireless applicants to sneak into residential neighborhoods. She showed examples of wireless facilities now and discussed their unsightliness.

In this wireless ordinance there is a variance that can be granted for any requirement or standard in this Article and citizens feel that this variance will deviate from any safety procedures and articles, causing excessive wireless proliferation.

Also, we cannot permit 3 2-year terms at the discretion of the City Planner because that creates 6 years that an applicant will go without paying any revenues. That loss of revenue to the City in the expired permits she has discovered comes to \$357,000.

She asked that Council enact this ordinance with the proper amendments if allowed to do so. Otherwise, we need to follow-up with the proper amendments.

**ERIC ATCHLEY**, 4872 Cardiff Bay, recently retired from the Air Force to Oceanside. He is an amateur radio operator and tries to serve the community. He agrees with what the other amateur radio operators said. A separation for the amateur HAM radio operators is a good idea since it allows for the amateur community, which is part of this community, to deal with Council as opposed to a commercial entity.

**LAURA MAYER**, 2226 Fire Mountain Drive, asked the Council to make sure that Article 39 is the best document it can be for protecting the citizens. She shares the concerns that were previously listed by Holly Hargett. She has a child at the Coastal Academy and when she went to the Planning Commission meeting she distinctly remembers when they voted on moving this document forward they recommended putting schools on a least designated list and also recommended a set back from

residential neighborhoods. She asked if that has been put in this document tonight. She agrees with the HAM radio operators; they are unsung heroes and when the cellular grid crashes, they will be the people who bail us out and keep our society running. She asked Council to protect the citizens and recognize the need for regulating this fast growing industry.

**CONNIE CHAPMAN**, 1371 Corte Alveo, also has a child at Coastal Academy and was confused as to why anybody would consider putting cell towers on a school. Council is our safeguard and should do the right thing with regard to all of the loopholes in the ordinance.

**KEITH BUTLER**, 2226 Fire Mountain Drive, stated that Article 39 is a good first step. Please do not consider this a final document. Council should approve this as an urgency ordinance because it is necessary, but see what you can do to protect the HAM radio operators. When he attended the Planning Commission meeting, the final motion was that schools and daycare facilities that were within commercial areas needed to be looked at differently than ones that might be in residential. Somewhere between that meeting and the document in front of Council, that piece got lost. It needs to be included in this document so that when you have mixed-use facilities you're not putting cell towers where children are spending most of their time.

The FCC has decided, based on research done in the 1990's, that current cell towers don't pose any health threat and he understands that Council can only make regulation currently based on aesthetics. That doesn't mean Council can't take into account what the rest of the world has recognized as well that there is evidence saying that there is a health threat and that you can make regulation here that complies with the FCC but recognizes that what they currently have in law is not sufficient to protect your citizens. He thanked Council for considering passing this as an urgency measure, but looking for the additional modifications that are necessary, such as Ms. Hargett and the HAM radio operators have suggested.

**MATHEW MROSKO**, 1615 Quiet Hills Drive, is a licensed amateur radio operator. It's ridiculous that the Article was drafted with for-profit corporations and radio amateurs, who are public servants and hobbyists and don't have the deep pockets for things like CUP's. There was talk of lowering the permit fee but that's not good enough. A separate ordinance that has different requirements for amateur radio operators makes more sense. Even if the fees were less for the application, there is still a whole host of things that need to be submitted with that, including RF reports, renderings, etc. that are not feasible for amateurs.

**JON STUDER**, 549 Lupine Way, is an amateur radio operator and a Scout Master who does a lot of hiking, etc., and takes his HAM radio with him. Several of his scouts have expressed interest in becoming HAM radio operators. When you go through the process of becoming a HAM radio operator, one of the things you're supposed to learn are the local ordinances and laws regarding HAM radio. The fact that the amateur radio rules are being combined with the commercial rules is confusing. He voiced this opinion as part of the Telecommunication Committee. He is also a big proponent of emergency preparedness. He has spoken to public safety personnel who have been out on an emergency and found their only form of communication was the HAM radio operators because their radios were not working where they were. Anything the City can do to support emergency communications amongst our HAM radios is a good thing.

**NANCY GREGORY**, 1928 South Tremont Street, feels like the canary in the coal mine. She had fatigue within 6 months of the first cell phone tower on Surfrider. She has heart problems and perhaps dementia and is worried about the cumulative effects of the multiple towers on Surfrider and everywhere else. South Oceanside has heavy proliferation and she is worried about the health of everyone.

**CATHARINE LEDESMA**, 342 Holiday Way, understands the parents and concerned citizens of all ages. It seems exposure is a common concern. The HAM radio

operators should be taken out of this as it makes no sense to include them in this ordinance. They communicate with people all over the world and also help with emergency services. If you limit amateur radio operators, you are limiting the citizens' freedom of speech and ability to get the word out.

Public input concluded

Mayor Wood closed the public hearing and asked for responses to public input.

**JONATHAN KRAMER**, Kramer Telecom Law Firm, 2001 South Barrington Avenue #306, Los Angeles, your special counsel and has been working with the City Attorney on this matter. He is an RF engineer and has been a HAM radio operator for nearly 40 years.

The issue that raises the most interest for the community is the issue of RF emission safety. For the past 14+ years the FCC has had the rules in place that govern those emissions in the United States. Congress delegated sole national authority to the FCC to establish those standards and Congress has allowed us to enforce those standards to determine compliance with the standards. The reality is that at the local government level we cannot set our own standards; we can't even adopt the national standards as our own. Our authority here is clearly prescribed by Congress and limited by FCC regulations; they preempt the field.

We have taken care in the ordinance to craft the language to insure the maximum compliance with the rules now and in the future. There is language in the ordinance that requires compliance with all current laws, not at the time of the granting of a permit, but at subsequent times thereafter. We anticipated that because we want to insure the maximum protection for the public now and in the future to the extent legally authorized for us to do.

The community wants to exclude schools, daycare facilities, etc. Because our authority is limited to determining compliance with the rules, we have to be exceptionally careful not to overstep that authority by carving out exceptions that are clearly based on health considerations. To the extent that a project complies with the federal standards on point, that's our criteria. We can do things in our zoning authority about limiting where a site can go and having the order that we have it, but we can't prohibit or have the effect of prohibiting the provision of the telecom service; in this case wireless. We're walking a carefully crafted line to insure that, to the extent maximally possible, cell sites don't go into residential areas, but we don't outright exclude them. We have a safety valve so we don't run afoul of the Congressional mandates, but we make it the least preferable.

When we get outside of the residential areas, that's where we have a problem, especially if we start doing specific types of carve-outs. The reason is because on Day 1 at 1 Main Street a cell tower goes in a commercial zone; Day 365 a preschool decides to open up at 3 Main Street, so these timing issues come into play. We have in the ordinance a time limitation, a 10-year permit with a maximum 6 years of renewal that is consistent with the State law that makes the minimum term, in most cases, 10 years. We're looking at this from 2 aspects. First, we recognize the fact that a wireless telecommunications company needs to get a return on its investment, but the State has recognized that there had to be time limitations so that these permits, if a city chose to do it as we've chosen, don't run with the land and are time limited. There are forces pushing in all sorts of directions, but like any other government agency, we are also bound to follow the laws that come down from above.

The toughest issue we have is always RF safety. It is a genuine and legitimate concern by the public and that's why we have crafted the ordinance in the manner that we have to comply with federal law. As those federal laws change, and the proper forum for those changes is Congress because they set the rule, our ordinance will automatically pick those changes up.

Regarding the amateur radio community, the direction we had and our goals here were to try and craft reasonable regulations that did not prohibit or have the effect of prohibiting an amateur radio from operating. The federal and State laws that track put an important responsibility on us as a local government agency to recognize the important contribution of amateur radio and that's why there is a federal and State law carve-out for that community. What both the federal and State levels require is that we respect the amateur radio community and that the rules that we create are the minimum necessary, basically for health and welfare purposes. Issues that come up in that are safety of the installation of the structure and, under FCC rules, compliance with RF emission standards. Trying to treat everyone equally, we've asked for that information as well as part of the application process. As you'll note from the ordinance, we've crafted a completely different set of standards for approval that reflect the deference given at the federal and State level.

The amateur radio community is requesting a carve-out from this document. If that is Council's desire, it is something that we can do. Essentially, we would take the body of amateur radio regulations that are intermixed here and simply move them into a separate subsection of Article 39. If that is Council's direction, we would come back with technical corrections to Article 39 to move all of that out into a subsection.

The bottom line is that we have tried to craft those regulations to follow the spirit of the federal regulations on point and we will continue to do so in any technical amendments that Council directs us to bring back to you.

Regarding the RF issue, **CITY ATTORNEY MULLEN** stated that the ordinance does include some protections to insure that the applicant is in compliance with FCC rules. Among other things, the City Planner has the authority to require an independent review, paid for by the applicant, in appropriate cases. So there will be a check to guarantee that they are in compliance with FCC regulations even though we can't exceed or even adopt the FCC standards as our own.

With regard to the testimony about making residential the least preferred, residential is the least preferred already. One of the slides shown by a member of the public showed that most daycare centers, schools and churches are in residential zones, so to the extent those properties are in residential zoning districts, they are already in the least preferred zoning district. The applicant would have to justify why they couldn't go through any number of the other districts listed in the ordinance.

Regarding further comments, **MR. KRAMER** clarified the fall zone for a monopole being set at 110% has two purposes. The number one purpose is that if there is a catastrophic event at the base plate failure, as it falls over it won't fall into another residential property. The other is that if something were to fall off and sail, that's why we have the 110% rule. The issue of RF safety is a separate issue which we've already discussed.

**CITY ATTORNEY MULLEN** stated if you were to pursue some kind of carve-out with amateur radio, that would be technically problematic tonight because we would have to go through and identify all of those sections in which the term amateur radio is identified and strike them. Another option for Council, if it is your desire to reduce the burden on the amateur radio community, would be to adopt it as-is and have staff meet with the community over the next 60 days or so and come back with appropriate amendments to the extent that you view this as over-reaching.

There is a concern that if Council were to strike everything related to amateur radio it might threaten the ability to adopt it tonight and it might imperil the other sections of the ordinance. We know from some of the testimony that we're not getting applications for amateur radio facilities. We have an existing requirement for Use Permits for amateur radio facilities above 12', so one of the ideas with this ordinance was that you don't have to get a Use Permit if you're up to 36' in a residential zone. It

is really to their benefit in some regards. That is one possibility to consider.

**MAYOR WOOD** stated there was some concern about the amateur radio issue but some of it was regarding the height, the aerial concerns of neighbors, the appearance, etc. It might have to come back later because this is an urgency situation. We get a lot of complaints on wireless communications and he understands everyone's concerns and is tired of them being built everywhere as well. What the expert explained is that between federal and State laws we're hamstrung. We have very little power over it except in trying to slip within their guidelines for our City ordinances. Later on there might be some changes. He is concerned about the RF standards and how we regulate those. We can come back at a later date and add or delete, whether it be with HAM operators or things we want to add into it. He has been frustrated that Council is not even allowed to address the medical issues, etc.

**COUNCILMEMBER SANCHEZ** stated we are headed in the right direction in terms of the amateur radio. For example, on page 4 of the staff report it indicated that the only part of Article 39 that includes amateur radio facilities are the facilities above a certain height. Only if you exceed that height would you have to go through a process. The hardships would be the cost of the process, as well as the notice, which is also another cost. The recommendations from the Planning Commission were that staff come back with some kind of much lower cost for this. She wants this to be done so she would like to do what the City Attorney suggested, which is to adopt it tonight and then meet with the amateur radio community to come up with whatever potential amendments will make it work better.

She **moved** approval [including adoption of **Urgency Ordinance No. 10-OR0807-1**, "...for Zone Amendment (ZA-10-00001) to modify sections of the Oceanside Zoning Ordinance regulating wireless telecommunications facilities, satellite dishes, and antenna standards", and adoption of **Resolution No. 10-R0808-1**, "...modifying the Local Coastal Program with amendments to various sections of the 1986 Oceanside Zoning Ordinance to regulate wireless communications facilities, satellite dishes, and antenna standards and requesting California Coastal Commission certification of said amendment", and Negative Declaration establishing Article 39 as zoning regulations to be applied within the Coastal Zone – Telecommunications Ordinance – Applicant: City of Oceanside]

**MAYOR WOOD** seconded the motion.

**COUNCILMEMBER KERN** is concerned about the HAM operators being brought back at a later time and would like some sort of guarantee that we're going to do that. He would like to give direction to staff to come back in 60 days, or the first meeting in January, to address this. Even if there is something that's not completed at that time, we put it on that first meeting in January's agenda so we can at least discuss what the progress is with that particular item.

Staff advised they would bring it back then.

**COUNCILMEMBER KERN** stated that someone said that microwave technology is relatively new. Thirty-five years ago when he was in the Air Force he worked on microwave towers and communications. Microwaves are line-of-sight; they are usually about 25-30 miles apart maximum.

**MR. KRAMER** responded the development of microwave transmissions dates back to around World War II. It's not a new technology. The issue is the application of it and it is a point-to-point technology. We've addressed it in here by not specifically carving it out because the FCC includes it in its regulation. When we look at this ordinance and how we anticipate staff will follow the ordinance, they look at the applicable rules for the band of operation involved. They also look at the license requirements under the FCC and these are the various competing issues that Planning staff will deal with as they process applications from, for example, the broadband radio

service, the PCS service, cellular, amateur, etc. That's why the ordinance is carefully crafted not to have specific carve-outs like that.

**COUNCILMEMBER FELLER** asked how many 100' towers we have in town.

**MR. HITTLEMAN** responded the tallest ones we have are near Camp Pendleton and are about 100' or so.

After titling of the urgency ordinance, the **motion was approved 5-0.**

**MAYOR AND/OR COUNCILMEMBER ITEMS**

20. **Request by Councilmember Sanchez to initiate the process for an amendment to the City's General Plan, Section 1.13 – Neighborhood Character, to include the South Morro Hills Character Statement; and direction to staff**

**COUNCILMEMBER SANCHEZ** presented the South Morro Hills Homeowner's Association (HOA) Statement of Character. She attended some of the meetings that were held when the issue of some development came up and there was a suggestion that the South Morro Hills community did not have a Character Statement. She begged to differ when she heard that but it seems to her that it encouraged the residents of South Morro Hills to do a little more work in the matter and actually go out and talk to the residents in their community. She called on George Murray to present the item.

**GEORGE MURRAY**, 1534 Sleeping Indian Road, President of the South Morro Hills Homeowner's Association, stated we've heard this evening that Oceanside is a beach community and that we want to preserve the sand and the beaches for the residents and the tourists. We are also an agricultural community and we also want to preserve that. Presented this evening for Council's approval is a request to approve the addition of the South Morro Hills Association Character Statement to the City Plan. The neighbors have worked hard to come to a resolution in the area so that we can not only preserve the agricultural community, but also protect the rural environment and our identity. Going forward we are going to continue to work with the City to develop our Vision Statement.

**KAREN GREEN**, 1537 Camino Corte, Committee Chair, stated the Neighborhood Character and Vision Committee was established in 2009 and consists of 15 members with a diverse range of interests; not special interests or special agendas, but rather representation from small property owners, large commercial growers and large landowners with avocado groves. The purpose of the Committee is to promote and reinforce the positive attributes of South Morro Hills. There are several activities that the Committee is involved with, including coordination with the City, keeping informed of potential changes to land use policies that could affect our neighborhood, coordinating with other neighborhoods and working with developers or other agencies that have interests that may affect our neighborhood.

An important activity of this Committee over this last year has been development of the Neighborhood Character Statement. An important aspect of this was to be consistent with our long-range planning goals, which have been published in our neighborhood directory for more than 15 years, as well as consistency with existing zoning and ordinances that affect the land. We used a fair and open process in developing this Character Statement. The 15-member Committee met approximately bi-monthly for about a year. There was a subcommittee that drafted the neighborhood Character Statement, which was published in our neighborhood newsletter 3 times over a 9-month period. The Board required that the Statement be polled in the neighborhood. It was sent to all residents, not just members of the Association. That meant that over 130 polls were sent out. The results of the poll weren't unanimous but we had 85% of the residents respond to the poll; 86% of those households agreed with the poll and that it be sent to the City for inclusion in the General Plan. We had 13% that disagreed and 1% that agreed or disagreed with portions of the poll.

We received several comments from a number of the respondents so we went back to Committee and reviewed those. We also met with some members of our neighborhood with strong disagreement in an effort to come to common ground. There is nothing new with the language, it's consistent with existing zoning and ordinances and our goals. Nevertheless, there are some concerns by some members of our neighborhood, so we tweaked the language and made it more condensed and kept the key elements that the neighborhood approved, which resulted in the Statement.

Having the City recognize our neighborhood character is important to the majority of residents of South Morro Hills. We look forward to working with the City for forward vision and protecting our agricultural and rural character for the wildlife, residents and community.

**DENNIS MARTINEK**, 1537 Sleeping Indian Road, stated there is nothing new in what we are proposing. It's consistent with what's in our General Plan now. On page 11 of our General Plan, under Neighborhood Character, it says it is the objective of the City to promote and reinforce the unique and positive attributes of individual neighborhoods of Oceanside while strengthening Citywide goals, involvement and identity. This is consistent with that. It then lists 8 neighborhoods in the City with the different proposals that they put forward.

On page 45 of our General Plan, under Agricultural Subdivision, there is a policy that says the City shall assure in all actions that the legal parcels or interests in agricultural lands are of sufficient size to viably conduct agricultural practices. That is consistent with the statement that we've had as our long-range planning goals for over 10 years. These are tough times for agriculture with water rates going up, etc., and we see this as an opportunity to encourage people to look for alternative crops and invest in the lands they have now so we can keep agriculture in Oceanside. It's important that it's recognized in the Planning community under both sustainable development and also smart growth. This will make the City a better place, having an agricultural greenbelt and encouraging agriculture in Oceanside.

**COUNCILMEMBER SANCHEZ** finds that this is consistent with what we do have. She read the Statement language.

She **moved** to direct staff to initiate the process for an amendment to the City's General Plan, Section 1.13, Neighborhood Character, to include the South Morro Hills Character Statement.

**COUNCILMEMBER LOWERY** **seconded** the motion.

**CITY ATTORNEY MULLEN** stated this cannot be adopted tonight without a public hearing. It has to go through a process that's required under the State Planning and Zoning Law, a 90-day consultation period with Native American tribes on all General Plan amendments. There is a whole host of issues that would have to be addressed, but it could start the process.

**COUNCILMEMBER KERN** can't support this because the only communications he got were negative. He got 2 emails and both were against this plan. He read from an email from Mr. Neil Nagata regarding neighborhood notification and involvement. They excluded people who didn't agree with them. The SMHA needs to talk with Mr. Nagata and all of the large landowners and include them in this. When you have 15 members, or a small group of people, come up with a Vision Statement for a whole community, it doesn't serve you well and isn't very democratic. He understands what the SMHA is trying to do but they need to bring the community together before this goes forward. Another email was received from Mr. Mellano with similar concerns. Maybe we should move forward with a General Plan amendment for the whole South Morro Hills community and just get it resolved.

Public input

**MIKE MELLANO**, 462 Wilshire Road, was a part of that 15-member Committee as was Mr. Nagata, and this started when he went to the Morro Hills Association to tell them that his family was interested in developing our property. His idea of Committee meetings was pump Mr. Nagata and Mr. Mellano about what they're going to do and then let's go meet separately and discuss how we're going to resist it. He is very uncomfortable with this. He is still a charter member of the SMHA and is one of the 13% that voted against this.

What we need in Morro Hills is an update in the Master Plan so the zoning regulations reflect current regulations. There was no discussion about how much habitat corridors were going to have to be set aside or about whether we needed sewers under the Clean Water Act. None of that was done. In his opinion, the underlying objective is to have a no growth policy in Morro Hills and the large property owners pay for the no growth policy. There is very good evidence that no growth policies and the policies that the SMHA espouse transfer value from large property owners to small property owners. His family has to be against that. We love Morro Hills and dislikes disagreeing with the neighbors, but he has a business to run and family assets to protect. We are against this vehemently and will fight this as much as we can.

**MICHELLE CASTELLANO**, 851 Wilshire Road, stated basically what is in this statement is already in your plan. That first section, the 2.5 agricultural zoning is on page 68 and 69. Addressing limiting infrastructure and limiting City services to agricultural areas, including South Morro Hills, is on page 85. Page 82 addresses the preserving open space and character. Everything there is already in it. SMHA is giving the impression that this is to protect agriculture; the agriculture operators in that area aren't looking for this additional wording. We feel that the City has protected our businesses and our areas; we're working in a zoned agricultural area.

SMHA is not a homeowner's association, it's a voluntary group that people pay into if they want to. It doesn't represent the whole community. Close to 70% of the land in that area was opposed to this. There's a little bit of a balancing act in what the message coming forward to Council is. She agrees with Mr. Mellano that probably looking at the entire General Plan is a better way to go about this and consider everybody's interests.

**ERIN MORIN**, 1241 Chambord Court, is an avocado farmer at 6467 La Paloma Lane and has recently gotten partial ownership of her property. We should keep our rural area rural and not develop it. If we develop it, we are going to lose a part of the beauty of South Morro Hills. She is concerned about what development happens in her area. She voted for this and wants to keep it the way it is. It is important to keep agriculture stabilized or we won't be seeing avocados or strawberries from Oceanside in stores or restaurants.

**NEIL NAGATA**, 1480 Wilshire Road, is a 3<sup>rd</sup> generation Oceanside resident. He served on the Vision Committee and had higher hopes. This represents a year of work but it doesn't make sense for us to piecemeal this. He requested that we take a look at the whole area, not just the citizens of South Morro Hills. The total acres represented there, the majority of them are the small property owners so when the survey was taken and 80% of the people said they want to live this way, it's only 30% of the property that is being represented. Why don't we take the time to look at all of South Morro Hills and how we're going to work it into a vision or a plan; something that we're going to do something with. The opportunity is there. The landowners are willing to sit and talk about this and residents want to work together. It's a waste of time and effort to do these little statements.

**MARK MURAI**, 306 Wilshire Road, stated his family owns a couple of pieces of land in the South Morro Hills area and have been farming them for over 30 years. He was not part of the Vision and Character Statement Committee and is disturbed that

many people believe they should just grow something else when one thing doesn't work. We already do that as farmers. We are constantly trying to stay in business. Someone mentioned the high cost of water in San Diego; it's an extremely difficult climate to be in agriculture. He's grown avocados and strawberries and struggles to stay in business.

It's very disheartening for people who have moved here and have these estate homes to say they want to keep it like this and too bad for you guys. Somebody has to put their house up for collateral to do that farming. There are several generations in those hills trying to stay in business and we definitely don't need people to tell us that we're not trying. He is eminently opposed to this amendment. It wasn't vetted properly. When a large portion of the land area is not represented with a clear voice and not coming to consensus for the area, it was done half-hearted. We need to start over.

Public input concluded

**COUNCILMEMBER SANCHEZ** stated this Statement doesn't change anything; it's a Character Statement because the community was accused of not having a Statement by Lou Lightfoot. She very much supports continuing the agricultural uses for South Morro Hills. She would like to see some agri-tourism or the City getting involved in having a consultant to work on that. George Murray is doing a winery and that's a wonderful addition. When she became an elected official in 2000 the first thing she heard was don't ever let the greenbelt disappear in Oceanside. We need to maintain the healthy mix of economy and this is the last greenbelt. She remembers when it was all agriculture past the Mission. We have changed so much but there are things that agriculture is doing to maintain those uses, which is very critical to our region. This is the right thing to do. There may have been some misinterpretations of what was sent to us. She knows that people knew about this and were approached. She has had quite a few people approach her in support of this.

She had previously asked Mr. Mellano when he told her he wanted to do residential instead of continuing farming if when he bought the property it had the agricultural zoning and if he didn't want to do that he could do 2.5 acre minimum lot sizes and he said yes. So nothing has changed and nothing is being taken away.

**COUNCILMEMBER FELLER** asked whose property gets to be open space if they want to do the 2.5 acre splits. If we keep over-regulating and under providing for agriculture like we are with water, he doesn't know how they can say that you have to stay in business. There are farms all over the country going out of business, not just in Oceanside. He isn't against upgrading the Master Plan and having input from all different sizes of the properties, but who's going to fix the roads or put in the sewers if and when agriculture fails. This needs to be done as a full General Plan update. Hearing that this is already part of the plan for that area, he's not sure why we're doing it at all.

**COUNCILMEMBER KERN** thinks if you really wanted to divide a community you just did it by drawing that line in the sand instead of working with your neighbors and coming forward with a cohesive idea. Now you have 2 sides to this community that are divided and it is disappointing that this came forward this way. Even Councilmember Sanchez's statement was that we want to do grapes and tourism. You can't do tourism on those roads. The community out there would rebel if we had tourism traffic on those narrow roads. There is no consistency here. These guys are trying and because of water, farming is no longer profitable. What do you want them to do just sit on vacant land so you guys can have a buffer around you. They are entitled to do with their land what you would do with your land and that is sell it or use it in the highest and best use. To have one group of property owners tell another group that they can't use their land at the highest best use that they want to use it at is not right. This isn't the time to bring this forward. He would like it to be withdrawn and have them go back and deal with the community as a whole. If this goes forward, you will

have a more and more divided community out there.

**MAYOR WOOD** has a different outlook on this particular issue. Dividing neighborhoods has already happened and it's not over this. There are 2 sides here. For the people who have agriculture out there, this is a Williamson Act agricultural area that's 2.5 acre lots. It's the last greenbelt in Oceanside. As far back as he can remember he was told that this last greenbelt was the last place in Oceanside to have high density housing and that's what they'd like to have because that's where the dollar sign is. He has talked to people on both sides. Years ago they wanted a bridge across Melrose Drive to North River Road in order to build high density housing out there because they would never get through environmental impact without having the bridge.

He agrees with the landowners that things are tough; the water is tough. Generationally speaking, some of the children of the landowners don't want to do agriculture for whatever reason. However, he doesn't want the City to provide the roads, sewers, etc. that they would like to do to have high density out there. It will have to be a developer that would put in the infrastructure to do what they want. He knows people want to sell their agricultural land but they don't want to split it into 2.5 acre lots. However, the history of that area is 2.5 acres. You can still sell your land to someone else and have them split it into 2.5 acre lots to keep it consistent with the neighborhood. It's all about selling land, money and changing your land to a different use. It's everybody's right to do what they want but it has to be compatible and consistent with the neighborhoods. He's always loved it out there. He doesn't mind supporting this because it's just words. It doesn't change what anybody can do with their land except be consistent with what it already is.

The farmers are competing with everyone else in the world who don't necessarily have the regulations or high water prices and it's difficult. A lot of the agricultural people out there don't want to do this anymore because they are highly educated and don't compete with the rest of the world in agriculture. The community out there has been split for years so this is nothing new.

**COUNCILMEMBER SANCHEZ** stated you use a lot less water growing grapes. One of the people growing grapes for a winery is not watering at all and using the natural precipitation. She would like to help our agricultural owners realize some kind of profits in maintaining that kind of use. She has seen, especially along the northern coast, with agri-tourism they limit the kind of activity and the amount of activity to insure that it maintains the character.

**COUNCILMEMBER LOWERY** asked if we are going to initiate a process, so we're not really approving this Statement, is that correct.

**CITY ATTORNEY MULLEN** stated that's correct. You are initiating a process, basically an application for a General Plan amendment that will have to go through a public hearing process. All of the interested parties would be able to come to the Planning Commission and ultimately back to the Council.

**Motion was approved 3-2;** Councilmembers Kern and Feller – no.

Mayor Wood asked for a vote on continuing past the 10:00 PM hour.

Council by majority consensus agreed to continue past 10:00 PM.

Mayor Wood determined to hear Item 28 at this time.

**PUBLIC HEARING ITEMS** - Continued

28. **City Council: Consideration of a resolution to add to the Fire Department Fee Schedule an annual inspection fee for certain occupancies including hotels, motels, apartments, vacation timeshares, and condominiums of three units or**

**more (3-10 units \$119; 11-30 units \$179; 31-50 units \$238; and \$15 for each additional 10 units), to address unfunded mandates for annual inspection**

- A) Mayor opens public hearing – hearing was opened.
- B) Mayor requests disclosure of Councilmember and constituent contacts and correspondence – Mayor and Councilmembers reported contact with staff and public.
- C) City Clerk presents correspondence and/or petitions – letter from the Apartment Association.
- D) Testimony, beginning with:

**MIKE MARGOT**, Fire Division Chief, stated the Fire Department was tasked on several occasions in the past with forwarding and investigating opportunities for cost recovery and that's why this is before Council. Fire prevention has 2 different areas in which it does charge fees. One is for development related activities and we also do annual inspections. We don't have a current fee to do any annual inspections outside of the business licensing inspection. The Health & Safety Code has a mandate in it for us to inspect certain occupancies, which are apartments, hotels, motels, condominiums and vacation timeshares. We think this is an opportunity to provide cost recovery because we currently do these inspections as well as we can with the staff that we have. The Health & Safety Code mandates this because this is where the highest propensity for civilian injuries and fire deaths occur. Our pricing structure is based on us doing these inspections in the last couple of years, how long it takes to do them and incorporating them into our existing inspection structure for new inspections. We currently have one fee that is \$119 per inspection and, as the time involved moves up greater with a greater amount of units, we would add another unit of inspection fee onto the fee structure.

If approved we're not going to just start walking down the street inspecting, we have a very planned out process. When these inspections come up in the system and are 30 days out, we're going to send out a letter notifying them that their inspection is due. We will also notify them that there will be a fee involved. They will also be presented with a self-inspection check list that will also be available on the website, so there will be ample notice that there is going to be a fee charged if Council approves this tonight.

Public input

**JIMMY KNOTT**, 127 Sherri Lane, has no objection to raising this but he has objections to how it was presented in the staff report because there is no breakdown of what's included in this inspection. Potentially this could have benefits to the owner of the property regarding their insurance. He asked if we are charging what we should be charging on all of our fees within the City. We should have a comparative indexing on an overall basis.

**LARRY BARRY**, 3973 Brown Street, stated this is a shakedown by the Fire Department trying to collect revenue. Everyone is struggling and now we have to pay for this inspection. He doesn't put a lot of faith in this; where's the accountability? This is another way of saying Oceanside is not a business-friendly place. He suggested this be put off until times get better.

**KAY GORDON**, 432 Edgehill Lane, is concerned about exempting condos because condo owners are homeowners, just like single-family homes, and we get hit by taxes that help pay for fire. We also pay homeowner's association fees. This isn't a complaint about money. We have more of a vested interest in making sure that we're trimming trees, etc., than an apartment, hotel or motel might. She read from Health & Safety Code Section 17921 where it says the Fire Marshal shall adopt, amend and repeal regulations for fire and panic safety for hotels, motels, lodging houses, apartment houses and dwellings, buildings and structures accessory thereto. She doesn't think a condo complex is an accessory to these others that are more transient - more rental

non-owner occupied. She requested that Council pass this with an amendment to exempt condominiums that are owned by homeowners with associations.

**BOB BERG**, P.O. Box 942, Carlsbad, has a couple of issues with this as an income property owner. It is a revenue generation tool. It is listed as a fee but he sees it as a tax. He feels this might be double taxation because his property taxes cover this kind of thing. There are a lot of under-represented stakeholders here and he questioned the notification. He can't always pass on these costs to his tenants, especially during these hard times. He asked Council not to pass this.

**RON TAYLOR**, 1535 Sleeping Indian Road, has several apartment houses and feels the business license he pays for should cover this. Some of the houses in his neighborhood have more square footage than his units combined, so maybe this should be done for anything over 3,000 square feet.

Public input concluded

Mayor Wood closed the public hearing.

**COUNCILMEMBER SANCHEZ** stated this is cost recovery for an unfunded mandate; it is the law. The Health & Safety Code requires us to do these inspections for very specific structures, existing high life safety hazard occupancies, which are hotels, motels, apartments, vacation timeshares and condominiums of 3 units or more. Other cities have been doing this for quite some time. Our City has been in the process of looking at cost recovery for every department. We are now requiring parents to pay for lighting for their kids' sports games. We have been criticized for the cost of public safety and this is only a cost recovery for something that is required by the State.

She **moved** approval [of **Resolution No. 10-R0809-1**, "...establishing a fee schedule for annual fire inspections for specified occupancies".

**COUNCILMEMBER LOWERY** **seconded** the motion. It appears these inspections are being done annually after there's the initial inspection for a new building, is that correct?

**DIVISION CHIEF MARGOT** responded yes. Once a building is built and constructed the Fire Department takes over the annual inspection process on it. A newly constructed building gets finalized with Fire and then every year after that, if it's an apartment complex, etc., it goes through an annual/tri-annual inspection process. We try to get to all of our buildings throughout the City in a reasonable timeframe. These types of buildings are mandated by the State's Health & Safety Code to be inspected annually.

**COUNCILMEMBER LOWERY** asked if the State gives us any money to do that.

**DIVISION CHIEF MARGOT** responded no.

**COUNCILMEMBER LOWERY** asked if these inspections are done to confirm that existing Fire Codes continue to be met and that there haven't been modifications.

**DIVISION CHIEF MARGOT** responded the inspection process takes into account a lot of things: exiting, egress, fire protection features, extinguishers, corridor protection, alarm protection, sprinkler protection and general household electrical, etc. It's mandated because of a landmark case in the late 1970's in Marysville.

**COUNCILMEMBER LOWERY** stated there is no cost for a single unit because a single unit would be a single-family home. What would a 2-unit building be?

**DIVISION CHIEF MARGOT** responded a 2-family unit would be either a duplex or a townhome and single-family, duplexes and townhomes are exempt.

**COUNCILMEMBER LOWERY** asked if the total cost for 10 units would be \$119 or \$11.90 per year per unit.

**DIVISION CHIEF MARGOT** responded yes. That would include, if there are violations, a re-inspection at no charge.

**COUNCILMEMBER FELLER** asked if most of Oceana will be getting these inspections because they are all interconnected with 6+ units.

**DIVISION CHIEF MARGOT** responded if they are more than 3 units then yes.

**COUNCILMEMBER FELLER** asked how many there are in the City.

**DIVISION CHIEF MARGOT** did a breakdown this afternoon based on some data that he had and we probably have close to 1,000 buildings of 10-units or less and probably 400 that are 10 units or greater.

**COUNCILMEMBER FELLER** asked who actually does the inspection.

**DIVISION CHIEF MARGOT** responded currently we have 3 fire inspectors on staff.

**COUNCILMEMBER FELLER** asked if it's possible to cross-train our entire department and go out from each individual station.

**DIVISION CHIEF MARGOT** responded yes.

**COUNCILMEMBER KERN** asked how you would charge for Oceana. Are you going to send individual bills to each property owner in one building? Are you going to take the 6-unit cost and divide it by 6 and bill each unit?

**DIVISION CHIEF MARGOT** responded no, it would be done by building. We would send one bill for the entire \$119 to whoever is managing the building or the homeowners association.

**COUNCILMEMBER KERN** stated the homeowner's association doesn't manage the units. He doesn't see how that will work. Councilmember Sanchez mentioned that we got criticized on our cost of public safety and we spent another \$543,000 recently on public safety. We're not controlling our costs but now we're adding fees. Until we start controlling our costs, he doesn't think we should be going to the public and demanding more fees. Apartment owners pay taxes just like everybody else and those taxes are probably a little bit higher than single-family homes. These services should be included in the taxes they pay. Raising fees, especially in this economy, is not a good thing to do. He can't support this. People will understand who the business-friendly and property-friendly people are up on the dais by this vote. The private sector is getting hammered a lot and we don't need to hammer them anymore by adding fees on top of their taxes.

There is that question, like with Proposition 26, about what is a fee and what is a tax. They have no choice in this; they are going to pay every year for an inspection fee. This isn't the same as kids playing soccer and paying for the lights because they can opt out of that by not playing. We should bring this back at a later time and we still have the question of how Oceana is going to be handled. He can't support any fess at this time in this economy.

**COUNCILMEMBER SANCHEZ** stated our Fire Department has been cut by millions of dollars. We're actually spending less on fire protection and fire services than we did a couple of years ago. Our firefighters actually gave up \$1,000,000 out of their personal pockets. Our Fire Department and firefighters are costing the City less. There are no free lunches; everything costs and we don't get the property taxes. We keep getting raided by the State. The City has never raised taxes.

**MAYOR WOOD** agrees that during this crisis we were struggling to find ways to make money when the State took \$14,000,000 from us and we were trying to come up with ways to recoup those costs. He is concerned about the condominium issue the speaker brought up earlier. If we have a condominium complex, is there a difference because they are individual homeowners. Is it State mandated?

**DIVISION CHIEF MARGOT** responded the reason that condominiums are included in the mandate to inspect is because a condominium uses the same construction features and has the same occupancy classification as an apartment complex. Those features are what protects people in their houses so we're trying to provide the same level of protection for people who are in multi-family dwellings that are called apartments or condominiums. It has nothing to do with whether it's owner or tenant occupied. We will continue to do these inspections to the best of our ability, whether condominiums are chosen to be withdrawn or left in.

**MAYOR WOOD** agrees that increasing fees in the middle of this economy is a tough thing to do but earlier in the year we were struggling to see how we could pay for staffing and everything else in the City because the State took all of our money. On the other hand, he wants to have safety. We're doing these because the State mandates it but we aren't getting any money for it. A lot of our condominiums are rentals and the safety of those are not necessarily looked at as closely by the tenants as they would be by the owners. This is a no-win situation. He asked if the Fire Chief supports this.

**FIRE CHIEF HEBERT** responded yes.

**Motion was approved 3-2;** Councilmembers Kern & Feller – no.

#### **PUBLIC COMMUNICATIONS ON OFF-AGENDA ITEMS**

No action will be taken by the City Council/HDB/CDC on matters in this category unless it is determined that an emergency exists or that there is a need to take action that became known subsequent to the posting of the agenda.

**Advance written request to reserve time to speak:** None

#### **26. Communications from the public regarding items not on this agenda**

**REX MARTIN**, 306 Benevente Drive, is a candidate for Council and brought forth a political issue about a hit piece in a mailer talking about certain issue he doesn't support and it's not true as he explained. This includes blatant lies. He doesn't know how they could print something like this. He read from articles that confirmed he spoke in support of those items. Mr. Kern and Mr. Felien paid for and authorized this knowing it was a blatant lie. They owe him a public apology.

**BOB BERG**, P.O. Box 942, Carlsbad, is looking to update the outdated public notification policy regarding material issues facing stakeholders. Current City law dictates only 1 ad needs to be put in the newspaper. Few people read the newspaper these days, given the popularity of the internet. Based on his recent experience with the City regarding a multi-million dollar devaluation issue of building heights, stakeholders were under-represented since mail was not used to notify each stakeholder directly. After some discussion some representatives of the City agreed that direct mail to stakeholders of record is a prudent and necessary step in the notification process, especially when material welfare of the stakeholder is affected. Consider updating the policy as soon as possible.

#### **INTRODUCTION AND ADOPTION OF ORDINANCES - None**

#### **CITY COUNCIL REPORTS**

21. **Mayor Jim Wood** – No report given due to the late hour

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22. **Councilmember Jack Feller** - No report given due to the late hour
23. **Councilmember Jerry Kern** - No report given due to the late hour
24. **Councilmember Chuck Lowery** - No report given due to the late hour
25. **Councilmember Esther Sanchez** - No report given due to the late hour

**ADJOURNMENT**

**MAYOR WOOD** adjourned this joint meeting of the Oceanside City Council, Community Development Commission and Small Craft Harbor District Board of Directors at 11:18 PM on October 20, 2010 [The next regularly scheduled meeting is at 3:00 PM on Wednesday, November 3, 2010].

**ACCEPTED BY COUNCIL/HDB/CDC:**

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Barbara Riegel Wayne  
City Clerk, City of Oceanside