

**MINUTES
CITY COUNCIL REGULAR MEETING
JANUARY 8, 2013 - 6:00 p.m.**

CALL TO ORDER

The regular meeting of the City Council of the City of Highland was called to order at 6:00 p.m. by Mayor McCallon at the Donahue Council Chambers, 27215 Base Line, Highland, California.

The invocation was given by Reverend Al LeBrun, Immanuel Baptist Church and the Pledge of Allegiance was led by Councilman Racadio.

ROLL CALL

Present: Lilburn, McCallon, Racadio, Scott
Absent: Timmer

REPORT FROM CLOSED SESSION

No Reportable Action

SPECIAL PRESENTATIONS

A MOTION was made by Councilwoman Scott, seconded by Mayor Pro Tem Lilburn, to approve an item, #16, to be added to the agenda regarding a grant to purchase a Fire Safety Trailer. Motion carried, 4-0, with Councilman Timmer being absent.

Captain Dave Williams introduced Rod Torres as the City of Highland's new Captain.

PUBLIC COMMENT

Mr. Tom Rubio stated he is present this evening representing a committee made up of members who are educators and business people. They have been working on this project for several years which is a Soap Box Derby. They have been speaking with the All American Soap Box Derby Association. After a great deal of research the committee feels the City of Highland would be the best place to hold the Derby. The San Manuel Village is an ideal location as it is freeway accessible and has accommodations to host the event. The event is scheduled for May 11, 2013. They will be working with City Staff to obtain the proper permits.

Ms. Rebecca Boydston stated she is representing Assemblyman Mike Morrell and the Assemblyman wanted to let the City of Highland be aware he is available to assist in any way.

CITY COUNCIL CONSENT CALENDAR

A MOTION was made by Councilman Racadio, seconded by Councilwoman Scott, to approve the consent calendar as submitted. Motion carried on a roll call vote, 4-0, with Councilman Timmer being absent.

1. Waive the Reading of All Ordinances
Waived the reading of all Ordinances in their entirety and read by title only.
2. Minutes – December 11, 2012 City Council Regular Meeting
Approved the Minutes as submitted.
3. Minutes – December 11, 2012 City Council Special Meeting
Approved the Minutes as submitted.
4. Minutes – December 31, 2012 City Council Special Meeting
Approved the Minutes as submitted.
5. Claim Consideration – Antonia Marquez
Rejected claim.
6. Warrant Register
Approved Warrant Register No. 554 for January 8, 2013, in the amount of \$6,190,665.78 and Payroll of \$139,903.65.
7. Treasurer's Report for November
Received and filed the Treasurer's Report for November 2012.
8. Easement Acceptance/Highland AL-MC Group (CUP 007-014)
 1. Accepted the Grants of Easement for Sidewalk Purposes and Landscaping Purposes from Highland AL-MC Group; and
 2. Directed the City Clerk to record the Grants of Easement.

CITY COUNCIL PUBLIC HEARING

9. Development Impact Fees Annual Adjustment

Mayor McCallon opened the public hearing.

City Manager Hughes stated he would like to request to move this item to January 22, 2013 Council Meeting.

A MOTION was made by Councilman Racadio, seconded by Mayor Pro Tem Lilburn, to continue the public hearing that has been advertised for the January 8, 2013 meeting regarding annual adjustment of Development Impact Fees to the January 22, 2013 meeting. Motion carried, 4-0, with Councilman Timmer being absent.

10. Amendments to the City's Land Use and Development Code Related to Small and Large Recycling Facilities (MCA-011-007)

Mayor McCallon opened the public hearing.

Community Development Director Jaquess stated the item tonight is a follow-up to an action that Council took about a year ago when an urgency ordinance was adopted to restrict new recycling facilities in the City while we re-evaluated our current regulations and current codes. The ordinance that is before you was prepared through the City Attorney's office with their review of the State law and local requirements. Then it got revised somewhat during the Planning Commission hearing process to that which is before you tonight. The ordinance actually has a number of parts which are listed in the staff report. It specifically allows a reverse vending machine or a small collection facility in a shopping center where there is a supermarket there, and that is the only place that it's in commercial zone. A large collection facility and a processing facility all are required to be in an industrial zone and inside a building. The small collection facility and reverse vending machine can be in a parking lot in the shopping center. This whole set of provisions is prompted in a large part by State law which encourages the Cities to allow recycling facilities in exchange for some grant funds that the State disperses which is currently about \$15,000 a year. The main purpose was to make sure we had a facility that could accommodate recyclable cans and bottles that had recycle value and that's what the shopping center facilities are limited to. They are not for other recyclable materials; those would have to go to industrial zoned facilities. One of the things that came out of the review process particularly when this was reviewed by the City Council Subcommittee was a recommendation that the stand-alone kiosk recycling centers, that we have seen around the City take clothes and shoes, not to be allowed, and those were deleted from this ordinance. There is also a requirement in the code that requires the collection facilities or processing facilities to make sure they clean up around their site which is a 500 foot radius around their site. So if there are shopping carts left they have to remove them and if there is trash they have to pick it up and dispose of it. There is an item in the staff report which talks about the fact that for us as a City to receive our funds from the State, our shopping center recycling facilities have to be open at least 30 hours a week. If they open less than 30 hours a week we would not receive our funds, but we have accommodated that in our ordinance by allowing for the possibility of a second facility in a shopping center subject to staff review of that facility. We don't have that problem today as all of our facilities are open more than 30 hours a week, so that is really not a big concern. At the time when we adopted the Moratorium Ordinance in December, the issue of regulating the use of shopping carts to bring materials to the recycling facilities was brought up by a Council member. Unfortunately the Planning Commission had already made their final recommendation at that point and that issue is presented in the Staff Report, and it is something the Council may want to discuss the option of adding it to the code. If we do add it, we would need to get the City Attorney's assistance to update the code to accommodate that type of change.

Mayor Pro Tem Lilburn asked does this ordinance pertain to both the commercial and the industrial zone.

Community Development Director Jaquess stated yes.

Councilman Racadio stated in the Staff Report, on page four, as referred to in the Draft Ordinance, it includes flexibility in the number of facilities within the shopping center, and when he looked at Subsection C, it states limited to one small collection facility per shopping center or public facility unless so approved through Staff Review Permit. Why isn't this more detailed, under what conditions, like it states in the Staff Report? If they are only operating 20 hours and we need 30 hours, is the second one going to be limited to say a number of 20 hours or 10 hours? He is just kind of surprised there weren't standards set in the ordinance under what conditions there might be more than one allowed.

Community Development Director Jaquess stated that did not get included in the ordinance at this point in time. Mainly we are trying to comply with the State law requirements which governs recycling facilities, so that really is why the overwriting point was here.

Councilman Racadio stated he is just surprised there aren't some standards shown in the ordinance. When the Staff Reviews might permit it, and under what circumstances, what limits might be put on it?

Community Development Director Jaquess stated there is certainly no reason why this can't be done. It just hasn't been done at this point in time.

Councilman Racadio asked as far as the shopping carts, when they gather them are they going to call the City to come and get them or is it their responsibility to take care of them?

Community Development Director Jaquess stated the intent was that they would call a cart pick-up service that would come to their site to pick them up. There are cart pick-up services. We do not intend to be the pick-up service as a City.

Councilman Racadio stated he was just wondering if there was a legal issue with them collecting private property. Those carts are private property, whereas we can collect them because they are a nuisance.

Community Development Director Jaquess stated cart pick-up services are used quite generally throughout the City, and what has been happening is Code Enforcement has tried to get the pick-up services to handle the problem; and really where Code Enforcement has stepped up is when there is a delay in pick-up or there isn't a service available to that set of carts.

Councilwoman Scott asked why not require the permitted facility to be open 30 hours per week as per State law, and then we wouldn't have to worry about less than 30 hours?

Mayor McCallon stated really we just need to not discuss it at this point. Just clarify it before we hear from the public.

Councilwoman Scott stated it is a question she wants clarified.

Community Development Director Jaquess stated the ordinance could do that.

Mayor McCallon called for any speakers in favor or in opposition of this item. Seeing none; the public hearing is now closed.

Mayor Pro Tem Lilburn stated she would like to say thank you and she appreciates all the work staff has put into this. Let's say that the recycling center on Base Line, the old car lot, they went out of business. Could they reopen as a recycling center?

Community Development Director Jaquess stated under this ordinance they would not be allowed to do that because they are not in a shopping center and it is not industrially zoned.

Mayor Pro Tem Lilburn stated the ones who are commercial right now can only take in the cans and bottles. Which ones that we have are commercially zoned? Do we only have one?

Community Development Director Jaquess stated well the one on Boulder is commercially zoned.

Mayor Pro Tem Lilburn stated she meant to say industrial.

Community Development Director Jaquess stated we just have the one, to his knowledge, on Fifth Street.

Mayor Pro Tem Lilburn stated because she knows he does a really good job by being careful what he takes in and keeps the facility clean. When we approve a new recycling facility in a shopping center, do we have the right to say where it's going to be located in the shopping center? Because personally, she thinks the one on the corner of Ninth and Victoria is an eyesore to the community. It's horrible and dirty.

Community Development Director Jaquess stated we agree. Yes, Staff Review process would give us the ability to affect the sighting of that.

Mayor Pro Tem Lilburn asked is there any way we could relocate that one right now?

Community Development Director Jaquess stated actually we are working with the operator to do that but we are also having to work with the property owner and that is part of the issue regarding the delay in relocating this.

Mayor Pro Tem Lilburn asked so the stand alone ones, you said we don't have it in this ordinance right now, should we not put it in here that we don't allow it?

Community Development Director Jaquess stated it is in here. We don't allow stand alone facilities; this proposed ordinance would not allow those little kiosks that took clothing and shoes.

Mayor Pro Tem Lilburn asked right now do we have a CUP where we have specific hours that we allow these recycling facilities to operate?

Community Development Director Jaquess stated it is the code; there are limitations on maximum hours.

Mayor Pro Tem Lilburn stated she keeps coming back to Ninth and Victoria but they have a large gathering of shopping carts there. She knows it is a supermarket but those shopping carts should be up by the front door rather than by the recycling center. People think these shopping carts are made to gather recycling goods and they steal them. She noticed that in the report it was talked about if the shopping carts are within a 500 foot radius that they have to go collect them, but once they collect them what are we making them do with them because then they just sit there.

Community Development Director Jaquess stated we make sure they are returned to the proper locations.

Mayor Pro Tem Lilburn stated she doesn't think it says that in the ordinance.

Mayor McCallon stated the staff report states the ordinance states so.

Community Development Director Jaquess stated the ordinance, as written, doesn't say they shall return them, but that is why you would contact a collection service.

Councilman Racadio stated he likes Councilwoman Scott's suggestion, keep it simple, and just say minimum 30 hours and then we wouldn't have to worry about allowing more than one.

City Attorney Steele stated he thinks it's problematic. We don't typically impose a minimum hour requirement for businesses because we run the potential of creating a taking if the business isn't profitable during those times that we are requiring them to be open. So he thinks that is a problematic way for us to go. If the Council is more comfortable or is uncomfortable with the language right now regarding an additional Staff Review Permit, he thinks the better choice would be to be more specific about only the number of permits necessary to ensure that there are 30 hours per week rather than trying to say if you have a facility, you have to be open for 30 hours. Then you are essentially setting up the facility to fail if there isn't enough business.

Mayor McCallon stated it doesn't sound to him like the amount of grant money we get is very significant.

Community Services Manager Morgan stated she spoke with Cal Recycle staff today. It's not that we have to ensure the operating hours are 30 hours, it's that we can't limit them less than 30 hours. If there is a facility there and is only operating 20 hours and there are no other applications, it is not up to us to gain their compliance. The reason why this happens is because the supermarkets are held for compliance of receiving beverage containers. If the supermarket is a supermarket that does not want to take beverage containers in their store, which most don't, that is why you see them. This is their way of complying with Cal Recycle.

Councilman Racadio stated so we could just say one and if he's operating 20 hours we would still be okay.

Community Services Manager Morgan stated if there is one there and they are only operating 20 hours and somebody else comes along and says that we want to open for 10 hours to make up the 30 hours, because it's really up to the supermarket to make sure they are in compliance. If we say no, then we lose our grant funding and just to make you aware her department uses this grant funding for the recycling programs in all the elementary schools. The recycling funds also bought the Repete truck in full. She and her staff make certain these funds go a long way every year.

Councilman Racadio stated he is comfortable with City Attorney Steele's language.

City Attorney Steele stated if we just added to that subsection, page three of the Ordinance, D1c, if we just added at the end of that existing section only to the extent necessary to comply with State law that would be a limitation on what staff could approve through this process.

Councilwoman Scott stated she too would like to commend staff and everyone else who worked on this because at this end of Highland especially we are inundated with recycling places. She believed the number of facilities that we have in a two mile radius of where she lives is seven recycling centers. Under the Staff Report, page two, under the analysis, the second paragraph is talking about the City Council determined that a study is urgently necessary to mitigate these threats before any new facilities are constructed, developed or operated. She just wonders if we shouldn't say including expansions, because you do have so many feet in the ordinance itself if that would take care of it.

Community Development Director Jaquess stated the language that you are referring to is reflected in the language that was used to adopt the current Urgency Ordinance, and that would be replaced by this ordinance when it goes into effect. So that wouldn't apply anymore and this would apply.

Councilwoman Scott stated again getting back to number of facilities; she doesn't know if that per general commercial area, we have so few of them that she is thinking of the area at Base Line and Victoria.

Community Development Director Jaquess stated it has to be where there is a supermarket and a commercial zone.

Councilwoman Scott stated the location where it used to be, Frenchie's Auto on Base Line, there is no supermarket there so and across the street, next to the Dairy Queen, those are both actually out of compliance with this ordinance. So if they close their business we can't open up another recycling center, is that correct.

Community Development Director Jaquess stated yes, they would become non-conforming with this ordinance adoption, and if they close for 180 days then it could not reopen.

Mayor Pro Tem Lilburn stated wait, it has to be for 180 days. What if someone new came in and pulled a new license.

Community Development Director Jaquess stated it's the use not the ownership of the property. A new owner could operate the business, the same business as before.

City Attorney Steele stated but that is true as to any non-conforming use. It has nothing to do with this ordinance.

Councilwoman Scott stated she could buy the business from him and she could run the same thing even if it is non-conforming. She doesn't like that.

City Attorney Steele stated that is State law with regard to non-conforming uses. That is not anything relating to recycling facilities.

Councilwoman Scott stated page two of the ordinance, the tiny number eight, we are talking about the processing facilities include the following and under A, the very last sentence, it says a light processing facility shall not shred, compact or bale other than food and beverage containers. Like Mayor Pro Tem Lilburn, the one at Ninth and Victoria, because they are already non-conforming...

Community Development Director Jaquess stated they are not a processing facility; they are only a collection facility. They are a small conforming, as of today, a small conforming facility. They would become non-conforming here to the extent that they wanted to modify or alter, they would have to comply with this code.

Mayor Pro Tem Lilburn asked but don't they comply with it?

Community Development Director Jaquess stated they do comply today. Even though we are working with them to get them to make it better, they do comply. Mayor Pro Tem Lilburn asked in here it doesn't specify that they would be non-conforming because it doesn't specify where they have to be located, does it?

Community Development Director Jaquess stated no, they are not non-conforming as they operate. Only if they want to expand or alter the use in some way that they would have to get a permit to do that.

Mayor Pro Tem Lilburn stated but what if they were coming in as a brand new. Let's say we have this ordinance in effect, this ordinance doesn't specify where the location of their recycling place should be.

Community Development Director Jaquess stated no, it does not. That is what the staff review process would be for.

Mayor Pro Tem Lilburn asked is there any way we could put the staff review process in the ordinance?

City Attorney Steele stated the question is would it be allowed to be in the ordinance. He means you could put in the ordinance what you like in that regard. He thinks the purpose of the staff review permit process is for you to delegate values to your staff and then for your staff to work with property owners to implement those on individual properties. It is going to be really difficult in an ordinance like this to create a standard that is going work City wide.

Community Development Director Jaquess stated he wants to make it clear that in that particular example that you are referring to, we realize that there are some issues there that staff is not happy with either. We are trying to get them to work with us to make it less unattractive and we would like to see it moved away from the corner, but we are working with the property owner as well who has issues with moving it. So we are trying to work out both sides of the issue.

Mayor Pro Tem Lilburn asked is he making money of that?

Community Development Director Jaquess asked who, the property owner? He does not know.

Councilwoman Scott stated the guy probably rents the space.

City Attorney Steele stated we need to separate the broader legislative issue of the ordinance from specific properties.

Mayor Pro Tem Lilburn asked were they notified that we were having a public hearing on this?

City Planner Mainez stated yes, they were.

Mayor Pro Tem Lilburn stated so they had a chance to come here.

City Attorney Steele stated he understands, but the deliberation of the Council should be really on the policy issue rather than specific properties.

Mayor Pro Tem Lilburn asked are the property owners making money?

City Planner Mainez stated again, we don't the answer to that. We hope they are as they are in business but we don't know the answer to that. We do know a lot of these spaces are rented.

Community Development Director Jaquess stated we are not a party to the negotiation between the tenant and the property owners. We don't know what arrangements were made.

City Planner Mainez stated we do know that when we allowed these recycling facilities on Base Line they were at the request of the property owner to help them out and rent the space. So we are assuming there is some kind of rental or lease agreement. When he drafted this ordinance with the City Attorney, they specifically thought about that staff review permit process because it is discretionary. In fact, if you go back to the ordinance, the plan use and development code, it has a specific chapter on staff review process. It states staff has the authority to look at hours of operation, set backs, lighting and so on and so forth. We thought this was the best approach because as Council indicated specific sites have very unique situations. They are an eyesore in some neighborhoods but not in others, they take up parking spaces, they block access and it is case by case. As Community Development Director Jaquess indicated we are working with that particular property owner. We can't talk about specific sites but this is an example on how if we had this particular process in place that would have been moved probably to a more acceptable location.

Mayor McCallon stated and he is sure staff understands the desires of the Council in this area.

City Attorney Steele stated and the other strength of a staff review process in general is that is appealable as well if the Council disagrees with that process or the property owner disagrees.

Councilwoman Scott stated on page two, section three, number G, where signage shall be clearly marked, identify the type of material to be deposited etc. She just thinks we need to add that the signage needs to be clean and in repair at all times. The sign at Ninth and Victoria is in deplorable condition. The paint is peeling, the letters are half off and it looks terrible. She would think the owner of the property, if not through this ordinance at least through our code enforcement, that it should be cleaned up.

City Manager Hughes stated actually what Councilwoman Scott brought up is already covered in I, N, K. Shall be maintained in a clean, litter free condition on a daily basis and shall be clean and not dented, bent or otherwise disfigured.

Councilwoman Scott stated she realizes this is just for the recycling that they have to have this little sign, but that particular recycling center is right directly underneath the pole sign of the Rio Ranch Market and the Rio Ranch Market sign is terrible.

City Planner Mainez stated every Friday our Planning Technician goes out with Code Enforcement and they do visit these sites. This is something they will take for the record and will follow up on and will have it cleaned up.

Councilwoman Scott stated just for clarification on number three, under D, under L, shall locate the containers for the 24 hour donation of materials at least 100 feet. She thought these weren't allowed. She is thinking kiosks here.

Community Development Director Jaquess stated this specifically refers to small collection facilities.

Councilwoman Scott asked okay, but wouldn't the little kiosk things be considered small collection?

Community Development Director Jaquess stated no.

Councilwoman Scott stated she knows we don't have them, but when she read this she was thinking of the kiosk and she put down question because she thought these weren't allowed.

Community Development Director Jaquess stated we deleted those from the definition of the code because they are not allowed in the City.

Councilwoman Scott stated page four of the ordinance, number two, the owner operator of the small collection shall be responsible for collecting. If not, what to

do when they are closed at night if they don't pick up the abandoned containers and carts. She knows at Food 4 Less if anyone comes in with a shopping cart they refuse to take their recycling. She kind of likes that requirement. Number four on the same page, the facility shall not reduce the landscaping. She thinks landscaping should be required; again she is thinking of that eyesore on Ninth and Victoria. Under EA, number 1A, the facility shall be located a minimum of 150 feet from the property line of any zoned or planned for residential use.

Community Development Director Jaquess stated keep in mind this is a large collection which is only allowed in industrial zone.

Councilwoman Scott stated okay, the large, okay. On page six, number M, this is talking about the storage material and the close building and so forth. The last sentence states not visible above the height of the property solid fencing and/or landscaping. So with this ordinance, adoption of this ordinance, we still can't go to the Ninth and Victoria and say you guys have to put a fence around this eyesore, you have to landscape it, we can't do that correct?

Community Development Director Jaquess stated that is correct.

City Attorney Steele stated with regards to the section Councilwoman Scott referenced, it is small m on page six of the ordinance, above the height of the property solid fencing and/or landscaping, he thinks it should be property's solid fencing and/or landscaping. Then also on page two of the ordinance, at the top, the last sentence of sub a, which starts on the previous page, a light processing facility shall not shred, compact or bale Ferris, the word material is missing there. We should insert the word material other than food and beverage containers.

Mayor Pro Tem Lilburn stated she knows our Sheriff Department has done a really good job but she knows we can't patrol trash pickers and Councilwoman Scott and she are probably asking so many questions because this is such an issue where they live. They see more of them in their neighborhoods and she runs and walks the neighborhoods every morning. On Mondays when the trash people come she is out there and there are tons of trash pickers. Once the trash is in the street and she knows we have a specific goal we have to meet with recycling on City's and the trash haulers, does this take away from our trash haulers obligation and once it is on the street whose trash is it? Is it the trash haulers, is it still ours?

Community Services Manager Morgan stated the code section states it is the property of the City. Once it is in the container and placed in the City right of way for collection, it is the property of the City.

Mayor Pro Tem Lilburn stated does it take away a lot from the trash haulers because we have to mandate to the trash haulers that they do a certain percentage of recycling, does it affect their business?

Community Services Manager Morgan stated she is certain it does but what that measurement is we do not know. To be honest, she stops them and takes their stuff away and tells them to stop doing it. Her staff works very close with Code Enforcement and she does know that some trash hauler drivers stop people and tell them to stop doing it because they need to collect it. Some people don't see it as a crime because they are recycling, they are doing something good and don't matter whether they take it or the hauler takes it.

Mayor McCallon stated we have two typos corrected on the ordinance and in addition to D1C and the wording is recorded.

A MOTION was made by Councilwoman Scott, seconded by Councilman Racadio, to approve the following as amended:

1. Adopt a Notice of Exemption and instruct staff to file a Notice of Exemption with the County Clerk of the Board; and
2. Introduce Ordinance No. 373 to amend Title 16, Land Use and Development Code Chapter 16.06, Chapter 16.20, Chapter 16.24 and Chapter 16.44 regarding recycling facilities. Motion carried, 4-0, with Councilman Timmer being absent.

City Clerk Hughes introduced Ordinance No. 373:

ORDINANCE NO. 373
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HIGHLAND,
CALIFORNIA, AMENDING TITLE 16 OF THE HIGHLAND MUNICIPAL CODE
REGARDING RECYCLING FACILITIES
[MUNICIPAL CODE AMENDMENT MCA-011-007]

which title was read.

11. Appeal Application (APP-012-003) a Request to Overturn the Planning Commission's Determination Requiring the Demolition of a Non-Conforming Single-Family Residential Unit Located within a Business Park (BP) Zoning District Whose Use has Been Discontinued for a Continuous Period of 180 Days or More Pursuant to Section 16.08.150 (Non-Conforming Parcels, Uses and Structures)

Mayor McCallon opened the public hearing.

Community Development Director Jaquess stated this is a hearing regarding a house located at 25480 4th Street in Highland which is in the area zoned Business Park and which does not allow residential uses. As you aware, there are quite a few houses there, all of which are non-conforming. In this particular case, the issues stem back to March 2011 where the Code Enforcement pulled the utilities because the house was open and accessible to anyone who walked up. It had no doors and anyone could get in. On March 24, 2011 we recorded a Notice of Lien for Substandard Property. In September we were rechecking and

we noticed that it was still vacant and we noted it had lost its non-conforming status as it had been vacant for over 180 days. In October we received a letter from the property owner at the time, and we advised them of the fact that it had lost its non-conforming status. A year later, in September 2012, the current property owner contacted the City to get a permit to rehab the house and we advised them it could not be rehabbed since it did not maintain its non-conforming rights. We met with the property owner and advised them of that fact and advised them they could file an appeal. They did file an appeal and it went to the Planning Commission in November 2012. The Planning Commission acted to uphold the Community Development Director's determination that the house was non-conforming and had lost its non-conforming rights and could not be redeveloped and needed to be demolished. The appellant in this case did subsequently file an appeal with the City Council. The issue is actually fairly straight forward for the Council, the code is very clear, the house is non-conforming and when they are vacant for more than 180 days they cannot be reestablished as the code is currently drafted. When we met with the applicant we advised them of this and we also advised them that at that point in time the Council had just finished a hearing on a residence on Court Street and that we had gotten some informal feedback from the Council that the Council would like to consider the issue being brought up as a Work Program item. To revisit the whole area of the City and to see whether we wanted to maintain or continue the regulations that are currently in place. This process is going forward and you will be getting something through the work program process in the near future. The appellant has asked the Council reconsider that code provision as it applies to their property and wants to be allowed to proceed today with rehabbing the house. They are present tonight and are here to make their argument to the Council on this issue.

Ms. Gloria Almanza, LLG Construction Inc., stated besides what has been read, the reason we wanted to bring this to the Council is they want to discuss how their situation is different from everything else the Council has seen before. One of the reasons is their home is different from other homes is that there are no illegal additions. They have not added any square footage to the home without a permit and it is a single family home. It is in a condition where it can be repaired easily and reoccupy it with a residential family. The only thing they did in this process, where they did it wrong, was purchase it through a real estate transaction after that letter was already submitted. So, when they did this they did it with the intention of putting a family there. She does send people out there to do maintenance and they are getting cited still because of the condition of the neighborhood. She was there today and there is a lot of criminal activity, a lot of vagrants, a lot of graffiti, and a lot of breaking into the windows whether they are there or not. This is happening on a daily basis and she has spoken to the neighbors next door and it is affecting his property. It is affecting the entire community because of the way the home is and the size of it. It is 1,700 square feet. The easiest way to remedy this would be to occupy it.

Mr. Aldo Calle asked if the Council has any questions for them and just to add to what Ms. Almanza stated they have come into all this as a surprise. He is sure the Council read the report and when they came into this property they didn't know a substandard notice meant you had to demolish a property. Walking the property and looking at it now, he understands the Planning Commission trying to get them to demolish the property and just go forward, but it is kind of impossible for them to do this when they walk through a property and it needs very little to be conforming so that a family could live there. They just wanted to stress this to the Council.

Ms. Gloria Almanza, LLG Construction Inc., asked besides the fact that the way the house lends itself to be, even if we tried to demolish it, where would we put parking and what kind of business would lend itself to that area? In looking at it and even reading the stuff, it has created a dead zone because people are trying to illegally do things. This is not what they are trying to do and it is not their intent.

Mayor McCallon inquired where the firm is located.

Mr. Aldo Calle stated they are out of Pasadena.

Mayor McCallon asked you are going to rehab it and then sell it or rent it?

Mr. Aldo Calle stated yes, they will rehab it and rent it.

Mayor McCallon stated and you are going to manage the property.

Mr. Aldo Calle stated yes, they are.

Mayor Pro Tem Lilburn inquired they continue to be cited because the condition of the neighborhood?

Ms. Gloria Almanza stated no, she meant they continue to be cited because the home is continually vandalized. The home is being vandalized on a daily basis and this is why this is urgent.

Mayor Pro Tem Lilburn inquired how long have they owned the home.

Mr. Aldo Calle stated since April.

Mayor Pro Tem Lilburn stated so they have owned it almost a year and have left it looking like this in our City.

Mr. Aldo Calle stated they purchased the home from Fannie Mae. They turned the property over to them and once they spoke with the City, they would not allow them to do anything to the property whatsoever because of the 180 days ordinance. They cited them to demolish the property so at this point they didn't know if they were supposed to clean up the graffiti and board up some windows. Now after this process, this last cite, they came and stated now you have some new graffiti and you have some un-boarded windows. They cleaned up the property once before in September and now they are cleaning it up again. The property next door was burned so they have people that are constantly going in there and he imagines that happened from squatters or something like that. They just don't want this to happen to their property. They want to bring it back so everyone in the local community can not see the eyesore anymore but they are not able to do that with the current ordinance in place.

Ms. Gloria Almanza stated they have boarded up the windows continuously and they have covered up the graffiti. As of right now there is no graffiti and everything is completely boarded up. She does have someone who visits the property and sends pictures to her for any changes and she approves the clean-up.

Mayor McCallon asked how many properties does your company own or manage?

Mr. Aldo Calle stated we are not a very big company. They represent a family trust and they own two properties in the area and then two properties in Los Angeles County.

Mayor Mccallon asked what about the 9 or 10 properties purchased from Fannie Mae.

Mr. Aldo Calle stated those have been sold, they no longer own them. They only keep a selected few, the ones that are in better shape. This happens to be one of those properties.

Councilman Racadio asked the purchase was consummated in April of 2011 or 2012?

Mr. Aldo Calle stated 2012.

Councilman Racadio stated in March 2011 there was a notice of lien recorded with the County Recorder. Were you aware of this?

Mr. Aldo Calle stated the substandard was recorded. When they purchased it, the substandard was recorded but that was given to Fannie Mae which was the current owner at the time.

Councilman Racadio asked did you look into whether there were any conditions such as the 180 days non-conforming use.

Mr. Aldo Calle stated the notice, that the City provides, is not a recorded document.

Councilman Racadio stated the only thing recorded was the lien of substandard.

Mr. Aldo Calle stated correct and a substandard notice is, in his experience, always repairable. They have never bought a property that had a substandard notice and they came in and had a City say you have to tear it down. They have purchased homes in much worse condition than this property.

Councilwoman Scott stated on March 22, 2011 recorded with San Bernardino County was the notice of non-compliance of substandard property. Paragraph two repairs and/or demolition of the substandard building are required. Now the owner listed at that time was Esa and Santiago Guzman. On October 12th there was another notice of loss of non-conforming status which very clearly states the subject parcel is no longer permitted to be reoccupied as a multi-family residential use and then it also instructs the code section etc. of Highland's non-conforming uses. Now, that was sent to Heritage Escrow and then another outfit came in and then it went to the LLG Construction. She came down and spoke to Building Official Everman because she asked him if he had been inside because they are stating the property is in good shape. Building Official Everman has not seen the inside because he can't go inside without their permission. So she can only take their word for it that it's habitable. Do you want to occupy the home or rent it?

Mr. Aldo Calle stated to rent it.

Councilwoman Scott stated so you want to be an absentee landlord.

Mr. Aldo Calle stated they won't be absent because they will be out here quite a bit, he is sure, to make sure everything is going okay. At the end of the day he would just like to ask the Council if they would please allow them to fix the property. It is a nuisance and it is wasting City money, it's wasting valuable time that the Police have to do other things instead of coming there and chasing away someone doing graffiti. We do not want to waste anymore time. They can solve this problem right now if the Council gives the okay to pull a tentative improvement permit. He will be happy to do that as of next week, but if we keep on going with the empty house and the nuisance and everything that goes along with it. They want to fix it now and ask the Council to please let them fix the eyesore.

Mayor McCallon called for any speakers in favor or in opposition, seeing none, the public hearing is now closed.

Councilwoman Scott stated she struggled with this because of the area and that is why Council has the maps in front of them as she asked for them today. That is an eyesore neighborhood and without any development or ability for anybody to do anything it's only going to get worse. She does think we need to address the issue of this particular area because with the absence of the RDA funds and the slow progress of the airbase, this area is going to get worse.

City Manager Hughes stated we do have this as a work program item to review the Business Park designation in this area.

Councilwoman Scott stated she does find fault with one of the statements that the applicant made on page 35. Where he stated the City has a duty to properly notify the public of what options you have when you invest in properties. The burden is on the City to do the proper notice and in this case the City failed to do so. She says no, no, the buyer and the title company, don't you dare blame her City for something they should have done.

Councilman Racadio stated he is glad this is on the work program as he thinks it is something the Council clearly needs to look at. When this was established he was not on the Council, but it was designated as Business Park and there were a bunch of tools available to do it. Knowing clearly that the least likely to be developed is something we have to put together various parcels, particularly residential parcels. With the elimination of Redevelopment for both Cities and the Airport there isn't a mechanism to realistically assemble this. We've always had a policy that we would not use eminent domain on single family residences so he thinks it makes this area even more difficult even if we had the tools to do it. What we are doing now is encouraging the dilapidation of the houses there because we aren't allowing people who are there for the long term to expand and we do have legal non-conforming uses that after 180 days they lapse. Last time we dealt with a property that expanded and had them tear it down. He would encourage the Council depending on how we act tonight, if our action is not to override the Planning Commission and staff's decision, he would encourage the Council to be actively involved as we discuss if we do possibly change the designation. Frankly, he is more sympathetic to someone who is expanding than someone who missed the time limit on legal non-conforming use.

Mayor Pro Tem Lilburn stated she is a little concerned when someone buys a piece of property it's not clear that it's a non-conforming. She thinks right now we are all in a catch 22 that we are fining them for graffiti and abandonment of the house and then they really don't have a vested interest in fixing it up if its non-conforming and they have nothing to encourage them to fix it up. Then we have absentee landlords that fix these places up and then rent them to people who cause more public safety issues than graffiti issues. Surely they have to understand people come in and rent and don't care about who they rent to and then our City gets stuck with the law enforcement responding to all the calls.

Mayor McCallon stated his concern is he doesn't believe, first of all if he was investing in property he would certainly do due diligence on it and understand what is going on before he invested his money, he doesn't think this was done in this case. The other thing that concerns him is the fact that although they have said they will rehab it and rent it and manage it, it doesn't appear you have done that with all the properties that they have purchased. Out of the number of properties they have purchased they only have four right now. So he is concerned they might not rent it out and sell it to someone else who maybe lives somewhere else and goes to the absent landlord issue. On the other hand having the house like that sitting there, not being used and being graffiti'd and causing all kinds of blight issues is something that he would like to get rid of. So there is more than having it rehabilitated and occupied. He struggles with the fact if we go ahead and approve the appeal and it gets rehabbed then we have issue of people who might occupy it might cause more problems. The fact we might have an absentee landlord who doesn't care about the property and lets it run down.

Councilman Racadio stated he would like to make a motion we approve the Planning Commission determination, denying the Planning Commission recommendation.

Mayor Pro Tem Lilburn inquired if there could be further discussion.

Mayor McCallon replied if we get a second, hearing none, the motion has died.

Councilwoman Scott stated we have other areas there and no one can do anything. They can't put a patio on; they can't do anything because of our ordinance. She thinks we need to look at the ordinance and she hates to go against the Planning Commission because they only did what we directed them by ordinance to do. They went the 180 days and all of the other factors. This issues needs to be addressed and she thinks we should go ahead and grant the appeal and then bring this thing back as one of the items on the work program and get it cleaned up.

Councilman Racadio stated he disagrees with that 100%. He thinks the real way to deal with and it's coming up soon, is to look in totality in that area and what we want to do. Unless the action tonight would be to ask the staff to come forward even more quickly but he would rather wait for the work program. He has some concerns with the designation of the Business Park.

City Manager Hughes stated a suggestion would be to direct staff to not follow through on the demolition and give it time to work through the work program process.

Mayor Pro Tem Lilburn stated she likes that suggestion.

Councilman Racadio stated he will make the Motion that the Council deny the appeal that Council uphold the Planning Commission's determination and to instruct Staff to put a stay on action relative to this area until Council has made a determination to the Work Program.

A MOTION was made by Councilman Racadio, seconded by Mayor Pro Tem Lilburn, to deny the appeal and to adopt Resolution No. 2013-001 upholding the Planning Commission's Determination requiring the Demolition of a Non-Conforming Single-Family Residential Unit located within a Business Park (BP) Zoning District whose user has been discontinued for a continuous period of 180 days or more pursuant to Section 16.08.150 (Non-Conforming Parcels, Uses and Structures) and also to instruct staff to stand demolition orders in this area. Motion carried, 4-0, with Councilman Timmer being absent.

RESOLUTION NO. 2013-001

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HIGHLAND, CALIFORNIA, UPHOLDING THE PLANNING COMMISSION DETERMINATION REQUIRING THE DEMOLITION OF A NON-CONFORMING SINGLE-FAMILY RESIDENTIAL UNIT LOCATED WITHIN A BUSINESS PARK (BP) ZONING DISTRICT WHOSE USE HAS BEEN DISCONTINUED FOR A CONTINUOUS PERIOD OF 180 DAYS OR MORE PURSUANT TO SECTION 16.08.150 (NON-CONFORMING PARCELS, USES, AND STRUCTURES)

CITY COUNCIL LEGISLATIVE

12. Voluntary Surcharge to the LOCC Annual Dues Invoice to Support Vital Litigation

Director of Administrative Services Dantuono gave a brief review of the staff report.

Councilman Racadio stated he is concerned they did this on a voluntary basis rather than just adding it as a required fee.

Councilwoman Scott stated if they wanted it for specific things, such as lawsuits, they should have stated if we would like to be a party to these lawsuits. She has a real problem, in 1987 our population was 25,000 and our League dues were \$3,000 and here it is population 58,000 and our League dues are \$16,447. Also we have to pay \$45 for the dinner meetings and so forth. They are making money on those too; this is why she does not attend. She cannot support this.

Mayor McCallon stated he supports the League; he is just concerned about funding additional litigation.

Councilman Racadio stated he will make a recommendation we approve this contingent upon 70% participation.

Mayor McCallon stated he would recommend it to be 75%.

City Manager Hughes stated we will send a letter to the League stating we will not send the funds until we have confirmation of 75% approval Statewide.

A MOTION was made by Councilman Racadio, seconded by Mayor Pro Tem Lilburn, to:

1. Approve the voluntary surcharge to the LOCC annual dues invoice to support vital litigation paid; and
2. Approve a budget adjustment of \$1,645 to be expended from 001-1000-4310 (City Council-Dues & Subscriptions) and transferred from 001-2100 (unreserved, undesignated) with the contingency being 75% of other Cities participating. Motion carried, 3-1, with Councilwoman Scott dissenting and with Councilman Timmer being absent.

13. Letter of Support for Automated Meter Reading Systems

City Clerk Hughes gave a brief review of the staff report.

A MOTION was made by Mayor Pro Tem Lilburn, seconded by Councilman Racadio, to consider a request from Blais & Associates on behalf of East Valley Water District for a letter of support for installing Automated Meter Reading Systems and advise staff accordingly. Motion carried, 4-0, with Councilman Timmer being absent.

14. Update on SANBAG, SCAG, Omnitrans, Work Program and Regional/Legislative Issues/Development Issues/Subcommittees/AB 1234 Updates

Mayor Pro Tem Lilburn stated during our construction of Base Line Beautification, has anyone worked with Omnitrans to alter their bus stops, as we only have one lane, so when the bus stops at a stop it blocks all the traffic.

City Engineer Wong stated we have done a notice to all the property owners plus agencies we think might be affected. Not knowing precisely, he believes we have but if we have not we will immediately do so.

Mayor Pro Tem Lilburn stated she will speak to Omnitrans to see if they could temporarily alter their bus stops.

City Manager Hughes stated January 17, 2013 is the first Work Program meeting at 10:30 a.m. and February 4, 2013 at 2:00 p.m. is the second meeting.

City Attorney Steele stated the California Supreme Court is considering four or five different cases regarding the validity of medical marijuana regulations by Cities. It is very important to this City obviously because we have a ban in place. The first case has been scheduled for oral argument and it will take place on February 5, 2013. This is the City of Riverside case and the Upland case has not been scheduled but he assumes it will be shortly thereafter. We should, in the next couple of months, have a definite ruling from the California Supreme Court on the validity of Cities' ban on medical marijuana dispensaries.

15. San Bernardino International Airport Authority and IVDA

Councilman Racadio stated there will only be one meeting a month held which will be the fourth Wednesday of the month.

City Manager Hughes stated he received notice from the Airport Manager that Boeing will be back testing their 747's for the period of January 19 -29, 2013. Any complaints from citizens can be directed to the Airport Manager directly.

16. Fire Safety Trailer Grant

City Manager Hughes gave a brief review of the staff report. The City's contribution in the grant would be \$7,500 which would be our portion of the 20% match for the funding requirement. It would give us an equal share in the use of the vehicle. It is his understanding the trailer would be stored at Loma Linda University Medical Center.

Councilwoman Scott asked how many times would Highland get to use the trailer?

Administrative Analyst Rissmiller stated the scheduling would be worked out with all five of the Fire Chiefs. Colton, Loma Linda, Redlands, Yucaipa and Highland would be the five cities sharing the trailer.

Councilwoman Scott asked have they considered including San Manuel?

Administrative Analyst Rissmiller stated it is not our project. It is actually the City of Redlands' project and they have asked for our permission to add us if we will participate. Redlands feels that having five different agencies in a Region that it will have a better chance of the grant being funded than if they were to apply on their own.

Mayor McCallon inquired who will own the trailer and who will maintain this trailer?

Administrative Analyst Rissmiller stated the City of Redlands will own the trailer and they will list the City of Highland as a co-participant. The cost to maintain will be shared amongst all five of the agencies.

A MOTION was made by Councilwoman Scott, seconded by Councilman Racadio, to authorize the 20% of grant matching funds for the purchase of a Fire Safety Trailer in the amount of \$7,500. Motion carried, 4-0, with Councilman Timmer being absent.

ANNOUNCEMENTS

February 2, 2013
January 24, 2013

Bridging our Community Fundraising Event
League of California Cities Dinner Meeting

CLOSED SESSION

None

ADJOURN

There being no further business, Mayor McCallon adjourned the meeting at 7:53 p.m.

Submitted By:

Approved By:

Betty Hughes, MMC
City Clerk

Larry McCallon
Mayor