

MINUTES OF THE ADJOURNED MEETING
OF THE LA PALMA CITY COUNCIL

November 20, 2001

Mayor Aragona called the regular meeting of the La Palma City Council to order at 5:32 p.m. on Tuesday, November 20, 2001, in the Council Chambers of La Palma City Hall, 7822 Walker Street, La Palma, California.

ROLL CALL:

Councilmembers present: Lauree Aragona, Christine Barnes, Kenneth A. Blake, Alta E. Duke, Paul F. Walker

Councilmembers absent: None

City Officials present: Catherine Standiford, City Manager
Vince Giampa, Chief of Police
Jeff Kirkpatrick, Police Captain
Ismile Noorbaksh, Director of Public Works/City Engineer
Tami K. Piscotty, Assistant to the City Manager
Paul Pitts, Director of Building & Safety
Robbeyn Bird, Director of Finance
Jan Hobson, Director of Recreation & Community Services
Joan Hoesterey, Principal Planner
Joel Kuperberg, City Attorney
Peggie Turnage, Executive Assistant

WORK SESSION ON UTILITY USERS TAX

City Manager Catherine Standiford presented a brief background on the steps that have been taken to date, relating to the utility users tax issue. She stated that the purpose of this work session is to present the results of the recent telephone survey as well as some anecdotal comments received at the open houses that were held, and after receiving that information it would be appropriate for the City Council to discuss whether or not a measure related to the utility users tax should be placed on the March 5, 2002 election ballot. If there is not a consensus to place the utility users tax measure on the ballot, then it would be appropriate for the City Council to discuss and provide direction to staff on the approach and time line they want the City to take for reducing the General Fund Budget to absorb the loss of the utility users tax. She then introduced consultants Jonathon Brown from Adler Public Affairs who assisted the City in the writing of the special editions of the La Palman and John Fairbank of Fairbank, Maslin, Maullin & Associates.

Mr. Fairbank explained the results were obtained from 500 respondents who were selected from registration rolls of voters who have past voting histories. He then made a visual presentation of the results on each of the 22 questions for the 500 completed surveys. These results indicated a very high percentage of respondents support the City government and its services. The survey

also indicated that 44% of those polled would definitely vote in favor of the utility users tax and 20% would probably vote yes, and only 14% would definitely vote no and 7% would probably vote no.

Mayor Aragona referred to Question No. 14 and asked for clarification that on Programs for Seniors, for example, 64% are saying they don't want any cuts and 14% want some cuts, which make an overall demand for 78%. Mr. Fairbank responded affirmatively.

Councilmember Barnes referred to Question No. 5 relating to Maintaining a Strong Police Presence in the Schools with the DARE program and the school resources officer and asked if she is reading it correctly that very satisfied is 55% and somewhat satisfied is 25% giving a total satisfaction of 80%. Mr. Fairbank responded affirmatively and added that only 1/3 of the respondents have children in their household, while 2/3 do not.

Councilmember Duke commented that there is a discrepancy in some of the material provided to Council on the number of survey respondents and asked for clarification of the correct number. Mr. Fairbank responded that the survey contacted 500 registered voters.

Councilmember Duke commented she found it interesting that the average age of the respondents was 50+.

Ms. Standiford stated that many of the questions asked at the open houses that were held dealt with to what extent the utility users tax could be changed. As an example one resident asked if it is put on the ballot and the voters approve it, could the Council then raise it. She explained that the answer to that question is no, it would have to go back to a vote of the people. She added that there were also several comments that when the tax was first adopted it was their impression it was adopted as a temporary measure and were concerned about it becoming a permanent source of revenue of the City.

Mr. Ted Reina, 8081 Lancashire Circle, La Palma, referred to the statistics that indicated a rather large percentage, 44%, of the survey respondents did not know anything about the utility users tax and asked if that is normal.

Mr. Fairbank responded that actually the percentage that is aware of the issue in La Palma is actually above average.

A straw vote to determine if there is support to place the utility users tax on the March 5th ballot indicated that the Council unanimously supports this action.

Ms. Standiford presented a redlined version of the utility users tax initiative that is basically housekeeping changes to reflect the current situation.

Mayor Aragona referred to Page 6, subsection (b) and asked how these requirements will be applied.

City Attorney Joel Kuperberg responded that since the utilities currently have a copy of the ordinance and have been applying it, the City would probably, in addition to furnishing them a new copy of the ordinance, just explain to them the changes. They would just make a minor programming change in their billing system to apply the 5% to the base service, rather than further down the line, so that it is not assessed on federal or state taxes.

Mayor Aragona asked how long it is estimated that it would take to make the change.

Mr. Kuperberg responded that his recollection is that the last time the City did this the utilities informed us that they needed two months to implement changes.

Councilmember Barnes commented that the ordinance states it will take effect in ten days and asked how that affects what Mr. Kuperberg stated.

Ms. Standiford responded that from a procedural standpoint, after an election has occurred there is an amount of time that is needed to count the votes, the County has to certify the election results, the Council has to declare the Initiative adopted based upon the certification of the County election results, and then from that point you would expect the two months time lag for it to go into effect.

Mayor Pro Tem Walker asked what percentage is required to pass this initiative.

Mr. Kuperberg responded the initiative requires a majority vote.

Councilmember Blake referred to Page 9, Section 8-54 and asked if the language should be expanded to include television services provided that are not on the cable system, such as Direct TV and Digital TV.

Ms. Standiford responded that there is not a utility tax on anything other than what is provided currently through AT&T Broadband.

Councilmember Blake stated that, in order to be fair to everyone, it should be included just on the cable or on everything.

Ms. Standiford responded there are a couple of ways to look at this. One is the extent to which the utility also utilizes services. Something such as Direct TV or Tele TV or satellite, are not governed under the FCC by the same telecommunications act as cable providers. They are not considered to be the same and equal and so the City's ability to regulate them as a utility is not as clear. The other difference is that, unlike cable television, unlike telephone, unlike natural gas, unlike electricity, satellite and digital providers that are using air for the provision of their utilities are not digging up the City's streets, they are not in the public right-of-way so the nexus is a little harder. She added that the City also does not negotiate franchise fees with satellite and digital as it does with the other utilities.

Councilmember Blake referred to Section 8-48 (a) which deals with the "very low income" exemption and asked what the impact would be if the exemption were changed to "low income".

Ms. Standiford responded that staff does not predict that it would have a very big impact on the revenue coming in to the City.

Councilmember Blake stated he would like to see the exemption for the seniors increased.

Councilmember Duke asked if any change downward in the utility tax, once is has been adopted, would require another vote.

Ms. Standiford responded that she believed the Council has the authority to lower the tax at any time. It does not have the authority to raise it again.

City Attorney Joel Kuperberg stated that the provisions of Proposition 218 are somewhat ambiguous and the wording used in the Constitutional provision suggests that the Council might not have the authority to lower the tax as well. Clearly, it cannot lower and then raise it up again.

Councilmember Duke stated that if the Council cannot modify the tax then she does not see the need for Section 8-63 requiring an annual review.

Mr. Kuperberg responded it seems appropriate to include this section because of the exemptions.

Councilmember Blake asked if this ordinance could be written in such a way that there is a ceiling and a floor.

Mr. Kuperberg responded that the ordinance could provide for downward adjustment and then reinstatement up to the original high point. The ordinance could, likewise, allow the utility tax at some point higher than 5%, but start out at 5%. So there is some latitude in how the ordinance could be drafted and that's really just a function of the Council's policy wish.

Councilmember Barnes clarified that the way the ordinance is currently written the Council does not have that latitude.

Ms. Standiford and Mr. Kuperberg responded affirmatively.

Mayor Aragona stated she would hate to take the right of the voters away by leaving the ceiling open.

Councilmember Duke stated she would like to know what the income level is for "low income" in Orange County.

Ms. Standiford responded that its an index based upon family size and it's indexed against the median income for Orange County; 80% of median represents "low income" and 60% of median represents "very low income".

Mayor Aragona stated she has a problem with the suggestion of increasing the exemption level since this would include high users.

Councilmember Blake stated he envisioned the exemption just for seniors, 62 and older, not low-income families.

Mr. Kuperberg stated it would be his recommendation to limit any income exemption only to a certain age category.

Ms. Standiford stated the current exemption for very low-income qualifiers for a family of one is \$25,800 or less and it ranges up to a family of eight with a gross income of \$48,650 or less. She added that of the currently approved exemptions, only one and two households have actually applied.

Councilmember Barnes stated she has talked with some seniors about the utility users tax and they were not concerned about increasing the exemption level.

The Council concurred to leave the "very low income" exemption as stated in the initiative ordinance.

Mayor Aragona asked the Council's feelings on whether to keep the rate at 5% as stated in the initiative ordinance, or to change the rate. The Council concurred they were comfortable with the rate of 5%.

Mr. Keith Nelson, 5311 La Luna, La Palma, addressed the Council to state that the suggestion of including a range to allow the tax to be raised and lowered shows good faith and he encouraged the Council to consider this suggestion. He referred to the language added to section 8-49 (b) and stated that while the other utilities do not currently apply the tax to other charges, perhaps it would be prudent to include this language in their sections as well to prevent this situation from arising in the future. He also asked how manly entities there are in the City that produce \$25,000 or more in sales tax.

Ms. Standiford responded there are ten.

Mr. Nelson asked if those ten produce more than \$25,000 in utility taxes. Ms. Standiford responded she does not have that information.

Mr. Nelson suggested the wording be changed to "actual use of services" instead of just "services". He also referred to the recent rise in electricity rates and asked if it is fair for the City to make more money as a result of extreme rate increases.

Councilmember Blake commented that there is an offset in that the City's utility rates go up as well.

Mr. Nelson stated that Mr. Fairbank had quoted that voters want to support schools and added that there are two school ballot issues on the March ballot and questioned how the utility tax will fare against the school bond measures.

Mayor Aragona stated that the fact that the recent ballot measure in Stanton passed was reassuring to the members of the City Council.

Mr. Brian O'Neal, 5042 Cartagena Circle, La Palma, addressed the Council to state he believes that the College bond issue is going to be \$18.00 or \$20.00 per \$100,000 assessed valuation and would be less than Anaheim Union is proposing and would total about \$36.00 per household per year. He added that he supports the idea of the variable tax. He stated 1% is not a lot of money but it is the idea that the Council is showing fiscal responsibility and looking at it each budget year. He then referred to Page 14, Section 8-62 and suggested the verbage be checked.

Ms. Standiford responded there is an extra word in this section and it will be corrected. She added, as a matter of clarification so that everyone understands what 1% of the utility users tax means, 1% may not represent a tremendous amount in terms of what the residents pay; based upon the amount of utility users tax for fiscal year 2000-2001 1% represented almost \$203,000 in revenue to the City.

Mayor Aragona added that when the budget review is done and programs for the next year are approved, it's the utility users tax money that allows the City to have a lot of the extras that the citizens stated in the survey they want. She stated that the differences need to be balanced out, the gains and the losses, and the positives or right way to go with it, and there are an awful lot of unknowns in that approach that concern her and due to the time constraints, making the decision to put this on the ballot, if there is time to step back and study that suggestion. She asked the City Manager the time constraints if Council wanted to step back and look at that suggestion.

Ms. Standiford stated that assuming the City Council adopts the Resolution calling for the election tonight, and assuming the City Council adopts the Resolution providing for a ballot argument, the deadline for receiving ballot arguments is one week from tonight and the deadline for receiving rebuttals, assuming the City Council adopts the third Resolution allowing for rebuttals, is ten days following that date. All materials need to be in to the County by December 7th. At the same time, the issue of providing a sliding scale, or the ability for the Council to drop the tax rate also has surfaced before and in anticipation of that the City Attorney and she have worked on some possible language changes to the ordinance that would allow the Council to do that. She stated that the concept would be allowing for a temporary reduction in the utility tax rate, the Council would review the utility users tax as part of the budget and could take action as part of the budget adoption process to reduce the tax by as much as 1%, the City Council could go anywhere from 4.9% to 4.0% for a twelve month period. At the end of that twelve-month period, the tax would automatically increase to 5% again unless the Council took an action as part of the budget

adoption process the following year to lower it again. She stated very candidly that she has worked for cities where the timing of an election cycle had a direct relationship with the extent to which elected officials were feeling pressure to lower taxes for the sake of either their election or re-election campaign. She stated the upside is that yes, it's a good faith effort on the part of the City to make sure that the tax is being expended in an appropriate manner for appropriate programs and services but we have all seen communities where once a fee or charge is lowered, even if the cost for the services goes up, it's been politically very, very difficult for the elected officials to raise it again. One way to try to mitigate that is to treat it as a temporary reduction with a defined time period.

Councilmember Duke stated this is a very weighty concept and the pros and cons would have to be weighed. She added she could see where it could be a political platform for someone where theoretically that should have nothing to do with it.

Councilmember Blake stated that after hearing all the arguments he's not so worried about the political implications because it would take three votes to change the rate and added that it does show good faith and it might help future Councils in the sense that it does give them, if the City gets to a point where it can fund all its programs and there is a healthy reserve, the opportunity of reducing the tax.

Mayor Aragona stated she doesn't feel anyone should make a decision based on politics. She added the Council has had to make some pretty tough decisions based on the information provided by staff and their own information that they seek out, and the Council has made them and in her heart and mind they have always been the right ones. She added she doesn't feel the Council has the time to look at this right now.

Mr. Nelson stated that unfortunately the Council is at a time window and he feels the Council needs to see Ms. Standiford's suggestions in writing and sleep on them and it needs another meeting before next Tuesday night to accomplish that. He stated any reduction in tax, even if it's just for one year, is a good reduction in tax in the eyes of the citizenry.

Mayor Aragona asked Ms. Standiford if there is enough time if the Council were to schedule a meeting for Monday, December 3rd.

Ms. Standiford offered the following alternatives:

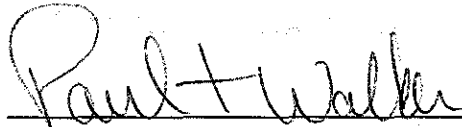
- 1) This item is also listed on the regular agenda so the Council will have further opportunity to discuss it.
- 2) Draft language is available that staff will distribute to Council that makes a modification to Section 8-63 allowing not only for the annual review of the utility users tax but a temporary reduction down to 4%.

She stated she thinks the draft language addresses some of the flexibility concerns that have been raised by the audience. From a practical standpoint the City needs a certain amount of time

between the time the Council takes action to place it on the ballot, and when the City Council accepts the filing of ballot arguments. One way to accommodate that is that the issue of rebuttals is an optional issue and the Council can choose to allow rebuttal arguments to ballot arguments that are filed or it can choose not to allow rebuttal arguments. Final action could be deferred until next week and still allow enough time for the filing of ballot arguments but the City Council would not have enough time to allow rebuttal arguments and still meet the December 7th deadline.

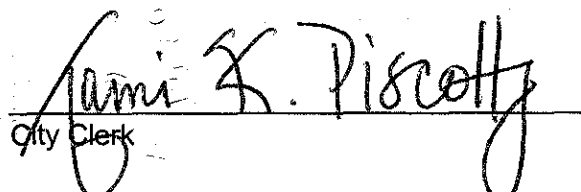
ADJOURNMENT

The City Council adjourned to its regular scheduled meeting at 7:02 p.m.



Mayor

ATTEST:


City Clerk