



MINUTES
REGULAR CITY COUNCIL MEETING
TUESDAY, NOVEMBER 27, 2012, 7:00 P. M.
SAN DIMAS COUNCIL CHAMBERS
245 E. BONITA AVENUE

CITY COUNCIL:

Mayor Curtis W. Morris
Mayor Pro Tem Emmett Badar
Councilmember Denis Bertone
Councilmember John Ebiner
Councilmember Jeff Templeman

City Manager Blaine Michaelis
City Attorney Ken Brown
Assistant City Manager of Community Development Larry Stevens
Assistant City Manager Ken Duran
Director of Public Works Krishna Patel
Director of Parks & Recreation Theresa Bruns
Deputy City Clerk Debra Black

1. CALL TO ORDER AND FLAG SALUTE

Mayor Morris called the meeting to order at 7:00 p.m. and led the flag salute.

- 2. ORAL COMMUNICATIONS** (Members of the audience are invited to address the City Council on any item not on the agenda. Under the provisions of the Brown Act, the legislative body is prohibited from taking or engaging in discussion on any item not appearing on the posted agenda. However, your concerns may be referred to staff or set for discussion at a later date. If you desire to address the City Council on an item on this agenda, other than a scheduled public hearing item you may do so at this time or asked to be heard when that agenda item is considered. Comments on public hearing items will be considered when that item is scheduled for discussion. The Public Comment period is limited to 30 minutes. Each speaker shall be limited to three (3) minutes.)

a. Members of the Audience

- 1) Kevin Kenney, of the Parks & Recreation Commission invited everyone out to the Holiday Extravaganza and Tree Lighting Ceremony on Saturday, December 8, 2012 from 10:00 a.m. to 6:30 p.m.
- 2) Pui Ching Ho, Librarian, San Dimas Library, highlighted the programs and events taking place at the library this month.
- 3) Dave Bratt, Chamber of Commerce, announced the current campaigns being run by the Chamber.
- 4) Janie Graef, San Dimas H.E.R.O.E.S., gave an update on the organizations latest achievements and upcoming plans.

3. CONSENT CALENDAR

(All items on the Consent Calendar are considered to be routine and will be enacted by one motion unless a member of the City Council requests separate discussion.)

MOTION: It was moved by Councilmember Ebiner, seconded by Councilmember Templeman, and carried to accept, approve and act upon the consent calendar as follows:

- a. Resolutions read by title, further reading waived, passage and adoption recommended as follows:
 - (1) **RESOLUTION NO. 2012-65** , A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN DIMAS, CALIFORNIA, APPROVING CERTAIN DEMANDS FOR THE MONTH OF NOVEMBER
- b. Approval of minutes for regular City Council meeting of November 13, 2012.
- c. Adopt Resolution **2012-66** Health Care Flexible Spending Account Amendment
- d. Award of Cash Contract 2012-06, "Street Light Conduit Installation on Third Street from San Dimas Ave to Walnut Ave. to Steiny & Company, Inc. for the amount of \$30,770.00

END OF CONSENT CALENDAR

4. PLANNING/DEVELOPMENT SERVICES

- a. Request from Bill and Sam Ghosn to initiate Zoning Code Amendment to allow off-sale alcoholic beverages in conjunction with existing convenience store and gas station located at 1790 S. San Dimas Ave (Via Verde 76) in Specific Plan No. 17

Assistant City Manager Larry Stevens presented staff's report that outlined the history of this applicant's request. He continued by describing the processes that would allow the request to be considered. Mr. Stevens stated that in order to proceed with the necessary Public Hearings to hear this request the necessary factors in the municipal code that must exist are whether are not the amendment would help public safety and welfare, whether are not it would adversely affect other property and whether or not there are changed conditions to warrant the amendment. This evaluation need only be preliminary in asking if there is sufficient reason to go forward and conduct the necessary public hearings. It need not be conclusive or indicate what decision may ultimately be made. The proponents suggest that the changed conditions are related to difficult economy, fluctuating gas prices, high operating expenses and customer demand. They are asking Council to reconsider their decision from 2008 and allow alcohol sales. If this is done it would most likely be by conditional use permit. This would be a straight forward amendment to Specific Plan 17. It would only be heard by the Planning Commission unless appealed to the City Council.

Staff suggests that part of the discussion needs to be on the larger context of convenience stores and gas stations. Mr. Stevens continued the presentation by listing the status of some of the locations throughout the city with convenience stores and or permitted alcohol. Most other locations have a mixture of service bays and accessory snack shops but not alcohol sales, because they are not allowed in the various zones. Most of these at some point have come in and indicated a desire to have a convenience store. Staff has explained the processes needed to go through to obtain the necessary approval of these requests. Because of the level of interests several other locations would likely seek the opportunity to have convenience stores should council consider an amendment. The City Attorney opinion from 2008 indicates with Specific Plan 17 we are probably in compliance with state law because there were no other locations within that Specific Plan allowed the sales of alcoholic beverages. In the other zones we don't have a specific prohibition against a mixture of convenience markets and gas stations on the same site, but also don't have a specific allowance. If reading the Business and Profession Code referenced in the memo more than one way, it is clear that maintaining our existing standards the way they are is in conflict with the code.

A couple of Councilmembers requested Captain Slawson to take a look at crime stats as related to alcohol sales and convenience stores. He prepared a background memo that talks about various thefts and robberies that occurred within the last year at a variety of businesses that have alcohol related sales and it

is fair to say that there is not a significant trend that there is a high level of criminal activity at any of these operations.

If there is a desire to look beyond the scope of the request, staff suggests there are a series of issues that are appropriate for consideration. There are two stations within the Creative Growth Zone Area 3 that have opportunity to seek a full convenience store, subject to design criteria. One of these we have had some discussion on how to comply with those standards and an application has been filed but not approved. The Valero we have had no discussions with. If you look at allowing convenience stores and alcohol sales at other locations one consideration to look at is how much of a redesign might be necessary to allow that use. If you are looking at a broader scope, staff would like to have some feeling about whether you want to make that scope consider other design issues or whether or not you would want to have those considered on a case by case basis. There may be some locations where you may not want to have a convenience market. These are broad areas of discussion and if you are going in that direction, some preliminary thoughts would be helpful to staff in preparing an approach to this issue.

You could give direction to deal with Specific Plan No. 17 now and put the others on a list and deal with them at an appropriate point time. The Planning Commission previously recommended that you allow alcohol sales in Specific Plan No. 17 and staff did not feel that was an inappropriate recommendation but took a neutral position. Staff asks Council's direction if you think that there are enough changed conditions that you think alcohol sales are appropriate in Specific Plan No 17 and if you're going to consider it at that location do you want us to expand the scope and look at other locations relative to convenience markets and alcohol sales.

Councilmember Templeman asked what criteria were used in determining no alcohol sales would be allowed in SP-17.

Mr. Stevens replied that in previous history of the site there were zoning and deed restrictions limiting convenience markets, there had to be an amendment to the CCR's. Another part of the consideration was whether or not the mixing of alcohol with gasoline sales was viewed as appropriate. Council determined that food sales were okay, but alcohol was not.

Mayor Morris stated that there was no request from the station operator at the time.

Mr. Stevens added that staff and the Planning Commission included it because they felt that is was going to come down the line at some point.

Councilmember Ebiner asked what keeps alcohol from being sold in snack shops and convenience stores in the Creative Growth zone.

Mr. Stevens responded that on a practical basis the maximum permissible size of the shops isn't big enough to justify the expenditure to obtain the liquor license. In theory operators could probably apply for a conditional use permit, because on sale alcoholic beverages is permitted in all of those zones. There has been a policy relative to what accessory facilities can exist at a gas station, that is a snack shop and it discourages alcohol sales, it is not a code it is a policy.

Councilmember Ebiner asked that you would not have to have a convenience store to have the alcohol, you could have a snack shop and if you wanted to and apply for the C.U.P.?

Mr. Stevens answered in theory you could take an existing building and have it be a liquor store as opposed to anything else, as long as you could get a C.U.P. We would tell someone that there is an existing policy that encourages this and we would probably weigh that policy heavily.

Councilmember Ebiner asked what staff would be doing for that particular zone that would be different from what we are doing right now?

Mr. Stevens answered make it clearer and eliminate the snack shop policy. But if we want to have design controls that could be a reason to put it in the code but make it clear there is a consideration if we are going to allow this opportunity to go forward. This would be the reason why you may want to put it in the code rather than making the policy go away.

Councilmember Badar asked if there was a specific prohibition by ABC for gas stations and convenience stores to have a liquor license.

Mr. Stevens answered, there is none.

Councilmember Badar then asked if there were anything that Mr. Stevens could think of that would need to be done at the 76 Store?

Mr. Stevens replied that it would depend on how they choose to do the operation. They would be limited to the 1,000 square feet, which they are pretty much right on. We wouldn't necessarily require any modifications.

Mr. Badar asked if there is a percentage of food versus beer and wine sales that has to be in a convenience food market.

Mr. Stevens replied there is nothing in our existing code and that it is not uncommon for cities to regulate food sales when they have a mixed use of alcohol. There can be those kinds of regulation, we don't happen to apply any of those.

Councilmember Templeman shared that he doesn't like the idea that we hold somebody hostage by requiring design changes if they are going to sell a different product at their location. He could understand if the issue were parking and circulation. He voted against the convenience store the last time it was heard because we should have addressed all gas stations in town. When you add more shopping convenience for patrons you have a lot of parking issues and most gas stations don't have a lot of parking to begin with. He won't mind hearing this item, but would like to know what other municipalities are doing as it relates to gas stations near freeways. He feels that it should apply to all gas stations not just this one.

Councilmember Bertone agreed with Councilmember Templeman in that if you are going to allow alcohol to be sold at one gas station, it should be the same for all gas stations and he won't mind having this come back to council.

Mayor Morris stated because of the law we cannot tie our regulation to alcohol to the gas station, which is preempted by the state. We can address by zoning whether we allow alcohol sales. What is different here is that this is in its own very small Specific Plan. We could consider the others, but this one could be changed just by changing the Specific Plan.

Councilmember Templeman responded that he feels we should have some objective criteria for saying why a gas station should or shouldn't be allowed alcohol sales.

Mr. Stevens shared that the policy we are applying stems from the late 1980's early 1990's, was based on the conclusion of the council then that alcohol sales at gasoline stations was inappropriate and encouraged law breaking acts and crimes. He continued by saying that the perceptions that generated the original policy are probably passé mostly because of the changes in the economic operations of gas stations.

Mayor Morris stated, if they were not in Specific Plan 17, and were in the same zoning as the Via Verde Shopping Center our ordinance would be invalid. Mayor Morris also mentioned that the policy applies to ordinances after 1988.

Councilmember Ebner expressed that it is probably time to take a look at this issue citywide and not focus just on this zone. Things to look at would be lot size, parking and access might determine whether

or not they could have a snack shop or convenience store. He continued by saying that it sounds reasonable to have some design standards, but to not let that be the trigger to have a new site design; he agrees with Jeff on that item.

Mayor Morris recapped that the majority of the City Council would like to review this item and also the broader review that the Planning Staff recommends.

Councilmember Badar asked Mr. Stevens how long did he think it would take for him to return this item to Council.

Mr. Stevens responded two to three months just for Specific Plan 17. If considering all seven or eight zones then it would be four to six months.

Councilmember Ebner stated given the timeframes that we should do Specific Plan 17 first because we have an someone interested in doing this.

Councilmember Templeman would like to see some way of addressing issues such as underage sales or loitering and the operator not taking care of the situation.

Mr. Stevens addressed this by stating the typically this is addressed in the Conditional Use Permit. This gives us the authority to revoke a permit.

Consensus is that council would like staff to start the process for Specific Plan 17 because we have an applicant now, and simultaneously move on to the broader review.

Mayor Morris restated that this is a consensus to look at and review our ordinance with no commitment on how it may go. There will be two public hearings, one with Planning Commission and another with City Council.

Mr. Stevens replied he would go forward on Specific Plan 17 earlier than the rest should they file a use permit. If they don't file it right away it may come back as one item.

- b. Request from Kimco Realty to initiate Zoning Code Amendment to allow various additional uses for the existing shopping center located at 802-888 West Arrow Highway (San Dimas Marketplace/Target) in Specific Plan No. 20

Applicant asked for this item to be deferred to the December 11, 2012 meeting.

- c. Budget adjustments for the Housing Element update. Increase the appropriation by an additional \$25, 000 to a total of \$50,000.

Assistant City Manager Larry Stevens presented a staff report that outlined the details of the request for budget adjustment.

Councilmember Bertone asked if SCAG received new numbers from the State that were more favorable for us.

Mr. Stevens answered no and that his appeal was unsuccessful. They have assigned us just over 1,000 housing units in the last two cycles. In the 2010 Census Report our net growth was minus 2, but they've assigned is 1,000. Of that 1,000 twenty-five percent have to be low variable, in which we will need to zone about 17 acres of land at 30 units per acre. He will be discussing this issue at the December 10, 2012 retreat because he is having difficulty find that much acreage suitable for that much density.

Councilmember Bertone asked if the Gateway Property was included in that.

Mr. Stevens responded a portion of that was included in the 2008 housing element.

Councilmember Templeman moved to approve increase to the budget, but questioned we could not use housing money to pay for this.

Assistant City Manager Ken Duran answered we are only able to use housing money for projects that were prior commitments.

MOTION: It was moved by Councilmember Templeman and seconded by Councilmember Badar to approve request for increase to budget for Housing Element. Motion carried unanimously.

5. OTHER BUSINESS

- a. Request from Waste Management for a rate increase of 1.35% for residential and commercial refuse services

Assistant City Manager Ken Duran presented the staff report that outlined the history of requests for rate increases from Waste Management.

Councilmember Templeman expressed that while we are encouraging them to recycle we are also going to charge them a fee when we weren't doing it before.

Mr. Duran replied that for customers that have been utilizing the service they will not be charged, but for new customers or those who change service there will be a charge. It was an oversight and it is a service that should have been paid for.

Councilmember Bertone asked if Waste Management used the Puente Hills site.

Mr. Duran answered very little about eight percent mostly they go to the Valley Vista site. We are still using Puente Hills for green waste cover.

Councilmember Templeman asked how are we to encourage business to do this when they are going to be charged for it.

Carolyn Corrao replied by saying that often they can reduce their overall trash bill; trash is more expensive to process.

Mr. Duran added it is required by the State for businesses to recycle, but the responsibility of the City to enforce or encourage.

MOTION: It was moved by Councilmember Bertone and seconded by Councilmember Ebiner to approve rate increase. Motion passed unanimously.

- b. San Dimas Avenue Bicycle Traffic Safety between Avenida Loma Vista to Avenida Domingo

Director of Public Works Krishna Patel presented the staff report that outlined background and reasoning for the recommendations for bicycle traffic safety improvements on San Dimas Avenue.

Mayor Morris asked if our ordinance has a minimum or maximum as to how wide our bicycle lanes have to be.

Mr. Patel replied the minimum is five feet, we don't have a maximum but he prefers to keep at seven feet.

Councilmember Templeman asked if with this plan we were only doing the road surface.

Mr. Patel replied that it would just be minor pavement repairs such as filling in and patching cracks.

Mayor Morris asked what the difference was between a bike lane and a bike path.

Mr. Patel answered a bike lane is a striped lane and a bike route is where you have a right to be on the road.

Councilmember Badar asked when are repairs scheduled for that roadway.

Mr. Patel responded depending on funding the plan is to reconstruct in FY 2013-2014.

MOTION: It was moved by Councilmember Bertone and seconded by Councilmember Ebiner to approve option 2, the request for repairs and minor modification and waive the formal bid process in retaining a contractor. Motion carried unanimously.

- c. Update Regarding Adopted Waste Discharge Requirements for Municipal Separate Storm Sewer System (MS4) Discharges – National Pollutant Discharge Elimination System (NPDES) Permit

Environmental Coordinator Latoya Cyrus presented the staff report that explained the details of the MS4 Discharges and NPDES Permit processes.

Councilmember Bertone asked if the options explained in the report came from the Regional or State Board.

Ms. Cyrus answered from the regional Board.

Councilmember Bertone asked if she was appealing to the State Board.

Ms. Cyrus answered that she was appealing to the State Board.

Councilmember Bertone asked if we had considered going with the WMP option of the report. He stated that most people that he knows in the water business thinks that is the best deal.

Ms. Cyrus responded that she is still looking at our options for the administrative petition.

Mayor Morris shared that we have a problem with the horse trails that are near the streets and doesn't feel we are going to be able to continue those. Horse trails in general may be a problem. He stated that he thought Ms. Cyrus would be coming to council with recommendation on what we can do about that other than prohibit the riding of horses on those trails.

Ms. Cyrus responded that the good thing about the Watershed Management Program is that it provides permittees with the flexibility to implement the permit. We could implement best management practices and provide outreach.

Councilmember Bertone asked why Walnut Creek, San Jose Creek and Puddingstone Reservoir that are owned by County Flood Control and Parks and Recreation Department are not responsible for that.

Ms. Cyrus responded they are also responsible under the TMDL, but our outfalls and discharges from the city do end up in the Puddingstone Reservoir as well as a contributory to Walnut Creek and Thompson Creek.

Councilmember Ebiner asked if a lot of cities are going to join the WMP.

Ms. Cyrus answered that we have discussed it with cities in the Upper San Gabriel Rivers Watershed since we are subject to the same TMDL'S.

Councilmember asked if the other cities in the Watershed that we would be joining with are going to file a petition. Are they doing the two steps or are a lot of them joining the WMP like Monrovia.

Ms. Cyrus answered that there are three cities out of the eleven that have confirmed that they will file the administrative petition.

Direction was given to file the administrative petition if necessary, and simultaneously start work on the Coalition for the Watershed Program.

MOTION: Councilmember Bertone moved and Councilmember Templeman seconded to authorize staff to file the joint Administrative Petition if necessary and the appropriation of \$3,000 of the general fund to file the Administrative Petition. The motion passed four to one with Councilmember Ebiner voting against.

Councilmember Ebiner stated that he doesn't think we are going to get much for our \$3,000 and would like staff to start working on the Watershed Management Program. He would prefer we do that and take a lead if possible. His vote no, is because he does not see the value in the petition.

Councilmember Templeman asked if council needed to provide staff with a consultant or engineer.

Ms. Cyrus responded that she is preparing a matrix of the permit process to determine the compliance deadlines. She will let Krishna know if she needs additional help.

Council continued discussion and sharing of ideas on ways to manage this process.

City Attorney Ken Brown clarified the direction given as, if the recommendation is to become part of a coalition as opposed to becoming the filer of a petition and if there is a next step we are prepared to become part of a coalition and authorize a contribution not to exceed \$3,000.

6. ORAL COMMUNICATIONS

- a. Members of the Audience (*Speakers are limited to five (5) minutes or as may be determined by the Chair.*)

Dr. Marvin Ersher shared his observations on the matter of the convenience store applicant and the cities policies on alcohol sales.

- b. City Manager

Mayor's call in show November 29, 2012

- c. City Attorney

Nothing to report

- d. Members of the City Council

- 1) Councilmembers' report on meetings attended at the expense of the local agency.

Nothing to report

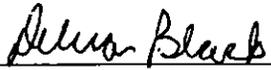
- 2) Individual Members' comments and updates.

Nothing to report.

7. ADJOURNMENT

The next meeting will be a Council/staff Retreat on December 10, 2012 at 5:00 p.m. The next regular City Council meeting will be on Tuesday, December 11, 2012 at 7:00 p.m.

Respectfully submitted,



Deputy City Clerk