

**MINUTES**

City Council Regular Meeting  
2212 Beach Boulevard  
Pacifica, CA 94044

February 28, 2011

Mayor Nihart called the meeting to order at 5:30 p.m., stating that all councilmembers were present and announced that the Council would meet in Closed Session. City Attorney Quick announced the business to be discussed:

1. PURSUANT TO GOVERNMENT CODE SECTION 54956.9(a): Conference with legal counsel, pending litigation. In the matter of City of Pacifica, California Regional Water Quality Control Board, San Francisco Bay Region Complaint No. R2-2009-0075; and Our Children’s Earth v. City of Pacifica, US District Court, Case No. CV-08-5201 EMC.
2. PURSUANT TO GOVERNMENT CODE SECTION 54957.6: Conference with labor negotiator: Agency negotiator: Ann Ritzma. Employee organization: Department Directors Teamsters Local 350.
3. PURSUANT TO GOVERNMENT CODE SECTION 54956.8: Conference with Real Property Negotiator: Discussion concerns price and terms of payment. Agency negotiator attending session: Steve Rhodes. Property: APN 023-073-050 and 080). Negotiating parties: City of Pacifica and Dave Colt.
4. Pursuant to government code section 54956.9(a) Conference with legal counsel pending Litigation. City of Brisbane, et al., v. California State Board of Equalization, San Francisco Superior Court Case No. CPF-09-509231, CPF-09509232, CPF-09-509234.
5. PURSUANT TO GOVERNMENT CODE SECTION 54956.9(a) Conference with legal counsel pending litigation. Emde v. City of Pacifica, San Mateo County Superior Court Case #CIV494710.

Mayor Nihart convened to Closed Session.

Mayor Nihart reconvened the meeting at 7:05 p.m.

Present:	Councilmembers:	Stone, Digre, Vreeland, DeJarnatt and Nihart.
Excused:	Councilmembers:	None.

Staff Present: Steve Rhodes, City Manager; Cecilia Quick, City Attorney; Ann Ritzma, Administrative Services Director; Van Ocampo, Director Public Works; Jim Saunders, Police Chief; Jessie deGuzman, Asst. Engineer; Brian Martinez, WWTP; Kathy O’Connell, City Clerk.

Councilmember Vreeland led the Salute to the Flag.

Commission Liaison:	Planning Commissioner Evans and PB&R Commissioner Murphy.
Chamber Liaison:	None.

**CLOSED SESSION:**

City Attorney Quick stated that, first, the City Council had reached a tentative agreement with the Department Directors unit with a more comprehensive agreement hopefully presented at the next meeting. She stated that each member of the Council, mentioning them individually, authorized the City Attorney's department to join in litigation in the matter of City of Brisbane, et al., v. California State Board of Equalization, explaining that the pleadings were available on the court's website.

Mayor Nihart asked the City Attorney to explain it to the audience.

City Attorney Quick explained that there was a dispute between Brisbane and the Board of Equalization regarding a method of calculating taxes that could negatively impact all municipal jurisdictions in California going back to 1995. A group of cities were participating to have a voice in the dispute and Pacifica's Council had authorized our city to join other cities. It was being administered by HDL which provides financial advice to municipalities.

**CONSENT CALENDAR:**

Mayor pro Tem DeJarnatt moved approval of the Consent Calendar, as amended, as follows: Approval of disbursements dated 02/02/11 to 07/14/11 in the amount of \$692,837.38, regular and quick checks numbered 81931 to 81932 and 12779 to 12445, as set forth in Item #1; Approval of Minutes of regular City Council meeting of February 14, 2011, as set forth in Item #2; Approval of Resolution Authorizing Disposal of Certain Obsolete City Documents and Papers, as set forth in Item #3; Approval of Lease Agreements between the City of Pacifica and the Department of Transportation (Caltrans) for the following State Owned Parcels; Deed Number 024574, 027235 (028808) 048309, 028782 and 044507. [No Additional Budget Authority is Needed as the Cost Has Already Been Noted in the Mid-Year Budget Adjustment Account Number 01.400410.52700.0000.000], as set forth in Item #4; Certification of the Sanitary Sewer Management Plan (SSMP), as set forth in Item #5; seconded by Councilmember Vreeland.

**ROLL CALL VOTE:**

Ayes: Councilmembers: Stone, Digre, Vreeland, DeJarnatt and Nihart.

Noes: Councilmembers: None.

**Motion carried: 5-0.**

**SPECIAL PRESENTATION:**

Mayor Nihart read a proclamation assigning March as American Red Cross Month.

**Mark Martell, Red Cross volunteer on the San Mateo County Leadership Council,** stated that they appreciated the proclamation which helped raise awareness of the Red Cross involvement in the community and Bay Area, briefly mentioning a few recent Red Cross responses such as the San Bruno disaster. He also reported on their free CPR training being offered in San Mateo on March 12 and their annual Hero's Breakfast on June 9.

Mayor Nihart stated that it was an honor to give him that proclamation, mentioning that she was a past volunteer, her neighbor had been honored at the Hero's breakfast and, personally, the Red Cross has been in her living room.

Mayor Nihart read a proclamation in recognition of Barbara Amberg following her retirement.

**Barbara Amberg** thanked the Council for the proclamation. She then thanked the San Mateo County Library, her boss, coworkers, partner and the people of Pacifica, stating that it was a great match and she loved working in the Pacifica community.

**PUBLIC HEARINGS:**

None.

**COUNCIL COMMUNICATIONS:**

Councilmember Stone mentioned a beach coalition movie event coming up. He then stated that he would be having regular open office hours, beginning on March 26 at the Salada Café at 9:30 a.m. to connect with the public. He mentioned a PG&E pipeline in the Linda Mar area and stated that he had been working with the City Manager and PG&E to have a public information meeting for the residents in that area.

Mayor pro Tem DeJarnatt agreed that the beach coalition movie would be of interest to anyone interested in Mavericks, stating that it would be shown on Friday, March 4, at the Sanchez Concert Hall. He congratulated Boy Scout Troop 74, having attended the Eagle Scout ceremony for four of the boys along with Councilmember Digre. He also mentioned the Nursery School Co-op's Spring Fest on March 5.

Councilmember Digre also congratulated the Eagle Scouts for their award. She stated that Vivian Pappas, wife of Andy, passed away and she asked that they adjourn the meeting in her honor. She then mentioned attending the funeral of the owner of Joe's Auto Body, and asked that they adjourn in his honor as well. She mentioned her hope that we have a community calendar soon, because she tried to attend six events over the past weekend. She stated that they would be meeting with Councilmembers throughout the county regarding public transportation for less accessible areas of various cities. She was also working with the County to get better housing options for those with developmental disabilities. She stated that the Youth Advisory Board has scheduled their first event, Open Mike for Poetry, on March 11 at the Spindriff Theater. She mentioned that Fresh and Easy would be opening on March 9. She also mentioned that the San Francisco Giants' World Series trophy would be on display at the Community Center on St. Patrick's Day.

Mayor Nihart stated that she attended all the various events on Saturday. She acknowledged St. Peter's for their support of the Terra Nova Bands, and mentioned Prom Night and the Eagle Scouts ceremony. She then mentioned attending the library assessment meeting but there were a number of other meetings scheduled at the same time, such as the meeting regarding the cutback on the Rob Schneider Foundation's music support for the schools. She mentioned that she asked the City Attorney to explain the pending lawsuit because of cities needing to go after every single penny in every way possible. She stated that she spoke to Jim Crogan of PG&E, and got confirmation that the pipe in Pacifica was not a distribution pipe but they would have a meeting to reassure the community. She also congratulated Fresh and Easy for their opening day of March 9. She mentioned having an articulation meeting with the schools on March 3. She thought Spring Fest should be wonderful. She hoped that they continue to get information out on the financial situation at the city, county and state levels. She felt it wasn't anything but a mess.

Councilmember Digre stated that the Department of Rehab has a yearly mayor's breakfast and they encourage the managers and HR people to attend. There are representatives of various agencies to support individuals with developmental disabilities in finding work.

Mayor Nihart stated that they had their second Mayor's walk in Pacifica, along with Councilmember Digre, the City Manager, Public Works Dir. Ocampo, in the Manor business district looking at traffic, signage, etc. They had observed that three businesses, Camelot, Save-More Meats and Myerhoff, stood for over 150 years of Pacifica business.

### **ORAL COMMUNICATIONS**

Mayor Nihart opened Oral Communications.

**Clark Natwick, Pacifica**, was present to thank the Council for instituting protection for the snowy plover. He stated that one part was for staff to contact U. S. Fish and Wildlife Service to review the City's plan. He urged that they follow up on that.

**Dyer Crouch, Pacifica**, added his own voice to Clark's, pointing out that the Council had voted to get input from Fish and Wildlife for the federal habitat area. He mentioned that one of the causes for the delay was the paved parking issue. He asked that the Council consider that the parking issue didn't drive boundaries, fences or signs, and this package could move forward without settling the paid parking issue. He stated that two agencies would be addressing this and they were aware that this was going to the Fish and Wildlife Service and those agencies would want to see Fish and Wildlife input before they make recommendations. He laid out his suggestions for how to expedite the process, as well as mentioning that there were grants available to help. He concluded by asking the Council to be proactive on this.

**Margaret Goodale, Pacifica**, displayed replicas of snowy plovers as a demonstration, then gave a brief explanation of what was required for them to breed successfully and why they probably will not be successful this year. She hoped the Council would proceed with the protections necessary to allow them to breed successfully next year.

**Noel Blincoe, 648 Edgemar Avenue**, thanked the Council on behalf of snowy plovers for what they have done so far, but felt that they needed to provide further protection. Many people felt it was important to contact Fish and Wildlife as stated in the motion because their input would be very helpful in moving forward. He suggested that they could speed up the process if they form a "blue ribbon" committee to help bridge the gap between the City and Fish and Wildlife.

**Mary Keitelman, Linda Mar**, stated that she was asking Council to have staff follow through on the 5-0 vote regarding adopting staff recommendations for the snowy plover and seeking comment from Fish and Wildlife on the recommendations. She was looking forward to helping the public understand how these little birds and Pacifica residents can live together on the beach.

**Laurie Goldberg, Vallemar**, stated that she was at the meeting on the libraries and she liked how they did that. She then referred to the General Plan update and stated that she was disappointed, feeling as though they were being railroaded into development. She didn't see anything to choose no development in some areas. She hoped they would have another session and give more information. She also hoped others would speak up about it. She mentioned that, during the week that Pacifica Schools were off, her commute time was halved, and she felt they didn't need to widen Highway 1 because it was the schools that caused a lot of the traffic problems. She stated that on March 9 at Cabrillo School they would be talking about restrictions

to dogs off leash and to address the dog parks. She added that there was nothing about dog parks in the General Plan.

**Bill Collins, Pacifica**, referred to the vote on the dog park in November as a positive step. He stated that he got an encouraging update from the City Manager. He felt that staff was on it which was encouraging. He agreed with the speakers that they wanted to get the federal government involved as they were developing things. He stated that he had conflicting information as to whether the City was interested in enforcing the leash law. He also felt it would be good for the signs to specify the penalty for dogs off leash. He was also encouraged that soon the snowy plovers would have a safe space on the beach.

**Rick Kritnitt, Lewis Lane**, stated that the residents of Lewis Lane received a parking regulation notice that they could not park their vehicles in their driveway if a portion of the vehicle extends over a portion of the sidewalk and could not park across the driveway on their property. He explained that almost every family has two cars and many properties did not have adequate setback to allow them to park in their driveway without some obstruction of the sidewalk. The police felt it was dangerous for pedestrians, but he felt it was no more dangerous than exiting a vehicle parked at the curb. He felt it has not been an issue in the 12 years he has lived there. He went on to explain the changes on the street over the years, and he was seeking a variance for the street to prevent the area from becoming an undesirable place to live. He had three recommendations to make.

Mayor Nihart apologized that he had run out of time, but asked him to leave the three written recommendations with the City Clerk.

Mr. Kritnitt stated that he would and concluded that they needed to work together because this did nothing to address the issue but did deteriorate the relationship between the police and residents.

**Nick Razlukin, Lewis Lane**, stated that he was continuing on the same subject as his neighbor. He felt the code was not unequivocal. He believed, similar to his neighbor, that being in front of his driveway was not a reason for a citation. He thought there had been several citations before they got the notices, and he felt it aggravated them because there was no place to go and no place to park. He felt there has to be a solution other than receiving a ticket. He felt that going to court was a possible alternative because they have to find a way out of this.

Mayor Nihart explained the timing system, specifically that the green light was go for speaking, followed by the yellow light which meant they have a minute, and then the red light meant their time was up. She added that the Council cannot talk about the issues they have brought forward but they can ask staff to give them information.

**Richard Kimbrough, Lewis Lane**, was going to speak to some of the things that have not been addressed. He stated that he was formerly a clinical psychologist working with people who were very damaged, and he looked at Lewis Lane as a “neglected child.” He proceeded to describe the differences on Lewis Lane from other areas in Pacifica, concluding that it was neglected when it was “born” and he asked them not to neglect it again.

**Bernie Sifry, Pacifica**, thought that the Council would take notice of their complaint and look into it and some action would come out of this. He then addressed the ballot on the fire assessment that was mailed out. He stated that he was getting calls with questions about it but he felt that the responses should come from the Council. He stated that he was telling them about

the March 9 meeting to get things clarified, although some had conflicts because of the meeting regarding dog leash laws on federal property which was also scheduled, so he suggested they give information on the ballot such as they are not secret, are weighted, etc. He felt that information should be coming from the Council. He also felt the returned ballots should be secured and not put in a desk drawer.

Mayor Nihart mentioned that they had talked about the assessment in two meetings and there would be a column from her in Wednesday's *Tribune*.

**Therese Dyer, 1408 Crespi Drive**, stated that she was speaking on the same subject. She stated that she was confused when her letter said it was a suppression tax and she felt as though they were suppressing something such as in 2004 when they put the money in the General Fund. She stated that they didn't have her approval for this tax because it was going into 2018 and that told her that the Council would not be making any changes regarding development, redevelopment, and empty stores and she was voting no. She explained that the public had to vote no, not just throw it in the wastebasket.

**Clorinda Campagna, Gypsy Hill**, thanked the parents, teachers and principals for allowing the children to do the UNICEF trick-or-treat tradition. She stated that each school will receive a certificate for participating. She mentioned Winter's Prom Night, which was a wonderful evening for a good cause with everyone having a great time. She mentioned that the Pacific Islanders team was also having a fundraiser for the Little Brown Church. She also asked everyone to save items for their rummage sale.

**Victor Carmichael, Pacifica**, stated that, as a member of the Open Space Committee and Park & Rec Commission, they wrestled over the parameters of the cordoned off areas which they felt required the expertise of Fish and Wildlife to work out.

**Charles Peoples, Lewis Lane**, stated that, because many of them had several cars, enforcing this law would create clutter on nearby streets. He hoped they would create a situation to make it easier on the residents.

Mayor Nihart asked the City Manager if he would like to give an update on the snowy plover issue.

City Manager Rhodes stated that the staff was working on the snowy plover issues. There were unresolved issues at the Council's decision in November and they were directed to resolve them and bring them back to Council for a final Council decision and then submit them for consultation with U.S. Fish and Wildlife. They were proceeding with the issues to be resolved, specifically fencing on the ocean side, regulations for possible events in the area and a cost estimate for implementation of the plan. He stated that they were scheduled for the April 25 meeting with the final package. Then, following the decision, they would go to the U.S. Fish and Wildlife for their expertise.

Mayor Nihart asked if he would give a brief update on the parking.

City Manager Rhodes stated that the two were not connected and they didn't affect decisions on the other. He mentioned that the parking issue had been going on for quite some time and the City had made an application in November 2007 for beach parking and received a reply from the Coastal Commission which addressed the differentiation of fees between residents and non-residents as unacceptable. He stated that, because it was a state owned beach, they needed the

state's approval to implement the parking program. He stated that they had moved forward and about a year ago the Coastal Commission again declined approval because of a ballot measure prohibiting parking charges. The measure failed, but another measure was adopted which appeared to prohibit the City from charging for beach parking. The state then did research and confirmed in December that the program could move forward. Since December, they have been working to get approval from State Parks, which had not come as yet. They have a conference call scheduled and hoped for the approval and, in the meantime, they have been addressing questions asked by the Coastal Commission and have been in constant communication with them to set up a hearing. They were pushing for a date to move the program forward which meant checking with the Coastal Commission on what it will take to move it along.

Mayor Nihart closed Oral Communications.

## **CONSIDERATION**

### **6. Information Update on Financing City Services Task Force First Review of Five Year Financial Plan.**

City Manager Rhodes presented the staff report.

Mayor Nihart asked if the Financing City Services group talked about the projections in the state of how long the deficit was going on and the projection of how many years the state can expect to be in this current financial problem.

Admin. Services Dir. Ritzma stated that she had just returned from the Finance Directors' state conference and the projections in almost every session was that the cities and the state will continue to grapple with the financial crisis for the next 3-5 years if not longer, which was why Pacifica was looking at a five-year plan.

Mayor Nihart stated that she wanted to get that information out because it was the basis for some of the City's decisions.

There were no public comments.

Mayor Nihart appreciated the final chart, and reminded everyone that they were looking at \$8 million in total reductions. Many of the contracts have moved through the process without going to court and they have worked out the cuts. She really appreciated all the employees who have worked with the City. The mayor referred to the chart, pointing out that they have moved it out of her term of office. She asked the City Manager if they could go below the line.

City Manager Rhodes responded that they could not.

Mayor Nihart asked confirmation that, if the City goes into deficit, the City was bankrupt.

City Manager Rhodes stated that, while he wouldn't say they were bankrupt, they would have to figure out what they were going to do.

Mayor Nihart stated that she was merely pointing out that they were trying to go very close but come out of it.

Councilmember Vreeland suggested clarification of what the City Manager meant, specifically that the City did not go bankrupt but looked for other cost savings and reductions with the quality of life in the town further reducing.

City Manager Rhodes agreed, clarifying that the City cannot deficit spend and they have to take cuts in order to balance the budget.

Councilmember Vreeland stated that, on looking at the summary charts of the goal versus where the City was, the expenditures were going up a little bit and reductions going down a lot. He reiterated that their goal was to reduce expenditures and increase revenues.

Mayor Nihart stated that, when she said that, she wanted the public to know how serious it was. She stated that there were Plan B and Plan C in the Financial Plan, and if necessary, they would move to serious service reductions, but they were looking at being very close to zero and they have to confront the problem head on.

Councilmember Vreeland thanked the Mayor and the City's Financial Services Committee for agreeing to meet twice a year to review the proposals and progress which doesn't get much more transparent. He felt they have laid out what the issues were. He echoed her comments and also thanked staff for their concessions as they work through the issues. He also thanked the City Manager for his efforts, adding that it was a serious issue. He mentioned a report in the *San Mateo Times* which was on budgets. He felt they were putting issues on the table, knocking them down and dealing with the consequences based on what the voters decide.

Mayor Nihart stated that was why she was underscoring the many different ways they were trying to avoid losing more money out of our small share from the state. She stated that, since the state has begun taking money which was ours, the City has lost an entire General Fund budget of \$28 million. She stated that was why they were fighting the state taking redevelopment money and why the City was involved in the lawsuit. She mentioned that she had not heard three year projections in any of the state-wide meetings she has attended, always around five years. She concluded that it was very serious.

## **7. Mid-Year Budget Review Report.**

Admin. Services Dir. Ritzma presented the staff report.

Mayor Nihart asked confirmation that franchise fees were a percentage, not a fixed amount.

Admin. Services Dir. Ritzma responded that she was correct.

Mayor Nihart referred to the assumption that budgeting in government was a straightforward matter and asked her to give a two-sentence version of the ERAF and the triple flip, to show how complex this was.

Admin. Services Dir. Ritzma explained that cities got a specific amount of property tax and sales tax up front in a simple process. She then proceeded to explain the various processes, stating that there were interesting flow charts which showed how money flowed to various agencies and, at one point they are backfilled with the ERAF (Educational Revenue Augmentation Fund) which were available to anyone interested in the specific details.



Mayor Nihart thought it was mind-boggling. She then asked if there was any sense where the budget was going from the state, because it makes planning quite difficult.

Admin. Services Dir. Ritzma responded that, at the Finance Directors' meeting, with all the great financial and legislative minds and all the Finance Directors in California, no one was willing to make any prediction except to say that it was a mess with not enough money to go around and we are all going to be impacted in some way.

Mayor Nihart referred to a time when the state was behind in their payments to the City, and stated that when we pay property taxes, the state gets it all and the cities get a percentage that she thought was 21%.

Admin. Services Dir. Ritzma stated that it was 16%.

Mayor Nihart stated that it has gone down, and then she thought the City gets 1% of sales tax to pay for streets, etc. She asked if the state has caught up.

Admin. Services Dir. Ritzma stated that they were in the process of catch up, with two more payments of catch up due in March.

Mayor Nihart stated that we were not caught up then, but catching up.

Admin. Services Dir. Ritzma agreed, adding that they had been predicting that we wouldn't see that until the end of the fiscal year in June, but we will see it in March.

Mayor Nihart commented that this was what made budgeting problematic from the city's end.

Admin. Services Dir. Ritzma added also cash flow, stating that some cities were able to put money aside and gain some interest, but Pacifica was not at that point and we had to keep our funds liquid.

Mayor Nihart opened public comments.

**Bernie Sifry, Pacifica**, stated that we have had a consistent problem with the fire department overtime when discussing the budget, and his question was how you stop the bleeding. He stated that suggestions had been made in the past, and he asked what was being done now to tighten up, referring to the Fire Department's overtime in the recent half year still being at \$96,000.

Mayor Nihart clarified that it was \$95,000. She then asked confirmation that they had some employees out on workers' comp.

Admin. Services Dir. Ritzma stated that it was a year where they have a lot of short term disability, as well as longer disability.

Mayor Nihart stated that people were looking at the statewide website of 2009, and she mentioned the situations where there were memorandums of understanding between various cities such as for emergencies. She explained that the officers get paid immediately, and the money ultimately gets paid back to the city from the Office of Emergency Services, however, those were hard to sort out in the tables. She thought this budget item was largely workers' comp.

Admin. Services Dir. Ritzma agreed that in 2009 it was the fires in Southern California, but the current year was an unusual year with a lot of injuries.

Mayor Nihart closed public comments.

Councilmember Vreeland referred to the revenues from franchise fees of \$332,000 and asked if they were assuming that it would double at the end of this year.

Admin. Services Dir. Ritzma stated that it was this year's.

Councilmember Vreeland clarified that it was not for the first six months.

Admin. Services Dir. Ritzma stated that it was for the entire year.

Councilmember Vreeland asked if the HR legal services contract for \$30,000 was based on upcoming negotiations or past negotiations.

Admin. Services Dir. Ritzma stated that it was upcoming, getting us to the end of the year.

Councilmember Digre referred to her comment about cities that had extra cash invested to get interest and she asked where they put that money to get decent interest.

Admin. Services Dir. Ritzma stated that they invest in longer term investments. She stated that we do just the local agency investment fund LAIF which a lot of cities do for short term investments. She mentioned that the County had an investment pool which Pacifica was not part of, and we were fortunate to not be part of that. However, it was a longer term investment pool which we are not part of because of our cash flow issues.

Mayor Nihart asked if they were making up the net difference of \$75,000.

Admin. Services Dir. Ritzma stated that they were watching every department's budget and they know that they have a negative of \$75,000.

Mayor Nihart commented that we had three more contracts to negotiate.

Admin. Services Dir. Ritzma agreed, adding that they all expire at the end of June.

Mayor pro Tem DeJarnatt moved approval of the 2010-2011 mid-year budget review and further moved adoption of Resolution for the mid-year budget adjustments for the 2010-2011 fiscal year; seconded by Councilmember Vreeland.

**ROLL CALL VOTE:**

Ayes: Councilmembers: Stone, Digre, Vreeland, DeJarnatt and Nihart.

Noes: Councilmembers: None.

**Motion passed: 5-0.**

- 8. Received an RFP for Police Services from the City of Half Moon Bay and the Pacifica Police Department has Developed a Proposal to Provide the Services.**

Police Chief Saunders presented the staff report.

Mayor pro Tem DeJarnatt acknowledged that, with an RFP, they don't want to get too deeply into it, but he asked about the distance between the two cities which concerned him. He asked if that was a major concern to the police or do they feel they can deal with it.

Police Chief Saunders stated that they would be concerned about putting out a proposal they couldn't fulfill. However, they feel they can fulfill the proposal, providing service that exceeds what Half Moon Bay was asking for. He stated that they would ensure that officer's safety would be paramount so there will be adequate staffing but, as with any agency, there may be times that they request mutual aid from neighboring cities or the sheriff's office.

Mayor pro Tem DeJarnatt asked confirmation that they would have mutual aid from the surrounding agencies.

Police Chief Saunders confirmed that assumption. He felt that what makes this more feasible was the tunnel, adding that if they had to be concerned with the slide and its potential for closings, he wouldn't be so sure about doing this proposal. He stated that Pacifica was 12 ½ miles long and it was 16-17 miles to Half Moon Bay, so it was a similar distance. They feel it is feasible and it would enhance Half Moon Bay and Pacifica, with both cities having programs the other city would like to emulate. He concluded that it was up to them.

Mayor pro Tem DeJarnatt acknowledged that the tunnel would open next year and it would cut out of some of the distance.

Councilmember Digre liked his comparison of distances. She asked confirmation that Montara and other communities between our two cities were still unincorporated.

Police Chief Saunders agreed, stating that they were under the sheriff office's jurisdiction.

Councilmember Digre stated her curiosity was piqued since she felt the sheriff's department was very visible in that area. She asked if they saw a problem of having to pass through a different jurisdiction.

Police Chief Saunders stated that he didn't see a problem.

Councilmember Digre liked the idea of a savings and thought the point of the distance was very well taken.

Councilmember Stone stated that his concern was the logistics of it. He asked how the timeline worked.

Police Chief Saunders asked for clarification.

Councilmember Stone stated that they were requesting approval to give a proposal to Half Moon Bay and, if the Council authorizes the proposal, would they be given the logistics at that time, such as where officers will be stationed and will officers be kept in Half Moon Bay.

Police Chief Saunders stated that they planned on having a minimum of two officers on duty at all times in Half Moon Bay and at times three officers to cover overlap when officers were

traveling back and forth to take over a new shift. They anticipate having a captain in Half Moon Bay's jurisdiction for a considerable amount of their time and partial chief time as well.

Councilmember Stone asked how many officers they have at this time.

Police Chief Saunders stated that they have 12 officers.

Councilmember Stone asked how many were on shift at one time.

Police Chief Saunders assumed they used two per shift but he noticed that their schedule did leave a blank of about four hours where they were working with one officer. He had a concern with that and would not do that.

Councilmember Stone asked if he would want two at all times.

Police Chief Saunders responded that they would want two at all times.

Councilmember Stone asked if they would assume the Half Moon Bay police station.

Police Chief Saunders stated that there were many options put forward, one being to occupy the facility.

Councilmember Stone asked the City Manager to take him through the process and if they would have a chance to review it if the chief submits a proposal.

City Manager Rhodes stated that once they submit the proposal and they accept it, they were in a position to negotiate a contract for the service. He stated that, if the City was not interested in doing that, they should not submit a proposal. Now was the time to make that determination because they wouldn't submit a proposal and back out unless they couldn't come to terms on the contract.

Police Chief Saunders stated that it was a competitive bid, with someone else also putting in a proposal. He stated that, because of that, while didn't want to be too vague, they also didn't want to give out the proposal. They felt it was a good deal for Pacifica, adding that the City Manager has had an opportunity to review, and the Finance Department has reviewed, his preliminary report and proposal. He felt it made sense and he thought it was a good proposal. However, he understood the Councilmember's need to have more information.

Mayor Nihart opened public comments.

**Bernie Sifry, Pacifica**, thought the question was what was the bottom line, specifically what is the plus for Pacifica in dollars and cents. He was aware that one of our captains would be spending 75% of his time there, and he asked if Pacifica would get him for the 25% and, thereby, saving money. He stated that maybe they have asked and have the answer.

Mayor Nihart closed public comments.

Councilmember Vreeland stated that, to answer Mr. Sifry's specific question, at the bottom of the staff report, the potential savings is listed as \$250,000 to \$400,000. He felt it was hard take action on this without seeing the proposal and information asked for by Councilmember Stone. He asked, if Half Moon Bay accepts this, how this is governed, specifically whether the contract

was between Pacifica and Half Moon Bay with the Council having no say except ratifying the contract. He clarified that it wasn't a Fire JPA and there would not be a joint board governing anything, but rather a fee for service contract that Half Moon Bay is asking our police department to provide.

City Manager Rhodes stated that he was correct. He stated that, if the proposal was accepted, they would bring the details to the Council and move forward from there into negotiations and he would consult with the attorney as to how much can be done in closed session.

Councilmember Vreeland stated that he was supportive of anything that would save the City a quarter of a million dollars and he would try and see if it works. His only concern was whether the Council would have a chance to look at it before decisions are made, but he thought they would have to wait until they accept the proposal before the Council weighs in on being comfortable that there was adequate staff coverage in Pacifica. He reiterated that two things were important, to save money and not reduce any police services in Pacifica.

Police Chief Saunders stated that he felt both were going to happen, specifically that there would be no reduction and there would be a saving of money.

Councilmember Vreeland stated that he needed to see it on paper somehow.

Mayor Nihart asked clarification that this was just a request to develop the proposal.

City Manager Rhodes stated that the proposal was done and this was a request to submit the proposal.

Mayor Nihart stated that they told them the contract would come back to the Council to negotiate.

City Manager Rhodes responded that she was correct, if Half Moon Bay accepts their proposal.

Councilmember Vreeland asked what the Council's ability will be to tweak the proposal if they have questions about the proposal which they haven't actually seen until they see it with a contract.

Police Chief Saunders explained that Half Moon Bay gave them several options. Option #1 was to hire all their people and keep their facility open. Option #2 was to keep two policemen on the street. Option #3 was for a 4-5 hour period you could have one policeman on the street and the rest of the time they wanted two policemen on the street. Option #4 was for Pacifica to tell them some other ideas they may have. On option #1, they gave them a cost and we could save them money because of our tiered system. On option #2, they gave them another cost because it was closing their facility with only policemen hired. On option #3, they didn't make a bid because of officer safety issues. On option #4, they gave them several options of keeping the facility open, closing the facility, hiring a clerk, not hiring a clerk, hiring a CSO, not hiring a CSO, hire officers at a different classification, hire them at their current classification, and gave them a cost estimate over a five year period, based on financial reports from our Finance Department, which include equipment, etc. He stated that it wasn't complicated, but you have to take into account all the various aspects of personnel and equipment and transition items for all their costs.

Councilmember Vreeland reiterated that they have a menu of options they are going through and will pick one that fits. If they pick us, he asked what will happen at that point, specifically will we have a contract that the Council would ratify in closed session.

City Manager Rhodes stated that our proposal will be out in the public at that point because Half Moon Bay would have opened and disclosed it. It will be a matter of negotiating a contract between the two agencies. At that point, they will return to the Council and lay out the terms and ask whether there are adjustments or they are okay.

Councilmember Vreeland stated that it was what he wanted to hear, that they were not limiting their options by doing this at this point.

City Attorney Quick stated that this was different from a competitive bid process for a public works project where you have a binding contract once you open the bid. Here, it was a request for a proposal or suggestion, and the first part of a two-part process. If Pacifica's proposal is the favored one, they get together and try and negotiate a contract. If they cannot come to terms, the proposal, in and of itself, was not a binding contract.

Councilmember Stone asked if this was how it was done because he thought it was backwards. He thought that, if Half Moon Bay accepts the bid, it was possible the Council could look at it and decide it was not something they want to do. He was aware there was nothing binding but he thought they should have looked at the proposal before. He was worried about unintended consequences. He asked if this was the only way to go about it, or could they look at it beforehand.

City Manager Rhodes stated that the point was that they were competing against another agency for this and there was a problem if they bring their deal to the Council and lay it out.

Councilmember Stone asked if that was why they did things in closed session and was this such an item.

City Manager Rhodes stated that this was the weird thing about two public agencies doing contracts together. There was no exemption for those negotiations in closed session. He felt it did put them at a disadvantage but that was the situation.

Councilmember Stone stated that, if this was the only way to go about it, they needed to explore it because of the potential savings.

Police Chief Saunders didn't think he was speaking out of turn, but he and the City Manager were very conscious of costs and what it takes to run a police department and what it takes to run it for years. They were looking at a five-year deal, with a possibility, after two years if the partnership is working, to continue the partnership ad infinitum. Half Moon Bay was looking for help, but he felt Pacifica could help our own City at the same time. He stated that they both looked the proposal over thoroughly as well as police staff and now he was confirming that his numbers add up. He thought they have been conscious of all the costs, and have tried to be as thorough as possible. They didn't want to make a proposal that would put more of a burden on our City. If they worked out the numbers and found it wouldn't work, they would have scratched it several weeks before.

Councilmember Digre sympathized with the concerns. She thought it was an odd feeling, adding that the Council would "skin them alive if anything went wrong," and the Council would all be chased out of town. She felt it was awkward because they had very little control and she thought they were trusting them. She asked if there was no liability. If they like it and we don't, and we

decided we didn't want to go through with it, Half Moon Bay would hate us forever. She asked whether it would be something like that.

City Attorney Quick couldn't confirm that they won't hate Pacifica, but our City will have no contractual obligation.

Mayor Nihart thanked the chief for doing this and she appreciated what he was doing. She felt that, all over the County, people were reinventing how we deliver services. She felt we have to explore these mechanisms. She stated that there may come a time when the County is the next thing hit by the state budget. She mentioned talking to a member in Jackie Speier's office who lives in San Carlos, and who stated that everyone was happy now, but as other people pile on there is a fear that the County can't do this and CALFIRE seems like a good idea in the short term but the cost escalates very quickly. She supports this endeavor, wants to go forward to find out, and she appreciates the incredible cautiousness to make sure the numbers work and we do save money. She thought maybe they might have a San Mateo Coast Police District someday.

Police Chief Saunders stated that a councilmember in Half Moon Bay feels the same way.

Mayor Nihart was aware of that, adding that there were issues with that but it might happen. She did feel that we have to go forward and do this.

Councilmember Vreeland thanked Chief Saunders for his efforts, adding that his questions were not based on what he had done or not done, but it was odd when agencies are doing something but you don't see the proposal before and this was a different situation for them.

Police Chief Saunders stated that he and the City Manager had discussed the difficulty in going forward without letting them see the details and they understood.

Councilmember Vreeland thanked him again for his efforts.

Councilmember Vreeland moved to authorize the Police Chief to submit the proposal to the City of Half Moon Bay; seconded by Mayor pro Tem DeJarnatt.

**ROLL CALL VOTE:**

Ayes: Councilmembers: Stone, Digre, Vreeland, DeJarnatt and Nihart.

Noes: Councilmembers: None.

**Motion passed: 5-0.**

**9. Approve Settlement Agreement and Mutual Release in the Pending Lawsuit:  
Emde v. City of Pacifica and Recology of the Coast, San Mateo County  
Superior Court Case No. CV 494710.**

City Attorney Quick presented the staff report.

Mayor Nihart opened public comments.

**Bernie Sifry, Pacifica**, stated that he chose to address this because of his concern about whether the City Attorney would be publicly transparent in the decision and he was pleased that she has. He stated that, when he read the decision of the mediator, he looked at where the money was

going which determines the victor. He stated that it was great to have solved this in two sessions of mediation. He then mentioned some of his specific concerns, such as the \$55,000 paid to Mr. Emde's attorneys, but was pleased that there was transparency.

**Therese Dyer, Pacifica**, stated that they were looking for ways to be solvent, and she felt that this was \$55,000 down the tubes. She didn't know how it could have been prevented, but she thought the next time they enter into any kind of litigation, they need to take a closer look at it. She stated that the Councilmembers had good heads and suggested that they use them.

Mayor Nihart asked confirmation that anybody can sue anybody for anything.

City Attorney Quick stated that she was correct. She also felt that the Council was between a rock and a hard place because when someone sues and it was not picked up by insurance, they have to respond to it and that costs money. She stated that you can give in to their demands or oppose it. Initially, the demands were for more which was why it was a settlement. She stated that, if the City had gone through litigation and it had gone up to the Supreme Court, at that point both parties would have expended hundreds of thousands of dollars and in this type of case, i.e., Prop. 218 suits, the risk could have been that the City would have been compelled to pay the other side's entire "freight." This was guarding against that risk, which was a tradeoff because they were buying freedom from that.

Mayor Nihart stated that she brought this up because she had been involved in a lawsuit where she was completely innocent and, in that case, it would have cost them more to go after the attorney fees from the individual bringing the suit. She asked if that would have been the case with this one.

City Attorney Quick agreed, but added that it was unlikely that they would have been able to recover the fees even if they had prevailed, which usually goes to the private party seeking to enforce the constitutional allegation.

Mayor Nihart closed public comments.

Councilmember Stone asked if there were any big changes in what they were doing now compared to what they were going for. He didn't see a big change in their operation as a result of this. He asked what was different now.

City Attorney Quick stated that this was not a total rejection of all the City's franchise fees, which was originally being sought. The City will be retaining \$805,000 of fees but would not be tying the fee to the increases of Recology over the years until 2017. She stated that the other change is a procedural piece in that they will provide a specific type of notice that was requested. In terms of the operation of the franchise and Recology's provision of services, those do not change.

Councilmember Stone stated that he was confused about the franchise fee. He thought it would be based on how much revenue was brought in by the waste management company, which was how it was done across the state and country.

City Attorney Quick stated that it was how it was originally set out in the franchise agreement but the argument being made was that Prop. 218 did not apply to an entity that charges rates for its services so it would not apply to Recology. The City of Pacifica was the potential case for it but someone was going to get sued over that theory. She stated that, by delinking the two with a flat



fee and making it less than what they had bargained for initially, it made it even more clear that the City was not charging the rates.

Councilmember Stone asked if the franchise fee could be more.

City Attorney Quick asked if he was referring to the 11%.

Councilmember Stone asked if they were locking it in.

City Attorney Quick agreed that they were locking it in to a flat fee.

Councilmember Stone asked, if people were paying less, whether it was possible that they were collecting more than they were paying because before it was a flat percentage, and we could be getting more money if the revenue came down.

City Attorney Quick agreed that it was a possible scenario. She explained that the revenue has already gone down from what they anticipated when they entered into the franchise.

Councilmember Stone summarized that they locked in the franchise fee and now, for any rate increase they have to send out a notice, and that would cost the City \$55,000.

City Attorney Quick agreed with that statement, adding that they also gave up the annual \$10,000 contingency fee.

Councilmember Stone stated that was just in case the garbage company went bust.

City Attorney Quick stated that if there were unanticipated solid waste issues that arose that they had to address, that money would have been set aside as a reserve to deal with that.

Mayor Nihart thought there was time in the past that they needed that, but at this point she didn't think it was a huge deal, adding that it would probably cost more than that to mail out the notices.

City Attorney Quick stated that she did not know how much it cost to mail notices.

Councilmember Vreeland thanked the staff for working through these issues. He felt it wasn't easy, but it was also disappointing to lose \$55,000 but it was money well spent to make sure they weren't the test case for this issue and the attorney can find another city to work with.

Councilmember Vreeland moved to approve the Settlement Agreement and Release and authorize the City Manager to execute the document and approve payments as set forth therein; seconded by Councilmember Stone.

Mayor Nihart stated that she could not see spending one more penny on this or be a test case or afford to go forward even though their attorney thought they had every reason to win.

**ROLL CALL VOTE:**

Ayes: Councilmembers: Stone, Digre, Vreeland, DeJarnatt and Nihart.

Noes: Councilmembers: None.

**Motion passed: 5-0.**

**10. Appointment of Citizens to Fill Vacancies on the Planning Commission and the Parks, Beaches & Recreation Commission.**

City Clerk O'Connell presented the staff report.

Mayor Nihart asked that they vote by roll call, starting with the Planning Commission.

City Manager Rhodes stated that they had to distinguish between filling a term and appointing for a full term. He explained that one person gets a two-year term, and then they select the full term.

Mayor Nihart asked for clarification.

City Manager Rhodes reiterated that whoever filled the vacancy only serves for two years, which was the first vote.

City Clerk O'Connell started with Councilmember Stone's recommendation for the two-year term.

Councilmember Stone voted for Omar Saleh.

Councilmember Digre voted for Mr. Brown.

Councilmember Vreeland voted for Mr. Brown.

Mayor pro Tem DeJarnatt voted for Mr. Brown.

Mayor Nihart thought all the interviews went well, and she appreciated those who interviewed. She had two concerns, specifically that individuals came back to applying the ordinances within the guidelines of the City and when they get legal direction they have a liability to adhere to the ordinances and rules of the City, as well as the state and federal. She also was concerned that they think about things from a representation of the entire town.

City Manager Rhodes stated that it should have come before they started voting.

Mayor Nihart asked if they have to finish this vote and then do something in between.

City Attorney Quick stated that they haven't made a motion, merely marked down their preference.

Mayor Nihart stated that her preference was that Mike Brown presented for the two-year term a compelling and thoughtful and even set of answers to the questions.

City Attorney Quick asked that they let the public speak before they take a motion.

Mayor Nihart opened public comments.

**Gil Anda, Pacifica**, wanted to endorse Connie Menefee because he felt she would add balance to the Planning Commission. He was concerned after watching the process with the joint study session on the expansion of Nick's hotel. It bothered him was the suggestion for a bike path and open space in front of the restaurant. He agreed with B. J. Nathanson that the Planning Commission has gotten too activist. He stated that if someone was oblivious to the economic

needs of the City, that would hurt us and we need to get some balance in there. He also thought they needed to go further than that.

Mayor Nihart closed public comments.

Councilmember Vreeland moved that the City Council appoint Mr. Mike Brown to serve the two-year term for Pacifica's Planning Commission; seconded by Mayor pro Tem DeJarnatt.

**ROLL CALL VOTE:**

Ayes: Councilmembers: Digre, Vreeland, DeJarnatt and Nihart.

Noes: Councilmembers: Stone.

**Motion passed: 4-1.**

City Clerk O'Connell stated that this was for the expiring term from March 1 to March 1, 2015, for a four-year term.

Councilmember Stone voted for Connie Menefee.

Councilmember Digre voted for Ms. Langille.

Councilmember Vreeland voted for Celeste.

Mayor pro Tem DeJarnatt agreed with the Mayor's comments that these individuals interviewed very well and any of them would do a decent job, but it was his policy that, when someone has done well in their previous term he would support them again, so he voted for Celeste.

Mayor Nihart stated that she has issues when doing interviews with two things in the process. One was coming in with an agenda that was preconceived and has nothing to do with being a Planning Commissioner. The other one was making statements that came across in a threatening way. With those in mind, she supported Omar Shalay.

Councilmember Vreeland moved that the City Council reappoint Celeste Langille to serve a four-year term for Pacifica's Planning Commission; seconded by Councilmember Digre.

**ROLL CALL VOTE:**

Ayes: Councilmembers: Digre, Vreeland and DeJarnatt.

Noes: Councilmembers: Stone and Nihart.

**Motion passed: 3-2.**

Mayor Nihart opened public comments.

**August Murphy, Pacifica**, stated that he was aware he was getting three more commissioners, but they took one away and he asked if they could give him four.

Mayor Nihart thought the City Clerk was going to arrange for that.

Mayor Nihart closed public comments.

City Clerk O'Connell stated that, with the appointment of Mike Brown, they needed an additional Parks, Beach and Recreation commissioner which means they need four.

Mayor Nihart asked if they could do these all at once.

City Attorney Quick stated that they could.

Mayor Nihart asked if they would give their recommendations by roll call with all four people.

Councilmember Stone voted for Todd Ewell, Deidre Finnegan and Cindy Abbott.

Councilmember Digre voted for Ms. Finnegan, Ms. Abbott, Mr. Ewell and Ms. Parsons.

Councilmember Vreeland voted for Ms. Finnegan, Ms. Abbott, Mr. Ewell and Ms. Parsons.

Mayor pro Tem DeJarnatt voted for Mr. Ewell, Ms. Finnegan, Patricia Sambrillo and Cindy Abbott.

Mayor Nihart commended everyone who interviewed. She voted for Mr. Ewell, Ms. Finnegan, Patricia Sambrillo and Cindy Abbott.

City Clerk O'Connell stated that the vote count was 5 votes for Mr. Ewell, Ms. Finnegan and Ms. Abbott; two votes for Ms. Sambrillo and Ms. Parsons.

City Attorney Quick suggested that they could have a motion for the three with consensus to get that out of the way, then they could discuss if they want to draw a fourth from the remaining candidate pool.

Councilmember Vreeland stated that they were so close that he was considering changing.

City Attorney Quick stated that he could do that.

Councilmember Vreeland moved that the City Council appoint Mr. Todd Ewell, Ms. Deidre Finnegan and Ms. Cindy Abbott to the PB&R Commission; seconded by Mayor pro Tem DeJarnatt.

**ROLL CALL VOTE:**

Ayes: Councilmembers: Stone, Digre, Vreeland, DeJarnatt and Nihart.

Noes: Councilmembers: None.

**Motion passed: 5-0.**

City Clerk O'Connell asked if they wanted to have a discussion or go through the roll call again.

The consensus was for a roll call.

Councilmember Stone voted for Patricia Sambrillo.

Councilmember Digre voted for Ms. Parsons.

Councilmember Vreeland voted for Patricia Sambrillo.

Mayor pro Tem DeJarnatt voted for Patricia.

Mayor Nihart voted for Patricia Sambrillo.

Councilmember Vreeland moved that the City Council appoint Ms. Patricia Sambrillo to the PB&R Commission; seconded by Mayor pro Tem DeJarnatt.

**ROLL CALL VOTE:**

Ayes: Councilmembers: Stone, Digre, Vreeland, DeJarnatt and Nihart.  
Noes: Councilmembers: None.

**Motion passed: 5-0.**

Mayor Nihart adjourned the meeting at 9:45 p.m. in memory of Vivian Pappas and Joe of Joe's Auto Body.

City Clerk O'Connell thought his last name was Spruitenberg.

Mayor Nihart wished all of their families well.

Transcribed by Barbara Medina, Public Meeting Stenographer.

Respectfully submitted,

Kathy O'Connell, City Clerk

APPROVED: 3/14/11 - 3-0; Councilmember Vreeland & Mayor Pro Tem DeJarnatt absent

  
Mary Ann Nihart, Mayor