

July 16, 2012

Council Special Meeting Minutes

ADJOURNMENT

MAYOR WOOD adjourned this special meeting of the Oceanside City Council at 2:33 PM on July 16, 2012, to a regularly scheduled meeting on Wednesday, August 1, 2012, at 2:00 PM.

ACCEPTED BY COUNCIL:

Barbara Riegel Wayne
City Clerk, City of Oceanside



California

CITY OF OCEANSIDE

JOINT MINUTES OF THE CITY COUNCIL SMALL CRAFT HARBOR DISTRICT BOARD OF DIRECTORS COMMUNITY DEVELOPMENT COMMISSION OCEANSIDE PUBLIC FINANCE AUTHORITY

DECEMBER 12, 2012

REGULAR MEETING 2:00 PM COUNCIL CHAMBERS

2:00 PM - **OCEANSIDE CITY COUNCIL (COUNCIL),
HARBOR DISTRICT BOARD OF DIRECTORS (HDB), AND
COMMUNITY DEVELOPMENT COMMISSION (CDC)
OCEANSIDE PUBLIC FINANCE AUTHORITY (OPFA)
- REGULAR BUSINESS**

Mayor
HDB President
CDC Chair
OPFA Chair
Jim Wood

Deputy Mayor
HDB Vice President
CDC Vice Chair
OPFA Vice Chair
Jack Feller

Councilmembers
HDB Directors
CDC Commissioners
OPFA Directors
Esther Sanchez
Jerome M. Kern
Gary Felien

City Clerk
HDB Secretary
CDC Secretary
OPFA Secretary
Zack Beck

Treasurer
Gary Ernst

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

City Attorney
HDB General Counsel
CDC General Counsel
OPFA Legal Counsel
John Mullen

For this regular and joint meeting, the Council sat as all 4 governing bodies [Council, HDB, CDC and OPFA] 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), Community Development Commission (CDC) and Oceanside Public Finance Authority (OPFA) was called to order by Mayor Wood at 2:02 PM, December 12, 2012.

2:00 PM - ROLL CALL

Present were Mayor Wood, Deputy Mayor Feller and Councilmembers Kern and Felien. Councilmember Sanchez was absent due to a Coastal Commission meeting.

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

December 12, 2012

Joint Meeting Minutes
Council, HDB, CDC and OPFA

Also present were City Clerk Beck, Assistant City Clerk Trobaugh, City Manager Weiss and City Attorney Mullen.

City Attorney Mullen titled the following items to be heard in Closed Session:
Item 1.

[Closed Session and recess were held from 2:01 PM 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. **LITIGATION OR OTHER ADVERSARY PROCEEDING (E.G., ADMINISTRATIVE HEARING, ARBITRATION) (SECTION 54956.9(a))**
 - A) CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION (SECTION 54956.9)

Significant exposure to litigation pursuant to Subdivision (b) of Section 54956.9:
One Case

Council, by a 3-0 vote with Mayor Wood recusing himself and Councilmember Sanchez absent, voted not to appoint legal counsel for the Mayor with respect to the validity of this proposed ordinance and not to seek an Attorney General opinion regarding the validity of the proposed ordinance

CLOSED SESSION REPORT

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

CITY ATTORNEY MULLEN reported on the item discussed in Closed Session:
See Item 1 above.

MAYOR WOOD was trying to save the City some money by asking that we send this to the Attorney General for a legal opinion, which would cost the City nothing. The Council majority didn't want to do that. If they didn't do that, he would like legal representation because using the City Attorney would be in conflict with the voting majority. There are legal issues about the rights of the Mayor to appoint and remove.

He thinks this is an inappropriate or illegal meeting tonight. The issue is you cannot have a special meeting for this issue to vote on this item. The three other Councilmembers signed a form to put this meeting on at the last Council meeting. They voted to have the meeting tonight because on December 19th Councilmember Kern will be out of town. There is only one item on the agenda, which is the item regarding the powers of the Mayor. Since there is only one item, he considers this to be a special meeting and that's illegal.

He will try to fight for the citizens, who overwhelmingly voted for him as the Mayor to represent them. The Council majority seems to be circumventing that. He's concerned about due process for the public. This isn't about him being on these committees. If he's not on them it doesn't bother him. The citizens voted him in, and he should be able to run the City as the Mayor. He has very few powers over the rest of the Councilmembers, and this is one of them.

The Charter came to being with no input from the City Attorney or City Manager and was written up by Councilmember Feller and the outside building industry. It went to the ballot and passed. One of the issues was the labor unions; that has now been

taken care of by the California Supreme Court, so it's not an issue anymore. This is purely a power grab.

CONSENT CALENDAR ITEMS - None

GENERAL ITEMS - None

INVOCATION – Zack Beck

PLEDGE OF ALLEGIANCE – Holly Trobaugh

PROCLAMATIONS AND PRESENTATIONS – None

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

3. **Communications from the public regarding items not on this agenda** - None

PUBLIC HEARING ITEMS - None

MAYOR AND/OR COUNCILMEMBER ITEMS - None

INTRODUCTION AND ADOPTION OF ORDINANCES

The following items are ordinances for introduction or adoption by the City Council/HDB/CDC/OPFA. Ordinances are laws of the City of Oceanside and require introduction and adoption at two separate City Council meetings (urgency ordinances are an exception, and may be introduced and adopted at one meeting as an emergency measure). The City Council/HDB/CDC/OPFA has adopted a policy that it is sufficient to read the title of ordinances at the time of introduction and adoption, and that full reading of ordinances may be waived. After the City Attorney has read the titles, the City Council/HDB/CDC/OPFA may introduce or adopt the ordinances below in a single vote. There will be no discussion of the items unless requested by members of the City Council/HDB/CDC/OPFA or the public through submittal of a Request to Speak form prior to the commencement of this agenda item.

4. **City Council: Adoption of an Ordinance of the City of Oceanside amending Chapter 2, Section 2.1.64(g) of the Oceanside City Code modifying the appointment process for regional boards and commissions** (*introduced 12/5/2012, 3-2 vote; Wood and Sanchez – No*)

CITY ATTORNEY MULLEN read the ordinance in its entirety.

Public input

BRENDA SOUZA, 3621 Vista Campana, stated this is lacking consideration and respect. The Council majority is trying to attack the Mayor with no provision of letting him be the senior person on SANDAG. If you send somebody else, they'll start at the bottom. The Mayor listens to the people of Oceanside about roads. The people want to be listened to. Jim Wood is Oceanside's Mayor and needs to be respected as the Mayor and not put down by 3 men on this Council who want to be king. She hopes the Mayor can keep his seat on SANDAG because that's the only way we're going to keep the senior seat.

CHRIS WILSON, 770 Harbor Cliff Way, hears a lot of talk about whether or not

the representative on SANDAG is representing the views of the majority of the Council, but that is misguided. The person who represents the City on SANDAG should represent the people of the City and not necessarily the Council. It's important to draw that distinction because in this case we have a Mayor who was elected with more than a majority of the vote of the citizens. He received 54% in a three-way race, which is pretty impressive. To put the views of the Council, even though you are elected leaders, over the views of someone who is elected directly by the people puts an additional layer in the middle and is a formula for bad government. He would be opposed to this even if the face of the Council was different. To do this is hasty and flies in the face of the opinions of the vast majority of electorate of this City. Leading, by definition, means you are headed in the same direction as everyone else.

JIMMY KNOTT, 127 Sherri Lane, stated there are only 2 employees that the Council hires and fires: the City Manager and City Attorney. He believes this may be influencing the City Attorney's selective decision on which segment of Article 11, Section 5, of the State Constitution is being used to support this action. That Section states it shall be competent in any City Charter to provide that the City governed thereunder may enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several Charters. In respect to other matters, they shall be subject to general laws. This is what has to be followed. There has to be a Charter amendment. Council is violating the law if they go ahead with this.

We must follow Government Code 40605 that says in general law cities, where the office of the Mayor is an elected office, pursuant to Article 5, commencing with Section 34900 of Chapter 7 of Part 1 of Division 2 of Title 4, the Mayor, with the approval of the City Council, shall make all appointments to boards, commissions and committees, unless otherwise specifically provided by Statute.

There is no staff report with this action and no written reasons have been published. This is a sham deal, and he doesn't want the City to have to defend their actions if they go ahead with this and use any of the taxpayer funds to support their actions.

LINDA SILLS, 42 Chico Lane, thinks this ordinance is unnecessary and a waste of time, money and energy. If the Council goes forward, people like her will be spending 2 hours a day in front of Ralph's getting referendum signatures. She has better things to do over the holidays. Why are they doing this now? What is the urgency? Just follow the will of the people.

WINDY BRAVO, 3030 Oceanside Boulevard, stated we've heard a lot about shovel-ready projects, and she'd like to set that aside for a minute and talk about a demolition project. Everyone knows that a Council block does not a City make. Yet an alarming and highly patronizing post-election insult pervades. We see ordinance spokesman Gary Felien providing the press with strangely convenient redefinitions of majority rule. Councilmember Felien is engaged in repackaging unpopular projects into popular ones. This redefinition of majority rule, combined with the misrepresentation of road building as a popular project in Oceanside, belies a flagrant disregard for Oceanside's voter intelligence and governmental integrity. Together with questionable practices regarding hasty dispense of administrative protocols, it suggests that our Charter is being toyed with for political gain. We should all become alarmed when a Charter becomes a convenience to serve any block that seeks to subsume ordinary deliberations of government so that ill-intentioned concerns can quickly advance.

The proposed ordinance has grave consequences. A heritage of governmental breakdown, it strips Oceanside's defense against unconscionable maneuvering by a series of hit and run City Council blocks over the course of time. Schemes and assorted boondoggles already sprawl in California's coastal cities. We want something better for Oceanside. We want Oceanside to stand apart as a haven for tourists seeking the

unsullied California. Oceanside is California's last stand, and we stand against any block that would wrest our town away from us. A system of checks and balances is in place to protect majority interests and apparently this Council block seeks to countermand that and usurp ordinary deliberation. Their contrivance is a fast-track to nowhere. We have seen the breakdown of other cities where blocks have interfered so. Councilmember Kern, Feller and Felien want to put Oceanside on the same fast-track to nowhere.

PAT MCFARLANE, 3538 Pear Blossom Drive, voted for Mayor Wood because she thought he was doing an able job. She moved here in 2010 and watches the meetings and has seen how Councilmembers behave. On that basis, she has formed her opinions. The Mayor deserves the support we showed at the ballot box, and he needs the respect of the Council and the citizens. This is a foolish and unwise act because it's taking time, energy and money that could be better spent for the welfare of this town. This is a poor start for a new inauguration. They starting a new cycle by disagreeing in a way that is not helpful. They should reconsider this; she is very disappointed that it's going the way it is.

HOLLI MORTON, 200 North El Camino Real, doesn't agree with this and asked why they are in such a big rush to do this right this minute. People are taken away from their work and Christmas activities to come out here and have this discussion at this time. What is the big rush? We're not happy with this. It's not just the 9 people that are up here speaking. We represent hundreds of people who are asking why you are doing this. We are suggesting strongly that they reverse this. Give it time for proper discourse and don't waste the City's money anymore.

LINDA WALSHAW, 151 Robby Lane, stated we had all hoped that we were going to start off this new year with Mayor Wood in office and a more congenial spirit of cooperation among us all. Clearly that's not going to happen, and that's a travesty of our political system. Many of us have looked into this from a legal standpoint, and this is going to violate political process. If every time somebody lost an election they could simply turn around and vote to strip their opponent of the powers of office, that violates the democratic process, and the people won't stand for it. Everybody has been dragged through this for the last couple of years, and people are angry. She reminded the voters who are listening that Mayor Wood has brought millions of dollars to the City.

SANDAG representatives are Mayors of other cities or their appointees. Why is Oceanside trying to do that differently than everybody else? SANDAG gives credit for seniority, and Mayor Wood is a senior member. Oceanside gets 5 votes on SANDAG; the City of San Diego gets 25; and the County gets another 25. All of the other cities get their votes, too, so it shouldn't be a big surprise that Oceanside doesn't always get their projects through. You claim that we're not getting the funds we need for the Melrose Extension. The neighborhoods don't want Melrose or Rancho del Oro. Ask the people who live there. They'll tell you they don't want their homes taken by eminent domain, and they don't want to lose Guajome Park. They're fed up with this. SANDAG only approves shovel-ready projects, and Melrose and RDO do not qualify. SANDAG also just received a court ruling against their 40-year plan, which will now go through the appellate and Supreme Court systems. Funds are going to be tied up in litigation for years to come. Some estimate as long as 16 years.

Nothing is going to change by doing this. It is simply sour grapes and a power grab.

ELLENOR MOORE, 276 North El Camino Real, expressed her disapproval of the actions proposed by the majority Council. She opposed Councilmembers Kern, Feller and Felien's actions to try to strip the Mayor of his powers. This is wrong and vindictive. It's a power grab because they can't accept the fact that Councilmember Kern lost his campaign for Mayor. Mayor Wood won with over 54% of the vote. They continue to

disregard the wishes of the citizens of Oceanside. It has to stop. It's bad for Oceanside and it makes them look bad.

Public input concluded

COUNCILMEMBER FELIEN stated the proposal he's making is exactly how the City of San Marcos currently appoints all of their members to regional boards and commissions, so it's not anything new.

Since this ordinance was suggested on November 28th and the City Attorney was asked to draft it up, the people who are opposed to the ordinance have not brought forth a single actual case or precedence or reference that conflicts with the opinion that our City Attorney has made regarding the legitimacy of the ordinance or the rationale in which it was deemed legal and acceptable. All we have are assertions and conjectures, but no cases or precedence, which is why we don't need to go to the Attorney General to get a letter. There is nothing to resolve. There's only one opinion on the table and that's our City Attorney's opinion based on actual laws, cases and precedence.

No city has ever paid for an attorney to sue the city. We don't want to be the first to set that precedence.

The latest assertion questions the legitimacy of this meeting. The meeting is a regular meeting that was scheduled according to the law by a special meeting that was held last Wednesday. The intent of setting up this meeting today was announced two weeks ago on November 28th to accommodate the needs of Councilmember Kern, who is not able to attend the December 19th meeting.

As to why the time frame of the ordinance, the reason for that was on the front page of the local newspaper, so it's hardly a secret. That sums up where we are.

The Mayor won an impressive election, and he congratulated him. But that election gave him 1 vote out of 5 on the Council. Councilmember Sanchez also had a great election day. As a result, she won 1 vote on the City Council. There are winners and losers in every election, but he doesn't know that they lost the election when they have 3 votes. Two votes don't run the City. We elected a Mayor; we did not elect a king.

We feel that when it comes to appointing fellow Councilmembers to regional boards and commissions, the Council as a whole should have more of a say in that process. The process of appointing third party members to commissions and City boards remains unchanged.

He urged his colleagues to vote yes for the ordinance.

He **moved** to adopt the **Ordinance No. 12-OR0799-1**, "...amending Chapter 2, Section 2.1.54(g) of the Oceanside City Code modifying the appointment process for regional boards and commissions".

DEPUTY MAYOR FELLER **seconded** the motion. He asked for clarification that this is a regular meeting and not a special meeting.

ASSISTANT CITY CLERK TROBAUGH responded that's correct; it is a regular meeting.

DEPUTY MAYOR FELLER asked the City Attorney if we are breaking the law.

CITY ATTORNEY MULLEN responded no. As he said at the 2 prior meetings, this is, in his opinion, a policy issue. Council could continue to have Mayoral

appointments under our current ordinance and our City Council Policy 100-10. He's looked at this issue and believes that the proposed amendment is legal as well. It's a policy issue for the City Council to decide.

DEPUTY MAYOR FELLER stated in what you've read, the Mayor still has the ability to appoint but Council still has the ability to change.

CITY ATTORNEY MULLEN responded the proposed ordinance says that the Mayor comes in with his appointments to regional boards and commissions. If any of those are not accepted by the Council, then any Councilmember can thereafter, at a properly noticed meeting, nominate a candidate to a regional board or commission. That would require majority approval.

DEPUTY MAYOR FELLER stated sending people to the bottom is what we've done here starting back a long time ago. Former Councilmembers Melba Bishop, Don Rodee and Nancy York did it to a most senior former Mayor Larry Bagley in 1991, when he was to be Chair of SANDAG. It's exactly what former Councilmembers Terry Johnson, Carol McCauley and Betty Harding did in 1996-97 when former Mayor Dick Lyon was to become Chair of the Transportation Committee. It's also what Mayor Jim Wood, Councilmember Esther Sanchez and former Councilmember Shari Mackin did to Deputy Mayor Feller. They removed him as Chair of the NCTD and took him off of the Executive Committee at SANDAG in June of 2005. After June 26, 2005, Oceanside could no longer vote for their own appointments. Even if we had had the opportunity, if the rules were in place then that are in place of as March 12, 2012, we could have removed Mayor Wood several times during that last 7 years. As of March 2012, the Fair Political Practices Commission passed a rule stating a person could vote for his/her own appointment. This is simply something that's important to Oceanside to keep everything moving. We, as a City, still have strong relationships with all of the communities down south, and we deserve better representation at SANDAG.

MAYOR WOOD has been Mayor for a while, and he's popular because he tries to do what the people want. He's not sure this Council does the same thing. Councilmember Felien went to the City Manager and said the Mayor could stay on SANDAG if he appointed 2 of them to the subcommittees. So if he goes along with this, he can stay on SANDAG. It's not worth it to him to compromise future Mayors and what they do.

The difference in the past instances that Deputy Mayor Feller brought up about people being removed is really and truly about the number of votes and how popular they were in the election. A while back they introduced Proposition F stating that no one could get on the Council unless they got over 50% of the vote. So far, he's been able to get over 50% every time.

There's a reason why he removed Deputy Mayor Feller from his position on NCTD and SANDAG. He talked to the people at both of those places and found that Deputy Mayor Feller wasn't a great representative for the City. He thought someone else could do more than just show up to get the stipend. We did that in the best interest of the City.

This is about the people, not the Mayor. How much of our citizen's time and effort do we want to spend to fight this issue? It's going to go forward because he knows how the vote will go. Since he's not a lawyer, he thought we should go to the Attorney General to get an opinion that might save us some money. It seemed reasonable, but they said no. He wanted another opinion besides the City Attorney's. The City Manager and City Attorney can both be fired by 3 votes. That might have an impact; it might not.

He would hate to see a referendum to change this, or to recall somebody, or to

change the City back to general law. He doesn't want to hear the majority crying the blues down the road about the cost of a referendum because they brought it up.

People should know that the SANDAG of today is not like the SANDAG of a year ago. A lot of cities throughout the County have changed their representation. The 2030 and 2050 plans are already in effect and they won't be able to change that money around. He wants to get the best for Oceanside, but he doesn't want to offend every community who doesn't want RDO at 78 or the Melrose Extension. He tries to listen to the people and represent them. This appears to be a way to circumvent his representation. He will fight to say no to this.

COUNCILMEMBER FELIEN stated this is certainly a passionate issue. He has said publicly that one of his complaints with the representation has been that the Mayor has not fought to get other members of the Council on the subcommittees on SANDAG. He has never had any meeting with the City Manager where he claimed he would support the Mayor in return for getting 2 appointments. There is no way that could even be guaranteed. The representative for SANDAG has to get together with 4 other representatives and haggle. Some people come out happy and some don't. There's no way to guarantee the outcome of those meetings in advance. He challenged the Mayor to retract his comment on that meeting or provide a source because he never had that conversation or made that kind of illusion.

MAYOR WOOD asked if this is voted in today, when will he lose his power as the Mayor.

CITY ATTORNEY MULLEN responded the Mayor to have that power. The ordinance would become effective in 30 days.

Having read the ordinance in its entirety, the **motion was approved 3-1; Wood no and Sanchez absent.**

ADJOURNMENT

MAYOR WOOD adjourned this joint meeting of the Oceanside City Council, Community Development Commission, Small Craft Harbor District Board of Directors and Oceanside Public Finance Authority at 2:59 PM on December 12, 2012. [The next regular meeting is scheduled for 2:00 PM on Wednesday, December 19, 2013].

APPROVED BY COUNCIL/CDC/HDB/OPFA:

Zack Beck
City Clerk, City of Oceanside