

**MINUTES
CITY COUNCIL MEETING
TUESDAY, FEBRUARY 20, 2007**

CALL TO ORDER Mayor Lieberman called the meeting to order at 6:30 p.m. in the City Hall Council Chambers, 154 South Eighth Street, Grover Beach, California.

MOMENT OF SILENCE

FLAG SALUTE The flag salute was led by Bailey Puder, a sixth-grade honor roll student at Grover Beach Elementary School.

ROLL CALL

City Council: Council Members Ashton, Nicolls, Versaw, and Mayor Lieberman were present. Mayor Pro Tem Shoals was absent.

City Staff: City Manager Perrault, City Attorney Koczanowicz, City Clerk McMahon, Administrative Services Director Chapman, Community Development Director Hansen, and Police Chief Copsey were also present.

CLOSED SESSION ANNOUNCEMENTS Mayor Lieberman read the following announcement:

On Monday, February 5, 2007, after meeting in Closed Session regarding the following items:

1. Conference with Labor Negotiators
Agency Negotiator: City Manager, James K. Katen, Administrative Services Director, Assistant Administrative Services Director, Human Resources Coordinator, and Fire Chief.
Represented Employee Group: International Association of Fire Fighters (IAFF), Local 4403
2. Conference with Legal Counsel - Anticipated Litigation
Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9: One (1) potential case
3. Conference with Real Property Negotiators
Property: 1542 Hillcrest Drive (APN 060-581-032)
Agency negotiator: City Manager and City Attorney
Negotiating party: Trey Neville, Crown Castle GT Company LLC
Under negotiation: Lease of City-owned property

the City Council reconvened into open session, announced that Mayor Lieberman had recused himself from deliberations on Closed Session Item No. 3 due to a conflict of interest regarding his employment, and that no reportable actions were taken on Closed Session Item Nos. 1-3.

AGENDA REVIEW

Action: Upon unanimous consensus, the Council adopted the agenda as presented.

CEREMONIAL CALENDAR

1. **Proclamation Declaring February 27, 2007 as "Spay Day USA".**

Mayor Lieberman read and presented the Proclamation to Mary Buehnerkemper of the Feline Network.

2. **Proclamation Declaring February 2007 as "Grand Jury Awareness Month".**

Mayor Lieberman read and presented the Proclamation to representatives from the San Luis Obispo County Grand Jury – current Grand Jury member Tom Lamarone and former Grand Jury member and Grover Beach resident Robert Mires.

3. **Introduction of New Employee - Building/Planning Technician Cassandra Mesa.**

Community Development Director Hansen introduced Cassandra Mesa, stating that she had graduated from California Polytechnic State University in San Luis Obispo in 2005,

had been serving in the position of Planning Intern for almost one year, and was recently hired as the new Building/Planning Technician.

PUBLIC COMMUNICATIONS

The Mayor opened the floor to any member of the public for comment on items of interest which were within the jurisdiction of the City Council but were not listed on the agenda. No one responded and the Mayor closed the Public Communications segment for this portion of the meeting.

PROTEST HEARING

4. Water Rate Protest Hearing.

Mayor Lieberman read the title to the foregoing item, declared the Protest Hearing open, and deferred to staff for a report. Administrative Services Director Chapman gave a brief overview of the proposed 12% increase in water rates effective February 21, 2007, and another 12% increase effective July 1, 2007, due to costs for the new water meters and ongoing operating expenses. She stated that this was the second increase in a series of three planned rate increases that had been delayed in implementation due to a recent Supreme Court ruling requiring cities to conduct a protest hearing for metered water rate increases. Displaying a sample Protest Hearing notice, Administrative Services Director Chapman stated the notice that set forth the requirements to submit protests had been mailed to all property owners and residents on December 29, 2006. Displaying a sample residential water bill for a single-family home, she described various components of the bill and proposed rate increases. She then responded to questions from the Council.

Brief discussion was held regarding the notification process and the number of notices prepared by a local mailing service, water rate increases prior to July 2006, and authorized expenditures from the Water Enterprise Fund. Further discussion was held regarding information previously provided by Tuckfield and Associates on water usage and estimated costs, concerns previously raised on water usage levels potentially exceeding the City's allocation, and aging equipment that necessitated replacement of the City's water meters.

Upon request, City Attorney Koczanowicz outlined the procedure for members of the public to submit a written protest during the hearing.

Mayor Lieberman invited comments from those in the audience who wished to be heard on this matter.

Liz Doukas, Grover Beach, raised a question about debt service and criticized the notification process.

There were no further public comments received. Mayor Lieberman confirmed that all written protests had been received prior to closing the hearing. He then closed the Protest Hearing and requested the City Clerk to make a determination of the number of protests received.

City Clerk McMahon stated that prior to the City Council meeting, seventeen (17) protest letters had been received, as well as twelve (12) pieces of correspondence that included e-mails, for a total of twenty-nine (29) protests.

City Attorney Koczanowicz noted that, pursuant to state law, 2,300 protests would be required to prevent further Council action. Since that number had not been received, the Council could proceed.

Brief Council discussion was held regarding debt service, the cost of retrofitting Lopez Dam, and the City's efforts to maintain costs and ensure water service was being provided at the most economical rate.

Action: The Protest Hearing was conducted and the total number of written protests received was determined to be twenty-nine (29).

PUBLIC HEARINGS

5. Master Fee Schedule Update for Water Rates.

Mayor Lieberman read the title to the foregoing item, declared the Public Hearing open, and deferred to staff for a report. Administrative Services Director Chapman gave an overview of the proposed update to the Master Fee Schedule for water rates, as recommended by an independent rate study conducted by Tuckfield and Associates in 2005 to raise rates by approximately 12% effective immediately and 12% effective July 1, 2007. The rate increases were proposed to cover increased costs from Lopez Dam, water infrastructure improvements, and debt service costs. She then responded to questions.

Upon request, Administrative Services Director Chapman again displayed the sample single family residential water bill from a family comprised of two adults and three children over a two-month period, briefly comparing current rates to the proposed water rates.

Mayor Lieberman invited comments from those in the audience who wished to be heard on this matter.

The following persons raised questions and received responses from staff regarding the number of water accounts in the City; costs for water meter replacement, accuracy and average life span of the new water meter equipment; previous increases to water rates; debt service; and operational costs associated with Lopez Dam.

- Anita Shower, Grover Beach;
- Liz Doukas, Grover Beach;
- Marcia Thornton, Grover Beach; and
- Gayle Mather, Grover Beach.

There were no further comments received, and Mayor Lieberman closed the Public Hearing.

Further Council discussion was held regarding the data available from the new meters, anticipated revenues, the notification process, previous discussions and Public Hearings regarding the Tuckfield report and the Council's previous authorization to initiate a tiered water rate structure, the recent Supreme Court ruling that delayed the rate increase and required the City to conduct a Protest Hearing, and critical improvements needed to the City's infrastructure.

Council Member Ashton objected to increasing water rates at this time, stating that insufficient justification had been provided. He also expressed concerns that the amount of revenue gained from the new meters could not yet be determined, and objected to the manner in which the direct mail notification process had been handled.

Action: It was m/s by Council Members Nicolls/Versaw to adopt Resolution No. 07-18 amending the Master Fee Schedule to increase water rates by approximately 12% effective immediately and 12% effective July 1, 2007. The motion carried on the following roll call vote:

AYES: Council Members Nicolls, Versaw, and Mayor Lieberman.
NOES: Council Member Ashton.
ABSENT: Mayor Pro Tem Shoals.
ABSTAIN: Council Members - None.

Resolution No. 07-18: A Resolution of the City Council of the City of Grover Beach, California, Amending the Master Fee Schedule for Water Rates.

Recess: Upon consensus of the City Council, the meeting was recessed at 7:52 p.m.

Reconvene: At 7:59 p.m., the meeting reconvened with all Council Members present, except for Mayor Pro Tem Shoals.

6. Request to Waive a Portion of the City's Underground Utility Requirements.

Application No. 05-045; Applicant: Tracy Henry.

Project Location: 801 Seabright Avenue (APN 060-282-010).

Mayor Lieberman read the title to the foregoing item, declared the Public Hearing open, and deferred to staff for a report. Community Development Director Hansen briefly outlined the property owner's request to waive a portion of the City's underground utility requirements pertaining to street frontages for a four-unit Planned Residential Development at the northeast corner of Seabright Avenue and South Eighth Street. He noted that the request for waiver by Mr. David Henry, now deceased, resulted from a denial by PG&E to remove or relocate the power pole at the southwest corner of the project site. He then detailed reasons for the denial, which involved significant costs, relocation of primary distribution lines, and securing additional property rights. He stated that Mr. Henry's surviving spouse, Tracy Henry, was pursuing the request in order to finalize the four-unit residential development.

Community Development Director Hansen reviewed the results of an on-site meeting with a PG&E representative and potential alternatives discussed. He then responded to questions.

Discussion ensued regarding the project background, review and building permit process, and the City's underground utility requirements. The Council expressed concern that some of the units had already been issued Certificates of Occupancy prior to meeting the requirements to underground utilities. Further discussion was held regarding location of utility lines on Seabright Avenue and various alternatives to moving them, the absence of cost information in the staff report, other development projects with underground utilities, staff's efforts to work with PG&E regarding an underground utility agreement, and the possible alternative of developing an underground utility "in lieu" program.

Upon question, City Attorney Koczanowicz stated that an "in lieu program" would need to be in place before the Council could consider including it as a Condition of Approval for development projects.

Mayor Lieberman invited comments from those in the audience who wished to be heard on this matter.

Tracy Henry, Applicant, spoke in support of her request to waive a portion of the underground utility requirement, stating that the effective date of the requirement had not occurred until after the project had been approved and construction was underway. She then gave an overview of the estimated costs to underground utilities.

The following persons spoke in support of the Applicant's request to waive a portion of the underground utility requirement:

- Penny Sandman, Grover Beach, who also submitted a letter regarding a proposed four-unit project on Newport Avenue with similar underground utility concerns; and
- Todd Ranier, Grover Beach.

The following persons spoke in opposition to the request:

- Chris Evangelo, Grover Beach, owner of the property adjacent to the project site;
- Liz Doukas, Grover Beach; and
- Ruth Lassen Evangelo, Nipomo resident and owner of the property adjacent to the project site.

There were no further comments received, and the Mayor closed the Public Hearing.

Discussion was held regarding various requirements for utilities and utility poles, the effective date of the City's Ordinance requiring utilities to be placed underground, a chronological overview of the review process conducted for this project, amending the existing Ordinance and the time frame for an amendment to become effective, potential impacts to a development project located adjacent to the Applicant's project site that also involved utility lines, and cost estimates provided by the Applicant to underground the utilities, which the City could not yet confirm.

City Attorney Koczanowicz pointed out an error in the first paragraph of the staff report: "The Ordinance became effective in January ~~2006~~ 2005", which affected the project

time line as stated earlier by the Applicant. He also noted that the Ordinance stipulated that "all existing and proposed utilities would be undergrounded."

Council Member Ashton expressed concerns regarding the review process for this project and that some of the units had been cleared for occupancy before the matter of undergrounding the utilities had been resolved.

Further discussion was held regarding having a PG&E engineering study conducted to determine actual costs to underground utilities in order to have sufficient information to make a determination on "substantial hardship", various alternatives to delay the Council's determination until cost information could be obtained from PG&E, an estimated time frame for a new underground utilities Ordinance to be drafted for Council review, and a proposed in-lieu fee program. It was noted that provision of the requested information from PG&E was not within the City's control.

Upon request from the Council, Tracy Henry, Applicant, again reviewed the cost information she had received to underground utilities and how the underground utilities requirements had been interpreted in relation to the project.

Upon question, City Attorney Koczanowicz stated that, if it was the Council's desire to grant the partial waiver, he recommended directing staff to prepare a Resolution outlining the conditions to be required of the Applicant, the basis on which the partial waiver was granted, either for financial hardship, practicality, or both, and to schedule the Resolution for formal consideration and action by the Council.

Action: It was m/s by Council Member Nicolls/Mayor Lieberman to adopt the Resolution that was included as Attachment 6 to the staff report, granting a partial waiver of the underground utilities requirement. The motion failed on the following roll call vote:

AYES: Council Member Nicolls and Mayor Lieberman.
NOES: Council Members Ashton and Versaw.
ABSENT: Mayor Pro Tem Shoals.
ABSTAIN: Council Members - None.

City Attorney Koczanowicz stated that a 2-2 tie vote was considered a non-action, and thus a denial of the request for partial waiver.

Upon question, City Manager Perrault stated that the Applicant could still pursue obtaining an estimate from PG&E and, once received, could submit a request for the City Council to review the issue.

Prior to consideration of Agenda Item No. 7, Council Member Versaw stated that, in the interest of due process, he would recuse himself from discussing an appeal of a Planning Commission decision. He then stepped down from the dais and left the room.

7. Appeal of Planning Commission Decision to Approve a Use Permit and Coastal Development Permit. Application No.: 06-052; Applicant: Joshua Hibbard; Project Location: 201 West Grand Avenue (APN 060-205-018)

Mayor Lieberman read the title to the foregoing item, declared the Public Hearing open, and deferred to staff for a report. Community Development Director Hansen noted that staff was requesting the Council to make a determination on two issues: 1) the timeliness of the appeal, and 2) the appeal itself. He summarized that the appeal submitted by John Koepf, owner of Beach Place at 260 West Grand Avenue, was initiated on January 17, 2007. Staff determined that, although the appeal form was not date-stamped by the City Clerk's Office until January 19, 2007, it was within the City's control and possession on January 17, 2007, which was within the required appeal period of five business days.

Issue: Timeliness of the Appeal

Mayor Lieberman invited comments from those in the audience who wished to address the issue of timeliness of the appeal.

Joshua Hibbard, Applicant, referred to his information packet that was distributed to the Council just prior to the meeting. He stated that the January 19, 2007 date stamp on the appeal application was two days after the close of the appeal period, and a letter from Community Development Director Hansen advising him of the appeal filing was also dated January 19, 2007.

John Koepf, Appellant, Grover Beach, stated that he submitted the appeal to the City on January 17, 2007, which was within the filing period. Due to some confusion on the process, the appeal form did not reach the City Clerk for date stamping until January 19, 2007.

Upon request, City Manager Perrault stated that he reviewed the matter and had made the decision to forward the appeal to the City Council in order to afford due process to all parties. His decision was based on the fact that Mr. Koepf completed the paperwork at City Hall within the filing period, and that it was Mr. Koepf's intent to file within the appropriate time frame.

City Attorney Koczanowicz stated that since the appeal document was in the control of City staff by the deadline, the issue was brought to the Council to make a finding as to timeliness of the appeal. Should the Council find that the appeal was timely filed, they could proceed with discussion of the appeal. Otherwise, the matter would be concluded at that point.

Action: Upon consensus (Council Member Versaw recused and Mayor Pro Tem Shoals absent), the Council determined that the appeal was timely filed.

Issue: Appeal of the Planning Commission Decision

For the information of those present, Community Development Director Hansen gave an overview of the proposal to establish a tattoo parlor and art gallery in the Coastal Visitor Services (C-C-V) district at the west end of Grand Avenue. He stated that tattoo parlors, including body piercing, were not listed or defined as permitted uses in that zone. He reviewed the permitted land uses, determinations required of the Planning Commission, the need for a Coastal Development Permit, and the nature of Planning Commission discussion regarding the type of proposed business in the specified location and zoning district.

Mayor Lieberman invited comments from the public.

John Koepf, Appellant and owner of Beach Place Properties, Grover Beach, requested a waiver of the \$275 filing fee for the appeal, observed that the Planning Commission's approval on the project was on a 3-to-2 vote, with two Commissioners absent, and expressed concerns with having a tattoo parlor located at the "gateway" entrance to the City. He then referenced comments made during the City's visioning process on the types of businesses residents wanted to have located at the west end of Grand Avenue.

Joshua Hibbard, Applicant, Bakersfield, summarized his experience in the tattoo art industry and information he had researched regarding tattoo shops in California. He described his existing business located in Bakersfield as a professional service provided in a drug- and alcohol-free environment. He stated that the proposed art gallery would exhibit framed art pieces by tattoo artists ranging in price from \$200 up to \$2,000. He reviewed alternate business locations he had investigated and asserted that the proposed location was the only one deemed feasible in the community. He then responded to Council questions.

The following persons spoke in opposition to granting the appeal, and expressed support of Mr. Hibbard's business:

- Aimee Shaw, Bakersfield, a client of Mr. Hibbard;
- Al Shaw, Bakersfield, a client of Mr. Hibbard whose tattoo art was included in the information packet;
- Jason Moore, San Luis Obispo, a client of Mr. Hibbard;
- Matthew Rodriguez, Grover Beach resident and client of Mr. Hibbard; and
- Michael Laeder, Bakersfield, whose full-back tattoo was shown in the information packet.

John Koepf, Appellant, Grover Beach, spoke in support of his appeal.

Mr. Hibbard briefly responded to Mr. Koepf's comments.

There were no further comments received, and the Mayor closed the Public Hearing.

11:00 p.m. Rule: At 10:32 p.m., it was m/s by Council Members Ashton/Nicolls to continue the meeting past 11:00 p.m. The motion carried on the following roll call vote:

AYES: Council Members Ashton, Nicolls, and Mayor Lieberman.
NOES: Council Members - None
ABSENT: Council Member Versaw and Mayor Pro Tem Shoals.
ABSTAIN: Council Members - None.

The Council commended Mr. Hibbard for an excellent presentation and his interest in locating a business in Grover Beach. Discussion was held regarding the types of visitor-serving businesses to be located in the "gateway" area as a result of public comments received at the visioning process workshops, and the viability of Mr. Hibbard's business in another Grover Beach location.

Council Member Ashton spoke in support of the Applicant's proposed business location.

Action: It was m/s by Council Members Nicolls/Mayor Lieberman to: 1) find that the proposed land use activity for a tattoo parlor and art gallery was inconsistent with and not primarily a visitor-serving use as permitted in the C-C-V Zoning District, 2) grant the appeal of the Planning Commission's decision, and 3) deny the proposed land use activity for a tattoo parlor and art gallery at 201 West Grand Avenue. The motion carried on the following roll call vote:

AYES: Council Member Nicolls and Mayor Lieberman.
NOES: Council Member Ashton.
ABSENT: Mayor Pro Tem Shoals.
ABSTAIN: Council Members - None.
RECUSED: Council Member Versaw.

Upon question, City Manager Perrault gave a brief overview of the basis to waive the Appellant's filing fee and said that staff would be in contact with Mr. Koepf in reference to that matter.

At this time, Council Member Versaw returned to the dais.

CONSENT AGENDA

It was m/s by Council Members Ashton/Nicolls to approve Consent Agenda Item Nos. 8, 9, and 10 as recommended. The motion carried on the following roll call vote:

AYES: Council Members Ashton, Nicolls, Versaw, and Mayor Lieberman.
NOES: Council Members - None.
ABSENT: Mayor Pro Tem Shoals.
ABSTAIN: Council Members - None.

8. Treasurer's Report for the Period January 30 - February 13, 2007.

Action: Approved as submitted.

9. Minutes of the Special City Council Meeting of Monday, January 22, 2007.

Action: Approved the minutes as submitted.

10. Employment Extension Per Government Code Section 21221(h).

Action: Adopted Resolution No. 07-20 authorizing the request for a one-time employment extension per Government Code Section 21221(h) for retired Police Lieutenant James English.

Resolution No. 07-20: A Resolution of the City Council of the City of Grover Beach, California, Requesting Employment Extension per Government Code Section 21221(h).

REGULAR BUSINESS

11. Presentation of the FY 06 Audit Report.

Mayor Lieberman read the title to the foregoing item and deferred to staff for a report. City Manager Perrault requested that this item be continued until representatives from the accounting firm of Moss, Levy, and Hartzheim, LLP, could be present to assist with the presentation of the audited Comprehensive Annual Financial Report (CAFR).

Action: Upon consensus of the City Council, this item was continued.

COUNCIL COMMITTEE REPORTS

Council Member Ashton gave a report on the Parks, Recreation & Beautification Commission meeting.

Council Member Nicolls stated that the meeting of the Housing Trust Fund did not have a quorum.

Council Member Versaw gave reports on meetings of the Zone Three Advisory Committee and the Economic Vitality Corporation (EVC). He then described a new venture capital program through the EVC for new business owners.

Mayor Lieberman stated that he had nothing to report. Mayor Pro Tem Shoals was absent.

CITY COUNCIL AGENDA

None at this time.

COUNCIL COMMUNICATIONS

- A. Mayor Lieberman stated that he was contacted by Pismo Beach City Council Member Bill Rabenaldt, who recently joined a federal lobbying firm, requesting to make a presentation of his firm's services to the City of Grover Beach. Brief discussion was held and the Council indicated there was no interest in scheduling a presentation.
- B. Council Member Ashton distributed updated literature from Amtrak regarding rail service in Grover Beach and Pismo Beach. He then described the February Neighborhood Watch group meeting that included a tour of the Police Department's dispatch center, and announced that the March 13, 2007 meeting would be a tour of the Fire Department.

CITY MANAGER'S REPORTS AND COMMENTS

12. Set Meeting Date for a Joint City Council / Planning Commission Work Study Session.

Brief discussion was held regarding previous Council comments to schedule a joint work study session with the Planning Commission and various available meeting dates.

Action: Upon consensus, Monday, April 9, 2007 was tentatively selected for a joint work study session with the Planning Commission, before which each Council Member was requested to submit suggested items to schedule for discussion.

13. Appoint a City Representative to Serve on a County Task Force Regarding the Oceano Dunes.

City Manager Perrault stated that San Luis Obispo County Supervisor Katcho Achadjian had invited the City to appoint a representative to serve on a Task Force to develop a strategy and recommendation to the Board of Supervisors regarding options for the future of the Oceano Dunes and County-owned property in the Oceano Dunes.

Mayor Lieberman volunteered to serve as the City's representative on the Task Force.

Action: Upon consensus, Mayor Lieberman was selected to serve as the City's representative on the County Task Force regarding the Oceano Dunes.

CITY ATTORNEY'S AGENDA

None at this time.

CLOSED SESSION

None at this time.

ADJOURNMENT

There being no further business to come before the City Council, Mayor Lieberman adjourned the meeting at 10:56 p.m.

/s/ STEPHEN C. LIEBERMAN, MAYOR

Attest:

/s/ DONNA L. McMAHON, CITY CLERK
(Approved at CC Mtg 04/16/07)