

# MINUTES

## ADJOURNED REGULAR MEETING OF THE PALM DESERT CITY COUNCIL

TUESDAY, OCTOBER 31, 2006 – 1:00 P.M.  
CIVIC CENTER COUNCIL CHAMBER

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### I. CALL TO ORDER

Mayor Ferguson convened the meeting at 1:05 p.m.

### II. ROLL CALL

Present:

Councilmember Jean M. Benson  
Mayor Pro Tem Richard S. Kelly  
Councilman Robert A. Spiegel  
Mayor Jim Ferguson

Also Present:

Carlos L. Ortega, City Manager/RDA Executive Director  
David J. Erwin, City Attorney  
Homer Croy, ACM for Development Services  
Rachelle D. Klassen, City Clerk  
Paul S. Gibson, Director of Finance/City Treasurer  
Frank Taylor, Asst. Chief, Palm Desert Police/Riverside Co. Sheriff's Dept.  
Grace L. Mendoza, Deputy City Clerk

### III. PLEDGE OF ALLEGIANCE TO THE FLAG OF THE UNITED STATES OF AMERICA - Councilman Robert A. Spiegel

### IV. INVOCATION - Councilmember Jean M. Benson

### V. ORAL COMMUNICATIONS

None

### PUBLIC HEARINGS

- A. REQUEST FOR APPROVAL OF A DEVELOPMENT AGREEMENT, ALONG WITH A PRECISE PLAN/CONDITIONAL USE PERMIT, TO ALLOW A NEW, 12-UNIT, 36-KEY BOUTIQUE HOTEL CONDOMINIUM PROJECT LOCATED AT 73-811 LARREA STREET Case Nos. DA 06-01 and PP/CUP 05-20 (Villa Property Developer, LLC, Applicant) (from the meeting of October 26, 2006).

Mayor Ferguson noted that this item appeared on the agenda because it received no action at the last meeting.

Councilman Spiegel moved to, by Minute Motion, continue the matter to the first meeting in December. Motion died for lack of a second.

Mr. Erwin explained that the City's Municipal Code required the City Council to render a decision on the Development Agreement/Change of Zone within 21 days after the close of the public hearing. The public hearing was closed at the last meeting; therefore, the November meeting would be the last time action could be taken. Upon question about the effect reopening the public hearing would have on the 21-day time frame, he said the 21 days began immediately at the close of the public hearing last Thursday. Further responding, he said at the end of 22 days, the matter would be automatically denied; however, the Applicant has the ability to waive the 21-day requirement. He offered that the first meeting in November was still within that period of time. In the meantime, the Applicant could be notified and, perhaps, provide their waiver of the 21-day requirement. He confirmed that without action today, the item will automatically go to the November 16 meeting.

No action was taken.

**B. CONSIDERATION OF THE PROPOSED INCREASE OF THE TRANSPORTATION UNIFORM MITIGATION FEE (TUMF) ON NEW DEVELOPMENT PROJECTS WITHIN THE CITY AND MODIFICATION OF THE TUMF JURISDICTIONAL BOUNDARIES.**

Mr. Ortega stated the purpose of the public hearing was for the City Council to consider implementing the new TUMF amount. He referred to both the resolution and ordinance provided in the staff report, in addition to the study conducted by CVAG (Coachella Valley Association of Governments), which justified the new amounts to be levied by the cities. He said only the City had authority to levy fees on development. Further, he had asked CVAG Executive Director John Wohlmuth to be present to respond to specific questions, noting that he had also just provided City Councilmembers with a worksheet showing the current and proposed fees.

Responding to question about the BIA's (Building Industry Association) awareness of the new fee, Mr. Wohlmuth confirmed they were aware. He went on to say that CVAG went through a nexus study, and the BIA's objection was instituting the legally defensible fee as of January 1, 2007. Therefore, he said with the BIA's transition request and the Measure "A" extension becoming effective in 2009, where maintenance dollars will be available for the regional arterial system, a transition period was instituted to provide both for the fee to be increased to its legally defensible limit and a maintenance fund that would be available in 2009.

Mayor Pro Tem Kelly pointed out that as of January 1, 2007, the fee for a single-family residence only goes from \$794.31 to \$1,837.44; then on July 1, 2009, that fee will be \$2,899.71. He noted that he'd participated in all the negotiations at CVAG, and this is the option agreed to by the BIA.

Mayor Ferguson commented that the worksheet being referenced showed an example of "one wind turbine," and he asked the City Attorney if there was potentially a conflict of interest due to his representation of Florida Power & Light, which has a majority of the wind turbines in the San Gorgonio Pass area.

Mr. Erwin responded that since the subject matter was applicable generally throughout the entire Coachella Valley, he didn't feel it was a conflict for the Mayor.

Mayor Pro Tem Kelly further commented that as of January 1, another changed feature was that the local agency would pay 25%, and Measure "A" and TUMF would pay 75% for transportation projects. Up to this point, it had been a 50-50 split on most projects, except those specifically named as Measure "A," such as interchanges and Fred Waring Drive, which were at 75-25. He said that was also something included in the nexus study.

In answer to Councilman Spiegel's question, Mr. Wohlmuth explained that Option 1 on the worksheet was the legally defensible option, the higher limit; Option 2 was the transition fee that allowed for increasing up to Option 1 in 2009.

Mayor Pro Tem Kelly remarked that he served on the Nexus Committee and sat through all of the meetings where the fee was studied in detail. He was satisfied that the recommendation being presented was the best possible option.

Upon inquiry about how the Coachella Valley fees compared to other California areas, Mr. Wohlmuth said not all of the counties or regions that are even classified "self-help" with the half-cent sales tax for transportation have a TUMF. The closest example would be the Western Riverside Council of Governments (WRCOG), that had to implement a TUMF as part of the new Measure. He noted their TUMF started out at \$7,000 per single-family dwelling and, because of the higher inflation factor there, was now above \$9,000 per single-family unit. He said it was currently nine or ten times the Coachella Valley's fee; but as of January 1, it would be about five or six times higher.

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Mayor Ferguson declared the public hearing open on the increased TUMF fee and modification to its jurisdictional boundaries. With no public testimony offered, he declared the public hearing closed.

Mayor Pro Tem Kelly moved to waive further reading and: 1) Adopt Resolution No. 06-143, approving the Transportation Uniform Mitigation Fee (TUMF) 2006 Nexus Study Report and increasing the TUMF amounts applicable to all developments in the City of Palm Desert; 2) pass Ordinance No. 1129 to second reading, amending the boundary for the collection of the TUMF fee adopted pursuant to Ordinance No. 573. Motion was seconded by Spiegel and carried by a 3-0-1 vote, with Ferguson ABSTAINING.

Mayor Ferguson commented that he realized there was not a legal conflict of interest for him, but he didn't want there to be an appearance of impropriety.

**VII. ADJOURN TO CLOSED SESSION**

Request for Closed Session:

Conference with Legal Counsel regarding significant exposure to litigation pursuant to Government Code Section 54956.9(b):

Number of potential cases: 2

Upon a motion by Spiegel, second by Kelly, and 4-0 vote of the City Council, Mayor Ferguson adjourned the meeting to Closed Session at 1:16 p.m.

**VIII. ADJOURNMENT**

The Meeting was reconvened at 1:30 p.m. and immediately adjourned, with no reportable action from the Closed Session.

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JIM FERGUSON, MAYOR

ATTEST:

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RACHELLE D. KLASSEN, CITY CLERK  
CITY OF PALM DESERT, CALIFORNIA