

**MINUTES  
RANCHO PALOS VERDES CITY COUNCIL  
ADJOURNED REGULAR MEETING  
AUGUST 5, 2014**

The meeting was called to order at 6:00 P.M. by Mayor Duhovic at Fred Hesse Community Park, 29301 Hawthorne Boulevard, and was immediately recessed into Closed Session. The meeting reconvened at 7:05 P.M. \*Councilman Campbell participated via teleconference for a portion of the meeting, as listed on the agenda, from Camp Emerald Bay, 1 Cove Road, Avalon, CA 90704.

City Council roll call was answered as follows:

**PRESENT:** Brooks, Knight, Misetich and Mayor Duhovic  
**ABSENT:** Campbell\*

\*Mayor Duhovic announced that Councilman Campbell would be joining by teleconference later in the meeting.

Also present were Carolynn Petru, Acting City Manager; Carol Lynch, City Attorney; Dennis McLean, Director of Finance; Joel Rojas, Community Development Director; Michael Throne, Director of Public Works; Sean Robinson, Human Resources Manager; Nicole Jules, Senior Engineer; Eduardo Schonborn, Senior Planner; Kit Fox, Senior Administrative Analyst; and, Carla Morreale, City Clerk.

**FLAG SALUTE:**

The Flag Salute was led by Mayor Pro Tem Knight.

**MAYOR'S ANNOUNCEMENTS:**

None.

**RECYCLE AND EMERGENCY PERSONAL PREPAREDNESS KIT DRAWING:**

Mayor Duhovic announced Recyclers of the Month from the July 29, 2014 City Council meeting: Bill Van Den Hoek and Cheng Y. Chin. He indicated that all winners receive a check for \$250 representing a year of free refuse service and urged everyone to participate in the City's Recycling Program. He noted that in addition to winning the Recycler Drawing, the two individuals had also won a Personal Emergency Preparedness Kit from the City at a value of \$60.00.

**APPROVAL OF THE AGENDA:**

City Clerk Morreale reported that there was a request to reorder the agenda to move Item No. 2 (Ordinance Reducing the Utility User Tax Rate from 3% to 2.75% and Modernizing the City's Utility User Tax and Emergency Resolution Authorizing the City Council to Call an Election on November 4, 2014 to Request the Voters to Approve the Ordinance) and Item No. 3 (November 4, 2014 Special Municipal Election) up on the agenda.

Councilman Misetich moved, seconded by Mayor Pro Tem Knight, to not reorder the agenda and approve it, as presented.

The motion passed on the following roll call vote:

**AYES:** Brooks, Knight, Misetich and Mayor Duhovic  
**NOES:** None  
**ABSENT:** Campbell

**PUBLIC COMMENTS: (Audience Comments regarding Items Not on the Agenda)**

None.

**CITY MANAGER REPORT:**

None.

**NEW BUSINESS:**

**APPROVAL OF CONSENT CALENDAR:**

City Clerk Morreale reported that late correspondence regarding Item No. E (Border Issues Status Report) was distributed prior to the meeting and there were no requests to speak regarding the items on the Consent Calendar.

Councilwoman Brooks moved, seconded by Mayor Pro Tem Knight, to approve the Consent Calendar, as presented.

The motion passed on the following roll call vote:

**AYES:** Brooks, Knight, Misetich and Mayor Duhovic  
**NOES:** None  
**ABSENT:** Campbell

**Motion to Waive Full Reading**

Adopted a motion to waive reading in full of all ordinances presented at this meeting with consent of the waiver of reading deemed to be given by all Council Members after the reading of the title.

**Register of Demands**

ADOPTED RESOLUTION NO. 2014-46, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO PALOS VERDES, ALLOWING CERTAIN CLAIMS AND DEMANDS AND SPECIFYING FUNDS FROM WHICH THE SAME ARE TO BE PAID.

**May 2014 Monthly Report of Cash Balances**

Received and filed the May 2014 Monthly Report of Cash Balances for the City of Rancho Palos Verdes.

### **June 2014 Monthly Report of Cash Balances**

Received and filed the June 2014 Monthly Report of Cash Balances for the City of Rancho Palos Verdes.

### **Border Issues Status Report**

Received and filed the current report on the status of Border Issues.

### **Traffic Safety Committee Work Plan**

Approved the 2014-15 Work Plan for the Traffic Safety Committee.

### **Consider Approval of Request by the Peninsula Education Foundation for Placement of Banners on Street Light Poles on Silver Spur Road**

1) Approved the request by the Peninsula Education Foundation for placement of banners on street light poles on Silver Spur Road between Hawthorne Boulevard and Drybank Drive; and, 2) Authorized the Public Works Department to issue a no-fee encroachment permit for these banners, upon the Permittee meeting all other requirements for an encroachment permit.

### **Approval of Minutes**

Approved the Minutes of the July 22, 2014 Adjourned Regular Meeting.

### **Emergency Preparedness Committee FY 2014-15 Annual Work Plan**

Approved the proposed FY 2014-15 Emergency Preparedness Committee Annual Work Plan.

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### **PUBLIC HEARING:**

### **Final Environmental Impact Report (Final EIR) and Code Amendment for the Zone 2 Landslide Moratorium Ordinance Revisions (Case No. ZON2009-00409) / Location: “Zone 2” of the City’s Landslide Moratorium Area [Continued from June 17, 2014]**

City Clerk Morreale reported that this public hearing was continued from the Council meeting of June 17, 2014; late correspondence was distributed prior to the meeting; and there were eight requests to speak regarding this matter.

Mayor Pro Tem Knight recused himself from the discussion of this item and left the dais at 7:10 P.M.

Senior Planner Schonborn provided a staff report regarding this item.

Discussion ensued among Council Members and staff.

Robert Maxwell, referenced his handout distributed to the City Council prior to the meeting. He noted the following concerns: 1) The City is allowing houses to be built on unstable land; and, 2) There is evidence of cracking at Wayfarer's Chapel, houses along Altamira Canyon, and in Altamira Canyon itself, yet the EIR allows building in the landslide area. He added that the land is moving and to approve the EIR is an error.

Stuart Miller, Attorney, Portuguese Bend Community Association, Laguna Hills, stated that he was disappointed in the consultant's responses to his concerns submitted in May 2014 regarding the Final EIR, and noted the approval of this item would allow ad hoc determinations by different consultants without clear standards and formal requirements of coordination. He noted concerns with erosion control; water runoff and drainage issues; lack of specific requirements for an erosion plan to be submitted by the applicants; evacuation of the Portuguese Bend area; and the impact on private roads, which was not analyzed. He provided comments regarding the landslide and the Monks case and noted that the Portuguese Bend Community Association would consider a lawsuit.

Cassie Jones, Rancho Palos Verdes, commented on photographs she submitted to the Council, which demonstrated water running down the streets in the Portuguese Bend area from runoff after grading for a new development and from hardscape in the area. She noted that water does not run into Alta Mira Canyon or the ocean. She added that she had concerns with landslides in the area and inadequate studies and there should be no project available at this time.

Bill Hunter, Rancho Palos Verdes, stated that no current homeowners in Portuguese Bend want any more development until Alta Mira Canyon is designed, financed and engineered to address the drainage issues. He stated he had concerns with the EIR for the following conditions in Portuguese Bend: 1) an ancient landslide area, 2) 1950's infrastructure that will not accommodate the amount of drainage that occurs in the community; 3) much of the natural native grasses have died and will not afford necessary drainage and erosion protection; 4) problems with evacuation during an emergency; and, 5) potential fire danger.

Robert Douglas, Abalone Cove Landslide Abatement District (ACLAD), Rancho Palos Verdes, stated that over the years he and his students have worked on the geology and hydrology in the Portuguese Bend area. He noted concerns with the following: water and drainage; rainfall which ends up as groundwater; and buildup of groundwater, which is the trigger for instability and landslide movement. He added that without the management of storm water runoff and groundwater formation there would be no stability in the area. He reported that ACLAD opines that sections in the Draft and Final EIR are simply inadequate. He noted that ACLAD disagrees with the staff recommendation and recommends that the Council reject the EIR.

Jim Knight, Rancho Palos Verdes, stated that he was speaking as a private citizen and resident regarding this item since he is recused from participation as a Council Member. He noted that if the EIR is certified by the City Council, the Council would be agreeing with the following: 1) the analysis and conclusions of the EIR; 2) the full build-out of the subdivision; and, 3) the standards that existed when the subdivision map was recorded, in 1949, are in compliance with conditions that exist today. He noted concerns with fissures in storm drain systems that might endanger downslope land; the burden of proof on the community, not the City, that the

subdivision is able to handle a full build-out; establishment of a new geological standard for the new additional Zone 2 homes, which is a non-scientific unquantifiable standard and is not the same standard used throughout the City; and drainage problems. He concluded that the EIR does not adequately address the potential impacts adequately and has too many flaws for certification.

Jeremy Davies, Rancho Palos Verdes, stated that the FEIR states that the drainage system can handle the drainage from a full build-out of all 111 lots, which includes the Monks lots and the remaining 31 lots. He noted concerns with the following: drainage; road design, pavement integrity and roadway system; and, the weight/loading of construction vehicles. He noted that the conclusions in the FEIR are of major importance to the integrity of the document and fail to adequately address the comments submitted by the public, contains unsubstantiated assertions, and was non-compliant.

Discussion ensued among Council Members, staff, City Attorney Lynch, and consultant Abe Lieder, Project Manager, Rincon Consultants.

Clare Look-Jaegar, Traffic Engineering Consultant/Principal, Linscott, Law and Greenspan Engineers, stated that her firm prepared the traffic analysis included as part of the Final EIR. She provided clarification regarding the emergency evacuation analysis for the Portuguese Bend area, noting that the discharge rate of vehicles is the number of vehicles that could clear a particular point in time and the analysis did not state that the entire community would be evacuate in 66 seconds. She provided details regarding the particular assumptions used for the analysis and concluded that under those assumptions, the community could be evacuated in less than 15 minutes with two access points and under 30 minutes with one access point.

Discussion continued among Council Members and City Attorney Lynch.

Councilman Misetich moved, seconded by Councilwoman Brooks, to table the item.

The motion passed on the following roll call vote:

**AYES:** Brooks, Misetich and Mayor Duhovic  
**NOES:** None  
**ABSENT:** Knight (recused); Campbell (absent)

#### **RECESS AND RECONVENE:**

Mayor Duhovic called a brief recess from 8:06 P.M. to 8:20 P.M.

#### **REGULAR BUSINESS:**

#### **Ordinance Reducing the Utility User Tax (UUT) Rate from 3% to 2.75% and Modernizing the City's Utility User Tax and Emergency Resolution Authorizing the City Council to Call an Election on November 4, 2014 to Request the Voters to Approve the Ordinance**

Mayor Pro Tem Knight returned to the dais at 8:20 P.M.

\*Councilman Campbell joined the meeting at 8:20 P.M., via teleconference from the remote

location as listed on the agenda.

City Attorney Lynch provided a brief overview and PowerPoint presentation regarding the proposed ordinance reducing the Utility User Tax (UUT) rate from 3% to 2.75% and modernizing the City's Utility User Tax, and emergency resolution authorizing the City Council to call an election.

Director of Finance McLean provided a brief staff report and PowerPoint presentation responding to questions and issues raised at the July 29, 2014 Council meeting, as well as fiscal matters to be considered by the Council.

Tom Long, Rancho Palos Verdes, stated that when he served on Council, the decision was made to postpone the issues regarding the UUT until the conclusion of litigations of other cities. He noted that, unfortunately, the litigation did not sustain the tax, resulting in the difficult decision that is before the Council for consideration. He stated that Alternative Nos. 1-3 were not optimal considerations, spoke in support of staff's recommendation, and opined the matter should be placed before the voters for their decision.

Discussion ensued among Council Members, staff, and City Attorney Lynch regarding the following: 1) Potential litigation regarding the past collection of the telecommunication portion of the UUT; 2) Consideration of UUT ballot measures by many cities and recent legal claims and challenges against other cities resulting in the successful award of damages; 3) Temporary suspension of the future collection of the telecommunication portion of the UUT; 4) The need for UUT funds and cost of the election if held in November 2014; 5) Alternative 2, as presented in the staff report, if the resolution to declare emergency was not adopted by the City Council, to temporarily suspend collection of UUT by telecommunication providers and reconsider UUT modernization ballot measure in November 2015; 6) An alternative to modernize the UUT language and keep the UUT rate at 3%; and, 7) An alternative to place the ballot measure on the November 2014 with the suspension of the UUT during the interim period.

Councilman Misetich moved, seconded by Mayor Pro Tem Knight, to: Place the UUT Measure before the voters on the November 4, 2014 Election with the incorporation of the modernization language, and keep the UUT rate at 3%.

Discussion continued regarding the suspension of the collection of UUT by telecommunication providers between now and the November 2014 Election and clarification that the motion did not include the suspension.

Additional discussion ensued among Council Members, staff, and City Attorney Lynch.

Councilman Campbell moved, seconded by Councilwoman Brooks, to call the question.

The motion to call the question passed on the following roll call vote:

**AYES:** Brooks, Campbell, Knight, Misetich and Mayor Duhovic  
**NOES:** None  
**ABSENT:** None

City Clerk Morreale reiterated the motion on the floor as the following: Councilman Misetich

moved, seconded by Mayor Pro Tem Knight, to place the UUT Measure before the voters on the November 4, 2014 Election with the incorporation of the modernization language, and keep the UUT rate at 3%.

The motion failed on the following roll call vote, as a unanimous vote was necessary:

**AYES:** Brooks, Misetich and Knight  
**NOES:** Campbell and Mayor Duhovic  
**ABSENT:** None

Discussion continued among Council Members, with Mayor Duhovic noting that he voted against the motion due to the potential backlash from the public and that he was in favor of the suspension of the collection of UUT by telecommunication providers. Councilman Campbell stated that he voted against the motion because he did not see enough evidence that this was an emergency, opined that the ballot measure has a high likelihood of failing on the November 2014 ballot, and noted that this matter should be addressed in a measured businesslike fashion.

Tom Long, stated that he had listened carefully to the concerns of Council and suggested the following compromise to: Hold the election in March 2015 with the City of Los Angeles; place the UUT Measure before the voters for their consideration; keep the UUT rate at 3% or 2.75%, although he was in favor of 3%; and, suspend the collection of the telecommunication portion of the UUT tax in the interim period.

Councilman Misetich moved, seconded by Councilwoman Brooks, to place the UUT Measure before the voters on the March 2015 Election with the City of Los Angeles conducting the election; keep the UUT rate at 3%, with the incorporation of the modernization language; and suspend the collection of the telecommunication portion of the UUT tax in the interim period.

City Attorney Lynch suggested that the motion be bifurcated so as to consider the suspension of the collection of the telecommunication portion of the UUT tax in the interim period separately.

City Attorney Lynch reiterated the first motion, as bifurcated, to be the following: To place the UUT Measure before the voters on the March 2015 Election with the City of Los Angeles conducting the election; and keep the UUT rate at 3%, with the incorporation of the modernization language.

City Attorney Lynch stated that the second motion would address the suspension of the collection of the telecommunication portion of the UUT in the interim period.

Discussion continued among Council Members and City Attorney Lynch.

City Clerk Morreale reiterated the first motion as the following: Councilman Misetich moved, seconded by Councilwoman Brooks, to place the UUT Measure before the voters on the March 2015 Election with the City of Los Angeles conducting the election; and keep the UUT rate at 3%, with the incorporation of the modernization language.

The motion failed on the following roll call vote, as a unanimous vote was necessary:

**AYES:** Brooks, Knight, Misetich and Mayor Duhovic

**NOES:** Campbell  
**ABSENT:** None

Councilman Campbell stated that he voted no because he did not want the matter to be locked in now, noting that with a March 2015 election there would be several more months to analyze and explore the topic in order to come to arrive at a better solution.

Mayor Duhovic stated that it was his understanding that the ordinance language could be modified prior to having that language placed on the ballot. City Attorney Lynch confirmed that his understanding was correct since the actual ordinance language would not be submitted to the City of Los Angeles until their deadline for submission of materials. Councilman Campbell stated that he was not comfortable voting for the UUT ordinance language until he has read the material in its entirety, and noted he was not in favor of the language as it was currently proposed.

**RECESS AND RECONVENE:**

Mayor Duhovic called a brief recess from 9:47 P.M. to 9:56 P.M.

Councilman Campbell left the meeting at 9:47 P.M.

**November 4, 2014 Special Municipal Election**

City Clerk Morreale reported that in light of the previous action regarding the UUT item, this report could be received and filed.

Mayor Duhovic moved, seconded by Councilman Brooks, to receive and file this item.

Without objection, Mayor Duhovic so ordered.

**Consideration of Portuguese Bend Drainage Petition**

City Clerk Morreale reported there was late correspondence distributed prior to the meeting and there were two requests to speak regarding this item.

Mayor Pro Tem Knight recused himself from discussion of this item and left the dais at 9:57 P.M.

Director of Public Works Throne provided a brief staff report and PowerPoint presentation regarding this item, noting that a petition had been received from a portion of the residents in the Portuguese Bend area regarding the development and maintenance of a City-owned drainage system and the private roads in that community.

Robert Cumby, Board of Directors President, Portuguese Bend Community Association (PBCA), Rancho Palos Verdes, stated that the streets in the PBCA are owned by the individual lot owners and the Board of Directors was not in support of the petition submitted by some of the residents in the area.

Leanne Twidwell, Rancho Palos Verdes, stated that she just heard about this item today, but inquired as to the status of the Altamira Canyon Project. She asked for staff direction in seeking grants for work of this nature.

Director of Public Works Throne provided a status update regarding the future Altamira Canyon Project and noted the Public Works Department would be inviting that area to participate in discussions about the project during the project study report process and be available to answer general questions and provide information to Ms. Twidwell regarding grants.

Councilwoman Brooks moved, seconded by Councilman Misetich, to receive and file the petition and refer the petitioner's request to the Portuguese Bend Community Association for deliberation with their membership.

Without objection, Mayor Duhovic so ordered.

Mayor Pro Tem Knight returned to the meeting at 10:09 P.M.

**FUTURE AGENDA ITEMS:**

None.

**CITY COUNCIL ORAL REPORTS:**

Each Council Member reported on his/her attendance at various organization and association meetings since the last City Council Oral Reports were provided on June 16, 2014.

**CLOSED SESSION REPORT:**

City Attorney Lynch reported that with respect to the Closed Session item regarding public employee employment, a report was provided and no action was taken, with Councilman Campbell absent from the Closed Session.

**ADJOURNMENT:**

At 10:34 P.M., Mayor Duhovic adjourned the meeting.

Jerry V. Duhovic  
Mayor

Attest:

/s/ Carla Morreale  
City Clerk

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