



**CITY OF PACIFICA  
CITY COUNCIL MINUTES**

**Council Chambers  
2212 Beach Blvd  
Pacifica, CA 94044**

Mayor Pete DeJarnatt  
Mayor pro Tem Len Stone  
Councilmember Sue Digre  
Councilmember Mary Ann Nihart  
Councilmember Ginny Jaquith

**September 24, 2012 (MONDAY)  
www.cityofpacifica.org**

Mayor Pete DeJarnatt called the meeting to order on September 24, 2012 at 7:05 PM

**6:15 PM CLOSED SESSION**

PURSUANT TO GOVERNMENT CODE SECTION 54957.6 Conference with labor negotiator. Agency Negotiator: Ann Ritzma. Employee organizations: Pacifica Police Officers Association; Pacifica Police Supervisors Association; Police Management Local 350; Pacifica Fire Fighters Local 2400; Teamster Local 856 Battalion Chiefs.

**7:05 PM OPEN SESSION**

Call to Order

Attendee Name	Title	Status	Arrived
Pete DeJarnatt	Mayor	Present	
Len Stone	Mayor pro Tem	Present	
Sue Digre	Councilmember	Present	
Mary Ann Nihart	Councilmember	Present	
Ginny Jaquith	Councilmember	Present	

Staff Present: Steve Rhodes, City Manager; Michelle Kenyon, City Attorney; George White, Planning Director; Jim Tasa, Police Chief; Ron Myers, Fire Chief; Rich Johnson, Deputy Fire Chief; Maria Aguilar, Assoc. Engineer; Mike Perez, PB&R Director; Dave Groom, WWTP Manager; Kathy O’Connell, City Clerk

Salute to the Flag led by Mayor Pro Tem Stone

Commission Liaisons

Closed Session Report

City Attorney Kenyon stated that there was no reportable action.

**CONSENT CALENDAR**

Mayor pro Tem Stone stated that he would abstain from voting on the minutes.

Minutes Acceptance: Minutes of Sep 24, 2012 10:00 PM (Consent Calendar)

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Len Stone, Mayor pro Tem
<b>SECONDER:</b>	Sue Digre, Councilmember
<b>AYES:</b>	DeJarnatt, Stone, Digre, Nihart, Jaquith

1. Approval of Disbursements.  
**PROPOSED ACTION:** Approve
2. City Council - Regular Meeting - Sep 10, 2012 7:00 PM

### **SPECIAL PRESENTATIONS**

#### SAMTRANS Service Plan

Lauren Dong, SamTrans Senior Planner, was presenting SamTrans' Service Plan draft proposal. She stated that their goal was to look at what was in place, the changes taking place in the County and making adjustments to provide better service for the needs of their riders. Toward that goal, she stressed that it was not a cost cutting exercise, but doing more with what they have while living within their means. She stated that they were looking toward using this plan as a jumpstart for a path toward improvement. They want to create a good foundation that addresses the needs of today's riders while looking forward to tomorrow's riders. They want to create a good foundation to improve services and be responsive to needs as they arise in the future, be relevant, respond to riders' needs while addressing their financial condition in a healthy way to grow ridership without making service cuts. She presented documentation to Council on their present routes and riderships, as well as performances. Their plan's proposals are addressing service improvements, modifications, route discontinuations, new routes, giving some details on specific changes. To get the information out, they were planning a number of outreach events, with one coming up in Pacifica on October 6 and one in Daly City on October 23. She stated that there was a lot more information on their project website - [samtrans.com/ssp](http://samtrans.com/ssp), as well as email and phone contact.

Mayor pro Tem Stone asked what well-performing routes had in common.

Ms. Dong stated that they had higher levels of ridership, cost per hour, etc., with a mix and match of those factors.

Mayor pro Tem Stone asked if the route's high ridership was the major factor that helped to have a better performance,

Ms. Dong stated that ridership wasn't the only factor, adding that it can exist for a number of reasons including community need. Low ridership on a route meeting a specific community need would not make it a candidate for modification.

Mayor pro Tem Stone asked if there was any conclusion on why ridership was going down.

Ms. Dong stated that there were a lot of theories, one being that people have changed residence and employment locations. She gave a few examples but added that they were theories and they didn't have a conclusive answer.

Councilmember Nihart thanked her for the scheduled public meeting in nearby locations, mentioning the meetings in the past were in locations such as Half Moon Bay and other places people had trouble getting to and from. She then asked if they spent time with the schools, adding that she had previously asked for alternates.

Ms. Dong stated that they didn't work with every school district, but did have conversations with various school districts. She stated that they tried to keep them into account, adding that the challenge was that every district had different rules, times, etc. They were taking it on a case by case basis because it was hard to do it uniformly across the county.

Councilmember Nihart acknowledged that they probably can't, referring to the #14 pilot in Pacifica as an alternate route. She commented that the bus routes were sometimes the only way to get to and from school without adding to the other traffic. She referred to her comment about other factors rather than just ridership, then asked if #397 on El Camino was a tiny route.

Ms. Dong stated that it was their late night route or owl service and it supplements when regular routes ends at 1:00 a.m. That service was available for those who work late shifts.

Councilmember Nihart asked if she would comment on why #118 was slated for discontinuance.

Ms. Dong explained that it runs to Pacific Manor and, for a lot of the route, it shares the same streets as the #110 and #112, and they found that they were leaching riderships from each other and their recommendation to delete the #118 to make the other two stronger.

Councilmember Nihart if they had the same stops or would pick up additional stops.

Ms. Dong didn't know for sure but thought it was fairly close.

Councilmember Nihart thought the thinking was reasonable, but stated that, with the layout of Pacifica, you are going to overlap something no matter what you do, which was why she was checking and thought if one went to the back of the Linda Mar Valley, they should pick that up.

Councilmember Jaquith stated that she would be interested in more information on the alternative service plan for Pacifica so that everyone understands what it is.

Ms. Dong stated that the idea behind it was that fixed routes were not the only answer on how to provide transit service, and this was their attempt to be more flexible in areas where fixed routes are not as successful for a variety of reasons. In Pacifica, they were looking to create an alternative service to serve a specific zone to enhance or create more transit service in the local community, such as those in the more hilly areas who need to get to the shopping center. They can use this service to make the local trip when the fixed route doesn't go by your house. It would be flexible because you can call in, adding that they have not laid out all the specifics but they will look at how to make it work. She stated that the intention was to be a more locally focused service.

Councilmember Digre thought it would be a good idea to have a map at the meetings with the public. While most people presently riding may know, there may be people who may get interested. She then asked if they had connected with Commute.org, the traffic alliance.

Ms. Dong responded that they were working with the alliance.

Councilmember Digre asked if the call in was the #14 route.

Ms. Dong stated that it would be an alternative to route 14.

Councilmember Digre asked if that meant they would discontinue Sunday service.

Ms. Dong stated that they would discontinue Sunday service on route 14.

Councilmember Digre asked if she was also saying that the call in service would not be available on Sunday.

Ms. Dong stated that they haven't gone that far in laying out the exact parameters.

Councilmember Digre mentioned that, in a previous survey, people liked Friday evenings, all day Saturday to 10 p.m. and Sunday to at least 6 p.m. She asked if the size of the vehicle for call in made any difference in cost.

Ms. Dong stated that they would try to match the vehicle with the anticipated demand, using the vehicle with the needed number of seats.

Councilmember Digre stated that she was happy to hear that ridership wasn't the only important need, but also community need. She was thrilled with that and she thanked them for that. She asked, because it was 12 years since the last extensive survey, was this considered a similar extensive survey.

Ms. Dong responded affirmatively.

Mayor pro Tem Stone asked what they time frame on trying to wrap it up after the public meetings.

Ms. Dong stated that they have a number of public meetings planned in October, then they will revise and hope to have a plan adoption in early 2013.

Councilmember Nihart referred to the mention of route 14, stating that they were talking about major locations for seniors. She stated that they had van service for medical appointments, but it was not available on weekends. If they weren't available on weekends, they have nothing and she felt that was not acceptable, mentioning that route 14 was in question previously.

Mayor DeJarnatt thanked her for her interesting presentation, adding that we appreciated it.

POPS - Anna Boothe

Anna Boothe stated that she was present with Dottie Borba to give her a T-shirt with her photograph because she won their T-shirt contest. She stated that it was so successful last year that they thought they would have a contest and let everyone give them their picture. She stated that she never saw so many pictures of the sunset at the pier in her life. She stated that Dottie's was twilight, probably was on the way to sunset and was a few minutes late, but that gave them the silhouette of, not only the pier, but the fisherman and even a seagull. She asked her how it felt to win the contest.

Dottie Borba stated that she was surprised. She mentioned that she read about the article in the paper about the pictures, adding that she has been taking pictures of the pier since it opened. She stated that she was always there with a camera, mostly storm pictures. She stated that she was planning to retire at the end of this school semester. She liked photography and many people have told her to take her pictures and use them for cards, etc. She stated that she had sent four pictures, and she was excited at the selection but thought she wouldn't win because she didn't think it had enough of the pier. She was honored.

Ms. Boothe stated that they were honored. She stated that there were many beautiful pictures, and they do have some honorable mentions. She stated that Dottie will be with them at the party at the pier on October 6, the Saturday after FogFest, and she will be there with her T-shirt and it will be the first time it will go on popular sale and people can be one of the first. The cost was \$20 for black, \$15 for the white. She stated that, if you are really anxious, you can be one of the very first by going to John, sign guy on Palmetto, across from the Resource Center and have it made up in a day and be the very first to wear it at the party at the pier. She stated that they were going to have a great party, music with Dan Butler and Fred McCarty, adding that he was a wonderful singer with one of the best guitars in the business, starting after 3 p.m. She stated that Jerry Hill and Leland Yee were planning to attend, and all Council candidates were invited. She then thanked the Council because they have helped bring them to the last round of emergency repairs and they can then think about making it beautiful. She stated that their finances were as bad as the City's and she encouraged everyone to come and support them by buying a T-shirt and enjoy their barbecue.

#### Proclamation - Fire Prevention Month

Mayor DeJarnatt read a proclamation acknowledging October as Fire Prevention Month.

Deputy Fire Chief Johnson, on behalf the Chief Myers, North County Fire Authority and the Pacifica firefighters, thanked the Council for the proclamation and continued support over the years. He affirmed the importance of the process mentioned in the proclamation, adding that they should set a prearranged meeting place to avoid going back in the building to find supposed missing family members. He then mentioned all the cross checks and plans that each family should have in place. He stated that, on October 20, they would be having their annual open house at the fire station in Linda Mar, with the firefighters doing presentations and showing their equipment.

Mayor DeJarnatt referred to the point about children scalds outnumbering burns, stating that his father pulled a pot of boiling water with a burn on his arm with permanent scar tissue.

Deputy Fire Chief Johnson stated that it was common for a child to reach for the handle of a pot on the stove.

Mayor DeJarnatt thought that was probably what happened. He then stated that they would try to be at the event.

### **PUBLIC HEARINGS**

3. Recology of the Coast Rate Adjustment Public Hearing Notice  
**PROPOSED ACTION:** Move that the City Council adopt a Resolution of the City of Pacifica Directing Staff to Issue Notice of Public Hearing For New or Increased Solid Waste Collection Services Fees and Charges.

Mayor DeJarnatt stated that this was probably not technically a public hearing, but it was listed in this section and they were going to leave it there.

City Manager Rhodes presented the staff report.

Mayor DeJarnatt opened the Public Hearing and, seeing no one, closed the Public Hearing.

Councilmember Nihart assumed this was to make a request for a public hearing.

City Manager Rhodes responded affirmatively.

Councilmember Nihart moved that the City Council adopt a resolution of the City of Pacifica, directing staff to issue a notice of public hearing for the new or increased solid waste collection services fees and charges; seconded by Councilmember Digre.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Mary Ann Nihart, Councilmember
<b>SECONDER:</b>	Sue Digre, Councilmember
<b>AYES:</b>	DeJarnatt, Stone, Digre, Nihart, Jaquith

4. Approval of Lease Agreement and Related Loan Documents with Municipal Finance Corporation to Fund Energy Related Improvements at City Facilities  
**PROPOSED ACTION:**  
Continue the Public Hearing to a date certain of October 8, 2012

Mayor DeJarnatt stated that he didn't want to open the Public Hearing.

City Attorney Kenyon stated that, if someone wants to discuss whether the City should continue it, they can discuss that.

Councilmember Jaquith moved that they continue the Public Hearing to a date certain, October 8, 2012; seconded by Councilmember Nihart.

**ROLL CALL VOTE:**

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

Noes: None.

**Motion passed: 5-0.**

5. Resolution Adopting Certain Findings and Approving Energy Service Contract for Energy Related Improvements  
**PROPOSED ACTION:**  
Continue to date certain of October 8, 2012

Mayor DeJarnatt opened the Public Hearing.

Councilmember Digre moved to continue the Item to October 8, 2012; seconded by Councilmember Nihart.

**ROLL CALL VOTE:**

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

Noes: None.

**Motion passed: 5-0.**

### **COUNCIL COMMUNICATIONS**

Councilmember Digre expressed sympathies to the family of Mrs. Jensen because she has not yet been found. She expressed appreciation for everything POPS has done for Pacifica, mentioning some of the specific contributions they have made. She was looking forward to the FogFest.

Mayor pro Tem Stone stated that he had missed the previous Council meeting because he had attended the GGNRA meeting in Montara regarding the event earlier in the year \_\_\_\_\_. He thought it was important for Pacifica to have representation at the meeting. He stated that Congresswoman Speier was present. He stated that the GGNRA was not going to release the report of the incident, citing the Privacy Act of 1974. They mentioned at the meeting that they had asked the Ranger if they could release it and they refused. He stated that they would not know the exact details of what happened, but it was clear that the GGNRA should do as much outreach as possible to other such as Pacifica in addition to the Montara community since we have a lot of GGNRA parkland in Pacifica and it was important that Pacifica know what their process would be if it happens in the future and what is being done to mitigate any type of potential incidents in the future. He thought this pointed out a good reason to have a GGNRA committee interface to have a direct contact that interacts with organizations. He mentioned that he and Councilmember Nihart have reviewed committees and he thought that would be part of it to have some interface. He felt that having such an incident in Montara didn't mean that it didn't affect Pacifica so he thought they should be reaching out to Pacifica as well about what will be happening in the future.

Councilmember Nihart referred to the Deputy Fire Chief Johnson's remarks about having two accesses in every room, and she would underscore knowing what those accesses were. She mentioned a tragedy next door to her house when she first was on the Council, and she stressed that they have to take care of seniors and others to make sure they know where to go, but had she known how to get out of the room, they might have saved a life. That is why she can't stress enough the importance of his comments. She invited everyone to the FogFest this coming weekend.

Mayor DeJarnatt stated that he got a memo from the Hispanic Chamber of Commerce of San Mateo County. They were asking for nominations for the Mayors Diversity Award. He has a potential nominee, but he would first ask for input from the Council, so he will fill the papers out and bring it back to the next Council meeting and vote on it. He also thought the FogFest will be fun as usual.

### **ORAL COMMUNICATIONS**

**Molly Muller, Pacifica**, stated that she lives on Grand Teton and she was commenting on the audible and visual airplane traffic over her home. She initially thought that it was because of the runway work at SFO. She called the noise abatement group to file a complaint, who heard the plane through the phone. She was in contact with John Hample of Noise Abatement who said the routes and patterns have not changed so she was stumped as to why the noise was happening now. She stated that she counted 18 planes in a one-hour time period. She requested the activity pattern and compared August and September and discovered that they were completely different. She wanted it known by the City, and she asked if

there was anything she can do. She planned on attending the airport community roundtable coming up on October 3. She felt it made no sense to go from nothing to planes all the time.

Councilmember Digre stated that she was on that commission, and she appreciated her efforts. She stated that they were trying to monitor single instances, and she felt it would be helpful if she can write down each day and time. She hoped she would come that evening.

Ms. Muller stated that she would attend.

**Courtney Conlan, Pacifica Chamber of Commerce CEO**, stated that she was present to apprise the Council of some their upcoming events, mentioning that the past Friday, they hosted a candidates forum, with great questions and answers. She also invited everyone to several events, including Florey's Book Store's 35th anniversary, grand opening of Goodwill Boutique by the Beach in Linda Mar Shopping Center, golf tournament and FogFest parade launching their new IPacifica app.

**Roger Medler, Pacifica**, stated that he was present to talk about codes and permits being violated at Seaview Tire and Brake. He stated that City Planning will not give him the documents, and he was asking who would be responsible for giving him those documents, such as proof of Seaview being a legal business. He was constantly annoyed by the noise violation. He stated that the City Clerk said she didn't have the documents, and he felt she needs to get them.

Mayor DeJarnatt stated that maybe they don't exist, since it was 28 years old.

Mr. Medler stated that he even knows his name.

Mayor DeJarnatt stated that it was hard to miss when he is picketing in front of his house. He suggested that he speak to the City Manager.

Mr. Medler stated that he was told that they were doing nothing wrong, and he feels that they are doing something wrong and the City should do something about it. He wants to know why the owner doesn't have to have permits.

Mayor DeJarnatt stated that none of them were there, and he can pursue anyone he wants to get the documents. He asserted that he doesn't have them and doesn't know where they are.

Mr. Medler stated that it was no excuse because they should have them on file.

Mayor DeJarnatt stated that he can go back to the Planning Department but there was nothing he could do for him at this time.

**Therese Dyer, Crespi Drive**, stated that she was also present regarding building permit violations. She explained that two years ago she had a roof leak in her family room which caused her insurance \$17,000 and the person got a permit after the job was completed. She stated that she had a 15-year warrantee on it but the man was no longer in business. She took him to small claims court, and two years later it has cost her \$14,000 to get her roof replaced. She stated that it happened with three people who attempted to repair her roof. She stated that she spoke to Mr. Ryder and asked him if there was some responsibility by the City regarding permits. She questioned why the City issued permits before the job was completed, because if she built something before she got a permit, they would make her tear it down. She stated that her new insurance company wants a police report of any violation and they were asking for a lot of information that she must provide them or she will be without insurance. She mentioned that, at two City Council meetings ago, she purchased the recorded tape of that City Council meeting because the ACLU was looking into her case against Mayor DeJarnatt because he refused to let her to speak at the police station. They told her that she had to advise Mayor DeJarnatt that she was sending them the tape with written materials, and this was his notice.

**Tod Schlesinger, Linda Mar**, stated that he had to give a shout out to Courtney Conlan because she was the real deal. He asked if anyone saw Clint Eastwood doing his thing with the chair. He stated that, if he was Mitt Romney, he would have taken those lemons and made lemonade, and regarding the fundraiser in Florida, he would have said "I said what I meant and I meant what I said." He thought he would have scored a lot of points with that. His point is that he has been coming to the meetings, being politically active for 20 years, and he says what he means and means what he says. Then, he mentioned that he couldn't make it to the state of the City, but he was glad to see that the Coastal Commission was caving in. He still had not heard about the final question regarding the permit process. He looked at the ten pages and there is nothing on it from the Coastal Commission that says they have to include permits for meters so he wants to discuss that. He then referred to the state of the City having a surplus, but he understands that it should equal approximately 15-25% of their budget. He stated that, at one point, we had that surplus. He felt that, having a million when you have a \$25 million annual budget, they were one catastrophe and one lawsuit away from bankruptcy.

### **CONSIDERATION**

6. Grand Jury Report: "Does San Mateo County Need 13 Separate Police Dispatch Centers?"

**PROPOSED ACTION:**

Authorize the Mayor to sign attached letter in response to Grand Jury request.

Police Chief Tasa presented the staff report.

There were no public comments.

Mayor DeJarnatt stated that the findings made were lengthy, and they made a lot of misstatements. He was impressed with how he corrected the many inaccurate facts. He appreciated the efforts made.

Councilmember Jaquith reiterated the appreciation, adding that having been on the Grand Jury for two years, she knew that deliberations were a difficult process. She felt he did an admirable job responding to the report.

Councilmember Jaquith moved that they authorize the mayor to sign the attached letter in response to the Grand Jury request; seconded by Mayor pro Tem Stone.

**ROLL CALL VOTE:**

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

Noes: None.

**Motion passed: 5-0.**

7. Approval of the City of Pacifica's Draft Comments Regarding the Proposed Basin Plan Amendment to Establish a Total Maximum Daily Load (TMDL) for Bacteria in San Pedro Creek and at Pacifica State Beach

**PROPOSED ACTION:** Approve the City of Pacifica's Draft Comments Regarding Proposed Basin Plan Amendments to establish a Total Maximum Daily Load (TMDL) for Bacteria In San Pedro Creek and at Pacifica State Beach.

WWTP Manager Gromm introduced Monica Oakley from RMC, which was the consultant company which helped the City do the sewer master plan and negotiate a new discharge permit for the wastewater treatment facility. She will give a brief description of the involved staff report.

Ms. Oakley presented the staff report.

Councilmember Nihart stated that she appreciated the points in the report and the comment that struck home with her were the standards that were unachievable set the City up for a potential

for fines, just guessing about that. She added that, if there were mandatory fines on these, she will really come unglued. She asked if she was in the ballpark.

Ms. Oakley stated that whether there are mandatory fines was up to interpretation. She also felt there was a lot of uncertainty on how they are going to implement the requirements. She stated that this TMDL just sets up the plan for what they are going to do. The plan will get implemented later in an MPBS permit for storm water, but they don't know exactly what they are going to do with that. They have to think of a worst case situation at this time. She stated that, if the worst case situation was not their intent, they need to say that in the TMDL, and be specific about the exact expectations.

Councilmember Digre recalled that Manager Gromm was in the scoping meeting, and staff was concerned about some of the things happening. She asked if there has been any discussion since then.

Manager Gromm stated that there has not been any with the water board.

Councilmember Digre didn't think all of them were water board members.

Manager Gromm reiterated that the last conversation they had was at the scoping meeting.

Councilmember Digre reiterated that several staff members expressed concerns at that time.

Manager Gromm responded affirmatively.

Councilmember Digre asked if he felt that they were looking toward fines at that meeting.

Manager Gromm stated that fines were never mentioned but, if you read their staff report, it feels that way.

Councilmember Jaquith mentioned that the comparable So. California site was not comparable to Pacifica. She asked if this was a standard process, having a a comparable site. If so, she asked if there was a more appropriate site.

Ms. Oakley stated that it was not at all standard for the San Francisco Bay Area. She stated that, while this is the first time here, they have done something similar in So. California and have a reference stream but there is no similar reference stream in No. California which was why they used one in So. California. She thought, if they want to use this kind of approach, there should be some kind of reference stream developed for the Bay Area.

Councilmember Jaquith asked what alternatives we have in the event they disagree with any of the positions proposed.

Ms. Oakley stated that there were a couple of options, moving forward with their plan and basically trusting them, which could be okay because of all the uncertainty on how these requirements will be implemented. Another option would be to appeal the decision to the State Water Resources Control Board, and get an administrative remedy. She stated that, ultimately the process of approving and finalizing a TMDL is that, after the regional water board approves it, it goes to the State Water Board and you get a second shot at it. It then goes to the Office of Administrative Law followed by the federal government EPA for approval. She stated that it was a fairly lengthy process which takes 1-2 years. She reiterated that, after the regional water board, you can appeal through an administrative process or, failing that, they can go to court.

Councilmember Nihart had one more question because the public didn't have access to the report. She stated that the table was striking to her for obvious reasons. She acknowledged that we had no control over 77% of the cause of the bacteria.

Ms. Oakley agreed, adding that it was a very conservative estimate, which meant that the most possible percentage that they could dream of having control over was 23%.

Councilmember Nihart stated that her level of indignation was beyond .....

Councilmember Jaquith asked for more details so that the listening audience can understand what that 77% and 23% are.

Ms. Oakley explained that the regional water board was requiring a reduction in bacteria levels to somewhere between 80-93% and they would hold the City accountable for that. She added that, in looking at the sources of bacteria, only about 23% are even conceivably controllable by the City, such as sanitary sewer overflows, homeless population, dogs. She stated that there was a disconnect between the expectation for how much the City is going to reduce the bacteria levels versus what they actually have control over.

Councilmember Jaquith asked for her to describe some of the things we have no control over.

Ms. Oakley stated that it was cats, birds, raccoons, rabbits, possums, goose, coyote, skunk.

Councilmember Jaquith concluded that it was essentially wild life.

Ms. Oakley added that some of them are attracted to developed areas.

Mayor DeJarnatt opened public comments.

**Tod Schlesinger, Linda Mar**, stated that everyone was broke, including the regional water quality board, and he asked why would we bring attention to ourselves by giving them some kind of letter. He felt it was their issue and burden to prove to come after us. He stated that, as a business person, he never brings attention to himself when there was risk, particularly when he doesn't have money to cover the risk. As a business person, his best advice is that less is more. We don't know what they are going to do, according to what he has read. If we don't know what they are going to do, why would we guess. It was not smart business and he advised them to ignore it. He referred to Councilmember Nihart shaking her head, and reiterated that they are going to do to what they're going to do and he was giving them good advice.

Mayor DeJarnatt closed public comments.

Councilmember Nihart stated that you can ignore things but she referred to mandatory per gallon fines, adding that she can't say enough about how much that hurt us in many ways. She appreciated the thoughtfulness that went into this and the comments. She gets what their thought is environmentally but, when we do not have control over more than 3/4 of what is the source of bacteria to start this path forward, it puts us at risks for fines in the future. She felt

that was what they do and you do have to fight them at every single step. She concurs and appreciate this.

Mayor pro Tem Stone thanked them for the report, stating that it was in depth and he appreciated it. He concurred with Councilmember Nihart and he saw the potential for the fines happening after this policy was in place. He asked if there were other cities going through this at the moment.

Ms. Oakley responded that there were none.

Mayor pro Tem Stone reiterated that it was just us. He asked because, if other coastal cities were going through this, they could talk and have a united voice.

Manager Gromm stated that, at the scoping meeting, they used the words that we were going to be the guinea pig and they were going to apply this to other agencies.

Mayor pro Tem Stone thought it was important to get out thoughts on the record. He thought it would be smart to communicate with other agencies and other cities to be prepared for the next step.

Ms. Oakley stated that there may be some other opportunities to coordinate in that way that they will look into.

Councilmember Digre thought the report was long probably in order to educate our City, but when the letter goes, she questioned whether it would need to be this long also. She preferred not to get into a fighting attitude but rather clarity about what seems reasonable and what doesn't. She mentioned that she saw a list of the county where they were watching for the protection of seven creeks, but she thought this was the most urbanized. She didn't know if the county would have anything to offer or not.

Ms. Oakley stated that they were coordinating with the county on this effort. She stated that they have made a specific request to simplify the requirements and make them 100% within the City's control. She stated that a lot of the other comments were justification to move in that direction.

Councilmember Digre was surprised it was getting to this because, at the meeting, staff was very clear that it was extremely over the top for this type of a creek. She would not give the impression that the City didn't care about the quality of water in the creek, and she would urge caution on that.

Mayor DeJarnatt referred to the staff report regarding their concern that the proposed requirements in the TMDLs were unachievable, and stated that he considered that to be an understatement. He questioned how they can achieve any kind of lower of TMDLs when dealing with possums, skunks, etc. He stated that, after what happened with the wastewater plant and the amount of fine there, this has to happen.

Councilmember Nihart concurred with Councilmember Digre that the intent was laudable. She didn't have a problem with the intent, but she has a problem with the way the Regional Quality Control Board goes after this stuff. She felt they were fair and balanced on the feedback and made a good suggestion about something that was achievable and makes it positive and it was a good suggestion about what we have some control over.

Councilmember Nihart moved to approve the City of Pacifica's draft comments regarding proposed basin plan amendment to establish a total maximum daily load for bacteria in San Pedro Creek and at the state beach; seconded by Councilmember Jaquith.

#### **ROLL CALL VOTE:**

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

Noes: None.

#### **Motion passed: 5-0.**

#### **8. Update on the Palmetto Avenue Utility Undergrounding and Streetscape Project**

##### **PROPOSED ACTION:**

Information only no action necessary

Councilmember Nihart recused herself from this item because of being within 500 feet.

City Manager Rhodes presented the staff report.

Mayor pro Tem Stone asked if we were going to continue to run into issues, such as with the FogFest when we will have to miss windows, on the next cycle.

City Manager Rhodes stated that, if we take this delay, they will be out of there. Even if there was minor work left, it would be nothing like would happen in the 12 months after completion of construction and they will not face the same problems a year later.

Councilmember Digre asked if it was PG&E that caused the last delay and they couldn't start the work when expected.

City Manager Rhodes stated she was correct, adding that the schedule has been slipping since day one.

There were no public comments.

Councilmember Digre stated that she was concerned about putting this off, mentioning that the FogFest was concerned about needing new input to carry on. She was not interested in waiting and worrying about the FogFest schedule, because she felt our economy needed Palmetto. She would like to see it get done. She questioned whether it would really take 12 months to do all that.

City Manager Rhodes stated that they have explained that it was physically impossible for AT&T to do all their cable splicing for three major connect points from the overhead to the underground and PG&E has to pull all the wire and what causes the City problems is going across the street to the properties where it gets connected to the new underground service. There will be work going on all along the street which threatens to interrupt the City's work. He stated that part of the problem with the streetscape work that it can be performed simultaneously and most contractors are going to bid it that way which would not be possible if we have segments of the street that will be unusable for construction and our project will have to be broken into pieces and we have to hope that they keep to their schedule because it will immediately impact our schedule. While they are trying to work it through to see if they can, but he didn't think it will be possible to do. He think that, based on what he was learning, the schedule will slip more with the utilities and will push us further out if we try to do it in 2013. That is the reason for the thinking to wait until 2014 when we know we will have a clear path and can get in and get the work done and finish it.

Councilmember Digre asked if there were any other cities to talk to them and compare.

City Manager Rhodes stated that they talked to other cities before this started. He stated that they were originally going to try to do the two projects together and they talked to other jurisdictions and they said don't do it because it doesn't work. He stated that they had three different utilities, PG&E, AT&T and Comcast, and all of them have to do their schedules.

Mayor DeJarnatt concluded that was the way it is.

Councilmember Nihart returned to the dais.

9. Animal Control and Licensing Fees and Charges

**PROPOSED ACTION:**

Move to approve the resolution next in order entitled "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFICA FEES - Section V. Police Department - V. Animal Control."

Police Chief Tasa presented the staff report.

Councilmember Digre asked if the Humane Society was audited.

Police Chief Tasa stated that he did not know what their process was for auditing.

Mayor pro Tem Stone stated that he didn't remember seeing this income on the finances. He asked if it was a pass through or income.

City Manager Rhodes stated that the fees were collected by Animal Control.

Mayor pro Tem Stone assumed that we set the schedule but do not collect the fees.

City Manager Rhodes responded affirmatively.

Mayor pro Tem Stone assumed it was a formality because the contract says that we have to update the fees.

City Manager Rhodes explained that was the fees they charge in our communities. We set it and they collect it.

Mayor pro Tem Stone added that they decide the fees and collect it, and we just have to set it as a formality.

Police Chief Tasa stated that these fees have not been looked at for nine years. The fees currently in place were well below the average fees out there in surrounding counties. It was an opportunity to look at the fee schedule and adjust it accordingly to be more in line with other counties.

Mayor pro Tem Stone explained that he wasn't as concerned with what as how it fits into the equation.

Councilmember Nihart asked what this would decrease our fee to.

Police Chief Tasa stated that it was all based on usage. It depends on what our usage was percentage wise compared to the rest of the county. Their report says that there will be a decrease of approximately \$385,000. He thought our percentage was 8% usage, but he wasn't positive, and 8% would be about \$24,000.

Councilmember Nihart concluded that we pay about \$225,000.

Police Chief Tasa thought it was \$280,000.

Mayor pro Tem Stone assumed that it would be incorporated with their costs going up as well, and they didn't know if this would be a true 100% bump to the bottom line.

Councilmember Nihart stated that this was the general problem, and the reason for the question about the audit. We do not know what we are buying.

There were no public comments.

City Manager Rhodes stated that we do know what we are buying, but we have no control over the cost.

Councilmember Nihart stated that we don't know about the audits and the amount internally. She asked where that all gets set, adding that we don't have any control over it.

Mayor DeJarnatt agreed, stating that it has been that way since he has been here. He stated, in their defense, the last couple of times he called them, they really gave good service and he was impressed.

Councilmember Digre stated that, in a quiet way, she would like to know when they were last audited. She acknowledged that it wouldn't change anything. She stated that every city has tightened its belt in everything. She hasn't heard of any belt tightening on this, but as the Mayor said, the services have a good reputation and they aren't cheap.

Mayor DeJarnatt agreed that they were not cheap.

Councilmember Digre thought they would probably be more expensive for us.

Mayor pro Tem Stone realizes that we are stuck because of the contract, but our alternatives at this point are to basically do it ourselves which would cost way more than it is right now, so the fact that it is a big line item was painful every budget cycle, but it might cost us double if we had to do it, plus liability, and we have no liability for this. He felt it was important to keep track of the ongoing costs are but be realistic about what our alternatives are.

Mayor pro Tem Stone moved to approve the resolution next in order entitled a Resolution of the City Council of the City of Pacifica, Fee Section V. Police Department - V Animal Control; seconded by Councilmember Nihart.

Councilmember Nihart stated that she just finds it annoying that they do not have any more control than they have over this, which is where her frustration and comments come from. She

apologized if they were erroneous in any way, but they irritate her. She added that she gets good service from them too.

**ROLL CALL VOTE:**

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

Noes: None.

**Motion passed: 5-0.**

Mayor DeJarnatt left the meeting at this point due to a migraine, with Mayor pro Tem Stone taking over as Chair of the meeting.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Len Stone, Mayor pro Tem
<b>SECONDER:</b>	Mary Ann Nihart, Councilmember
<b>AYES:</b>	DeJarnatt, Stone, Digre, Nihart, Jaquith

10. Update on Recommendations for Western Snowy Plover Protection at Pacifica State Beach

**PROPOSED ACTION:**  
None- Information Only

PB&R Director Perez presented the staff report.

Councilmember Jaquith asked that he define "a federal consistency determinant."

PB&R Director Perez stated that he wished he could but it was taken from her communication to him, and he believes that it was something the Coastal Commission would be granting Pacifica in terms of the permit. He explained that, normally, they would go to them to get a permit for the signage and fencing in a process much like paid parking. His contact states that this way expedites the whole thing. He didn't know what it meant but it was a good thing.

Mayor pro Tem Stone opened public comments.

Margaret Goodale, Pacifica, gave a brief summary of the process, specifically that the Council voted to modify the staff recommendations by looking into symbolic fencing, staff responded saying they couldn't do symbolic fencing but would check with U.S. Fish and Wildlife as asked and they responded with a compromise. She didn't know if the Council knew about the offered

compromise, and she asked that they consider doing whatever is necessary to protect the endangered species.

Mayor pro Tem Stone closed public comments.

Councilmember Digre stated that the process has been painfully long. Her recollection was that, with the flexible fence, they asked staff to look into the footage from the wave action and, in general, they really need to look at what they said in their minutes and evaluate why this is taking so long.

Councilmember Jaquith asked where they go from here. She asked when they anticipate when it will come back to the Council.

PB&R Director Perez stated that Fish and Wildlife stated that the City should get something in mid October from them which would be their final comments on our recommendations. He would get it back to the Council after they get it, although it has been changed four times.

Councilmember Jaquith assumed that either the end of October or November they would have the full report back with all the recommendations. She also thought they would possibly know more about grant funding.

PB&R Director Perez responded affirmatively.

Councilmember Nihart asked if they got a copy of the letter the speaker referenced.

PB&R Director Perez stated that she was not only referencing letters but also emails that were part of her request for public records. He stated that they also had conversations on the phone, but she was referencing the letters and emails.

Councilmember Nihart asked if he remembered what the problems were with symbolic fencing.

PB&R Director Perez stated that staff came back to Council without symbolic fencing and Council asked them to take the recommendations and seek comment from U.S. Fish and Wildlife. He stated that the initial response from Fish and Wildlife were that they were going to recommend the maximum protection for the bird immediately. He stated that the process of discussing the recommendation was a conversation and he would probably say the same thing. He commented on the length of time that it takes to get written responses from them.

Councilmember Nihart assumed that there was a discussion about sand movement, etc., and they were all explored in their discussions.

PB&R Director Perez stated that they talked about a lot of things, including the recommendations and disagreements or additional recommendations.

Councilmember Digre asked if the representative he was talking to was new in the process.

PB&R Director Perez didn't think she was. She was in charge of the U.S. Fish and Wildlife funding program.

Councilmember Digre reiterated that they should have the minutes on their request to staff and a chronological report of the conversations, which she felt would give them a better idea. She felt the process was painful and long. She didn't know if the City's evaluation of the process would be of help since he says they are not top priority.

PB&R Director Perez thought she was interested in snowy plover projects and was very excited to hear about our project. She was arranging programs so she can be involved in it. He told her that we were still waiting for comments and he got a communication from the other office, so that helped a little bit.

Mayor pro Tem Stone asked her name.

PB&R Director Perez stated that her name was Kate Symons.

Mayor pro Tem Stone thanked him for the report, adding that it was good to see that there was funding for this project. He appreciated that they should be able to make a final decision in the final quarter. He expressed appreciation for all his work.

11. Letter of August 16, 2012 from the Sanchez Art Center Regarding Inspection Services Reimbursement Fees

**PROPOSED ACTION:**

Provide direction to city staff.

Deputy Fire Chief Johnson presented the staff report.

Councilmember Nihart stated that she hoped the report would explain the decision on how they determine an area that needs to be inspected. She assumed that Kibblewhite would pay three fees because he occupies three spaces.

Deputy Fire Chief Johnson stated he would not be because it was one business occupying three spaces. He stated that Sanchez occupies more than one space in the center. The easiest way was to look at it as a separate building or separate offices in a building. If they were in an associated business, you would make your appointment there and pay for any products through that business, such as Sanchez. He stated that, if you buy a painting from one of the artists, you pay the artist and not pay the Sanchez.

Councilmember Nihart stated that it was not true because you pay for it at the front desk for all the artists.

Fire Chief Myers stated that they get apples and oranges when they get down to nebulous pieces, because the fee was never based on square footage. It looks at common occupancies. If you are occupying an area and doing business it just looks at it that way. He stated that, in taking a look at all the examples they tried to provide, they tried to give them a basis for something to be considered equal across the community. He felt they would get into difficulties if they start changing, they will have everyone coming in saying that it shouldn't apply to them. He stated that, when looking at Sanchez, they hear that there are special interests going along with this. He stated that, if they take a look at it from the standpoint of saying they are individual occupancies, they would be charged \$150 just as a shopping center or any other place. He stated that, if you want to make a finding that would be different than that, it would be a policy decision they can make, such as they described in the report. He felt there was no way to change it from what they do across the whole community. They are also going to struggle with it, and it is what it is. He stated that the only thing the Council can do is try to make a finding that would create something that would be different.

Councilmember Nihart explained that she was trying to understand the rational basis, stating that it depends on how you define the business. She states that it is irrespective of what the business is. She was trying to come up with a rational thing and she needs help.

Mayor pro Tem Stone thought there were two separate questions. The first is how does this fit into our existing rules and how are we evaluating how this applies to that ordinance. The second is whether the Council wants to act in changing that ordinance which would be a policy decision. He stated that he saw, in the staff report, that there was a recommendation or assessment as to how Sanchez fits based on the current ordinance. He did not see the current ordinance in the report and has not read it. He thought that might be helpful for the Council.

Fire Chief Myers stated that it was a policy decision the Council made. He stated that they have been doing inspections forever and a prior Council set the policy to recoup the cost associated with providing fire inspection services. He stated that there is not an ordinance about the fee.

Mayor pro Tem Stone still thought there was a reason for doing the fire inspection and what qualifies as one business or multiple businesses.

Fire Chief Myers stated that the uniform fire code simply spells out the type of business, and you were looking at hazards associated with the business. Every business is classified under the fire code as to what they do. Based upon that, there are safety measures placed inside the fire code that they apply when doing inspections. He stated that they look at everything as being an occupancy that fits into a category within the fire code. He stated that, in this particular case, if you enter through a door and go out a back door with walls around it, that is considered to be a separate business, unless you are one business and have an open area like a real estate office where they are all sitting inside. If you go to a shopping center or Sanchez where you are going in to an individual occupancy doing a business, they inspect it separately and charge a fee for that.

Councilmember Nihart stated that was what she needed to understand.

Fire Chief Myers stated that they provided diagrams are the same, just bigger ones in shopping centers. They don't look at it as square footage but by an inspection. Each is an individual with an individual fee for each one.

Councilmember Nihart assumed that it was based on the door, the entrance and the separateness.

Fire Chief Myers stated that was the best way to look at it. They have a cubicle with walls and they come in a door to a separate business. They inspect that area and then go to the next one.

Councilmember Nihart stated that she was using an example where there are three different doors in three different areas, but they are a related business so it is one fee.

Fire Chief Myers acknowledged that it would happen in one common area.

Councilmember Nihart stated that she was trying to get it out of who it is. That was why she was confused.

Mayor pro Tem Stone asked where the information he mentioned was written, such as a page in the code.

Fire Chief Myers stated that it tends to be related to business licenses which was one of the categories, and it would be an entity doing business in a facility they inspected.

Mayor pro Tem Stone asked Councilmember Jaquith if that was in the staff report the last time.

Councilmember Jaquith stated that the information on the fire code was in there. She stated that she was trying to understand. She proposed an example of a business that occupies section I, H and G which are three separate units, but was one business. She asked how that one business was charged.

Deputy Fire Chief Johnson stated that it was one business.

Councilmember Jaquith stated that it was in three separate distinct places.

Fire Chief Myers reiterated that it was one business. He acknowledged that she was correct in what she was saying. He stated that the difference at Sanchez was how they want to classify the individual artists in different cubicles.

Councilmember Jaquith thought a part of it was that they were unclear on how the Sanchez Art Center actually works. She stated that all of those artists were part of one entity which was the Sanchez Art Center. Just as I, H and G have separate cubicles, they have separate little cubicles. Part of their responsibilities as individual cubicles was to help run that center. She thought it was a question of a definition.

Fire Chief Myers stated that it was analogous to a property manager who would manage all of Crespi and say they were one entity and charge them one time, but they don't do that.

Councilmember Jaquith stated that it was a separate entity. It was not a property manager but separate businesses doing very different things in each of the cubicles. In the case of the Sanchez Art Center, they are all doing the same thing, which happens to be art and they are all responsible for the operation of that facility. Not only do they pay for their piece of the cubicle but also have requirements to operate the entire facility. She felt it was a different definition which was part of the issue. She understood that it was up to the Council to decide.

Fire Chief Myers heard what she was saying.

Councilmember Nihart stated that she used one other example the last time when he was not present and she wanted to hear what he had to say. She referred to his mention of business licenses. She stated that she was trying to make sense out of this in a way that will be fair for everyone. She stated that it was not about the business but how they define the business. She had used the example of an antique mall. While we didn't have a big one, we have small ones with several dealers with independent licenses share a common space. She stated that, in that case, the common space takes priority from what she heard from Deputy Fire Chief Johnson and they have one fee. She stated that this was where she gets confused. In the beauty salon, they all have licenses.

Fire Chief Myers asked whether they were all working for Sanchez. He stated that he wasn't sure. He asked if each of them pay a business license. He stated that, when each of them have a business license, they are not Sanchez doing business. He can see where it gets confusing. He wasn't sure if he could help her with this. It depends on how they want to handle it. They are separate entities among themselves. They didn't work for Sanchez. He thought it was analogous to what she was talking about but they have a business license doing business in the City.

Councilmember Jaquith stated that it was required by the City.

Councilmember Nihart stated that the problem as she sees it was that, when she goes into a beauty salon, they all have to have business licenses.

Fire Chief Myers saw the confusion, but it was an open area, and they don't charge extra. It was all about the wall space and the individual compartments.

Councilmember Nihart stated that she understood that, adding that they have to come up with a finding that blankets the whole City. She stated that the confusion was that it was difficult because is it the space that takes priority, the business license that takes priority, the door that takes priority. Which one makes sense from a fire inspection point of view.

Fire Chief Myers stated that it only got complicated when they started charging fees.

Councilmember Nihart asked how they do this in Daly City.

Fire Chief Myers stated that it doesn't come up. They do it the same way, and they would charge but they don't have a City owned building that was set up like that. He thought the City-owned building was what makes it a different kind of animal in the way it was orchestrated. That was why they came up with the option that it was a City owned facility and they don't charge fees in City-owned facilities right and wrong, just as they don't charge fees in schools for inspections.

Mayor pro Tem Stone opened public comments.

**Kathleen Salvia, Pacifica**, stated that the Sanchez Art Center respects what they are all doing and trusts that they will make a right and fair decision and they will go on from there. She was present to answer any questions if they have any.

Councilmember Jaquith asked that she clarify the nature of the Sanchez Art Center and how it functions and the relationship of artists to the overall organization.

**Ms. Salvia** stated that they were non-profit. The artists rent their studios and they pay rent but each standard studio performs about 98 hours of service a year. Without those service hours, they cannot perform all their various activities, such as install the exhibitions, go to the FogFest, etc. She stated that there were three part time staffers. She felt it was a symbiotic thing. Stated that they have rooms with doors and locks all over the facility and they were not connected in one central area. She concluded that they cannot operate without the artists' support.

Councilmember Digre assumed that the Sanchez Art Center paid a business license and each artist/vendor has a business license.

**Ms. Salvia** stated that, with the City, they said that each artist has to have a business license which they get at a discount.

Councilmember Digre asked confirmation that the Sanchez Art Center also has a business license.

**Ms. Salvia** responded affirmatively.

**Tod Schlesinger, Linda Mar,** stated that he may not expect Councilmembers Digre and Jaquith to get this, but they needed to get it. He suggested that as an expert, he would tell them what the problem was and they need to learn from him. He then stated that the reason this is a problem is because they wrote this lease in 1996, which was not well written. He asked if anyone had read it besides him. He stated that there were three amendments, clarified by the former City Attorney. They are master lessees. The City has nothing to do with deciding, unless they change how they are going to assess the fees and determine that they are going to be waived for them to get in between how the master tenant and the subtenants deal with the fees. According to his reading, the master tenant is liable for all of the \$150 fees for each business license. He again suggested that they read the document and learn what they are doing, adding that they were dealing with his tax dollars. He sounds and is aggravated. He asked why the City would jump in. It was not their business. Let the subtenants deal with the master lessee. He reiterated that the City had no business determining what was going to happen between the master tenant and the subtenants. He again suggested that the Council and the City Attorney do their job. He stated, if they want to change the ordinance, that was one thing. If they arbitrarily decide that they are going to throw them a bone when he was already subsidizing them, he might take some legal action against that. He stated that they need to shape up and do what they were supposed to do and know what they are doing. He stated that this was not rocket science, but rudimentary landlord/tenant 101. He stated that they should not try to outthink it, adding that they can't be all things to all people. He stated that need to be

careful and do the right thing. He referred to the rental agreements with the City, but not between the subtenants and master tenant, and stated that they must let what dictates dictate, and not make it up as they go which was not okay.

**Andrew Leone, Pacifica**, stated that he would like to bring a little historical perspective if he can. He referred to trying to compare the Sanchez Art Center to other businesses, and stated that none of that works very well. He stated that it was alarming to compare the Sanchez Art Center to a shopping mall. He stated that it illustrates a deep misunderstanding of the original agreement, which was more of a partnership with Pacifica and its residents. He felt it had to be a collaboration. He thought it would be better to compare the Sanchez Art Center to the Community Center where they have classes. It was also a city-owned building. He asked if the fire inspectors charge to inspect every room in the Community Center, concluding that they didn't. He mentioned the business licenses, stating that he remembered all the negotiations, when they were trying to work things out to make the Art Center work by taking the building that the City was ready to write off and they did what no one thought and improved the building, and continue to improve, spending thousands of dollars ongoing, with the improvements and maintenance, all of the work going into the building. He stated that was going on all the time on a City-owned building. He stated that they didn't want the business licenses from the beginning, not being the right fit. Many of the artists have businesses elsewhere, and they didn't think of themselves as a business. They come there when they can to build community, volunteer to make the Art Center work to provide many cultural services. He hoped they can figure out a compromise. He respected the work of the City Council and city staff and the fire inspectors. He also hoped that they respected the work they do there to keep all the services going. He hoped some compromise can come up, adding that they should not have to pay \$150, the same as Safeway or Radio Shack. They really aren't a business like those. He didn't know what the answer was, but he thought they should be able to come up with something, such as paying a little more than the one fee. He would like them to be able to recoup their costs for doing the inspections but hoped there was a compromise that could be worked out and be fair for everyone.

**Chris Fogel, Linda Mar**, sympathized with the position in which the Fire Department has been put. They are required to do these inspections but it was the City and Council who have asked them to recoup their cost but they were not accountants. He came up with an idea that may help in deciding this. He stated that, when the Fire Department did their inspection of an artist's studio and finds that a particular studio was not in compliance, or there was a dangerous situation. He asked who has to rectify the situation. If it was the occupant of the studio, that person created that dangerous situation and they were the ones who should be assessed the fee. He stated that, as an intellectual exercise, they could figure out whether or not to assess the fee individually or collectively based on who was ultimately responsible for the individual space for safety and compliance. If out of compliance, who was ultimately responsible for getting that space in compliance.

Mayor pro Tem Stone closed public comments.

Councilmember Nihart stated that she was struggling with it, adding that the last comment was very thoughtful. She stated that this wasn't about lessees, lessors, master agreements, etc. She felt it was how they define the space, agreeing that it was not an issue when they were not charging. Once they started charging they didn't spend any time on this discussion. She felt this discussion was bigger, and was unfortunate that it has become about Sanchez. She stated that they have a bunch of businesses in the park mall in the little building out front. If they all give up their leases and one company moves in there, does it become one company. She comments that the Deputy Fire Chief was nodding his head.

Deputy Fire Chief Johnson stated that it was the sum of all the parts. He gave the example of one owner occupying the whole building.

Councilmember Nihart stated that the problem she was having with this site was that they rent to Sanchez Art Center, Pacifica Performances, and two other leases. She stated that there was a common factor that she related to an antique mall and a number of other things and was having a trouble getting past that. She doesn't want it to be about profit or non-profit. She wants it to be fair for everyone and there was an office where you pay, a place that was common, contributions that were common in that setting. They are not operated individually. They have the common gallery openings and viewing and everyone does it together and she didn't see that as different than an antique mall.

Fire Chief Myers thought it was the type of partnership and how they got there. He thought that may be a distinction in itself. Was it more of a community center kind of event? He asked if you classify them as good for the community. He thought it was not the same as anything else. For them, it was a fire code designation classification, business, institutional, assemblies, etc., big or small, and they inspect them and they are classified. The inspection generates a fee. They were not talking about how they are classified, but about what they see as a benefit to the community. He stated that they were looking at all the years when it was a community driven thing, and why it was in a City facility.

Councilmember Nihart stated that was not what she was talking about. She was trying to make sense out of it in a way that was fair. They have independent rooms in an antique mall and they go on and on. They have independent people, doors that go to the outside, and they all have individual licenses, yet, that would be considered a business. That was what she was having trouble with.

Fire Chief Myers thought, in this particular case, business licenses were an afterthought. He felt this building was an anomaly, asking if it meets the threshold of being something that they make a finding that they do not charge because it was an activity that does not generate revenue and was good for the community.

Councilmember Nihart states that she cannot do that.

City Manager Rhodes stated that what he was hearing was imprecise and if they keep going down the path, they end up at the same place. It does not work. From the telephone calls that he has been receiving, he would rather not go down that path, because there was no right answer. He thought that was one reason articulated in the staff report that there was a right answer that works, which is that it is a city-owned building. That was the only distinction. He thought that otherwise, they were going to have the people calling him showing up and going "I'm like them too." He stated that he has already gotten a call from Eureka Square offices. He was nervous about that.

Mayor pro Tem Stone thought the point they were making, and the point he was getting at, was that they were asking to change the policy. He has heard the current policy but he would love to read it himself to know what they would be changing.

Fire Chief Myers stated that there was not a policy. The policy decision by this Council was to charge for inspections that they do based on classifications of the fire code.

Mayor pro Tem Stone concluded that we need to establish one.

Councilmember Jaquith concurred with the comments that this was a unique situation, a City-owned facility, a partnership between the City and the Sanchez Art Center with all the value and benefit that comes from that partnership over the years from both a cultural and economic development perspective. The facility was a venue for economic development in this community. She thought that the City Manager provided the one little piece that it was a City facility unlike any other arrangement in this community. She thinks it is unique and different. She would like to suggest that they look at a single fee for the Sanchez Art Center based on all of that and based on the fact that the center itself can provide access to all of those rooms and that, in fact, the fire inspector would come in at one time or, because of the number of spaces, it might take more than that, but they can come in at one time and do the inspections throughout the entire facility as opposed to scheduling individual inspections with each person who occupies a part of that center. She thought they should look at it as a unique facility.

Fire Chief Myers stated that he would not make it more complicated than just that it is a City-owned facility and leave it at that, but not the part about how they do the inspections.

Councilmember Jaquith acknowledged that they would figure it out.

Mayor pro Tem Stone asked her how she would apply that. He mentioned that the City had a number of other leases, such as the pier, the credit union.

Councilmember Jaquith stated that those were all individual businesses or sites.

Mayor pro Tem Stone assumed that the difference was not that it was a City-owned facility.

Councilmember Jaquith stated that it was.

Mayor pro Tem Stone mentioned that the Cafe on the Pier was a city-owned facility.

Councilmember Jaquith stated that it was one facility and they continue to be charged their inspection fee. The credit union was there and was a separate entity in a City facility and they get charged an inspection fee, mentioning the other tenants. She was not suggesting that they don't charge them but that they treat the art center as a single entity in a public facility.

City Manager Rhodes suggests that they try to articulate a policy and come back for the Council to look at and try to see how they can write that.

Mayor pro Tem Stone agreed.

Councilmember Digre liked what has been said, and thought Councilmember Jaquith summarized it for her. She felt they want to keep the importance of fire inspection. She was leaning toward not thinking of things as one size fits all. Since we are policy makers, how Councilmember Jaquith put it may have covered how she was thinking, which was that the Sanchez Art Center could be a policy element that could be charged in a different way. She thought, if you say City buildings, it wasn't fair that a bank and other entities that could be capable of making higher profits should fit the same thing and she didn't agree with one size fits all. She referred to the history of the Sanchez Art Center as the soul of the community. She thought the Council has a right to foster what contributes to the soul of the community which may seem like prejudice but she doesn't think so. She thought what he says covers it.

Mayor pro Tem Stone thought they all agreed that they needed to do the fairest thing. He thought, in preparation, they had to look at how it will be applied to the Sanchez Art Center but how it would be applied to a different type of business. He thought it was important to look at that. He was partial to the fact that he sees the tenant as one tenant, Sanchez.

City Manager Rhodes thought his comment takes it in a different direction, beginning to go down the path they were going down of having to articulate every single space and why one was a certain way which he didn't think they were trying to do that. He was suggesting that they look at another way to approach this.

Fire Chief Myers agreed.

Mayor pro Tem Stone asked if he was saying that the only differentiation was being City owned.

City Manager Rhodes stated that, if they start talking about other businesses being a certain way, they will never get out of it. That was why he suggested that they look at it as a City facility and articulate a policy that relates to that.

Fire Chief Myers agreed.

Councilmember Jaquith stated that she was suggesting that also.

Mayor pro Tem Stone thought it was the make up at Sanchez that was unique.

Fire Chief Myers thought the City Manager's suggestion was the best one and he suggested that they try that.

Councilmember Digre asked if that was saying that the bank and the Art Center are going to have the same fees or can they do some policy making in there.

City Manager Rhodes stated that they will come back with a recommendation but, if they start to alter the fees, they will run into the same problem. He stated that they were looking at how they deal with City buildings and make people in City buildings equal and how do they articulate that. He felt, if they start trying to adjust the fee, it was an endless process because everyone will define themselves to fit in the category that just got a lower fee.

Councilmember Digre didn't know if looking into the lease would help.

Fire Chief Myers suggested they see what they can do and go from there.

**ADJOURN 10 PM**