



**CITY OF BEVERLY HILLS
CITY COUNCIL
ADJOURNED REGULAR MEETING
October 23, 2012**

The Adjourned Regular City Council meeting was held in the Council Chambers at 7:00 pm.

A. ROLL CALL

Present: Councilmember Gold, Councilmember Bosse, Councilmember Brucker, Vice Mayor Mirisch, and Mayor Brien
Absent: None

B. PRESENTATIONS

1. CERTIFICATES OF APPOINTMENT - Health and Safety Commission
 - Myra B. Lurie
 - Lisa Kay Schwartz

Mayor Brien, along with Councilmember Brucker, presented certificates of appointment and City pins to newly-appointed Health and Safety Commissioners Myra B. Lurie and Lisa Kay Schwartz.

C. ORAL COMMUNICATIONS

1. TELEPHONE CALL-IN (310.285.1020) (Members of the public are invited to place telephone calls to comment on issues that do not appear on the evening's agenda. The City Council will take up to three telephone calls per meeting. Comments on the evening's agenda must be made in person as the item comes before the City Council.)

None

2. AUDIENCE COMMENTS. Any person wishing to address the City Council on any matter not on the agenda may do so at this time. However, the State open meetings law (Government Code Section 54950 et seq.) prohibits the City Council from providing a detailed response or acting upon any item not contained on the agenda posted 72 hours before a regular meeting and 24 hours before a special meeting. If you wish to address the City Council at this time, please complete a speaker's card and give it to the City Clerk prior to the commencement of the meeting. Please use the microphone provided, clearly stating your name for the official record and courteously limiting your remarks to three (3) minutes so others may have the opportunity to speak as well.

None

3. REPORT FROM THE CITY MANAGER

* Cable TV Update – Rick Gale, Cable TV/Video Associate II

Cable TV/Video Associate II Rick Gale provided an update on the City's cable television programming and current initiatives. He also showed a short video montage of the past year's projects.

4. CITY COUNCILMEMBER AND COMMITTEE REPORTS

Mayor Brien shared highlights of the annual New York Sales Mission trip held the week of October 15-19, 2012. He spoke about the mission of the trip, and highlighted the activities held during the trip. He thanked the Beverly Hills Chamber of Commerce for organizing the trip. Former Mayor Jimmy Delshad also spoke briefly about the trip, and thanked Mayor Brien for inviting him to join the delegation.

Mayor Brien read Vice Mayor Mirisch's report on his MWD trip to the Colorado River on October 12-14, 2012 which was also attended by a delegation of Beverly Hills residents, Commissioners and City staff. He noted that Vice Mayor Mirisch will provide a more detailed report at the next City Council meeting.

D. PUBLIC HEARING

TO SET:

None

TO CONSIDER:

This being the time and place set, a public hearing was held to consider:

- 1. APPEAL OF JUNE 7, 2012, HEARING OFFICER DECISION IN BUSINESS TAX ASSESSMENT HEARING ESTABLISHING BUSINESS CLASSIFICATION AND ASSESSING TAX LIABILITY, INCLUDING PENALTIES, FROM 2003 TO 2011 OF \$5,536,356.48 BY TAXPAYERS SPECIALTY SURGICAL CENTER, LLC AND SPECIALTY SURGICAL CENTER OF BEVERLY HILLS, L.P. FILED ON THEIR BEHALF BY ALLAN COOPER, ESQ., OF ERVIN, COHEN & JESSUP LLP** Comment: The attorneys for Specialty Surgical Center, LLC and Specialty Surgical Center of Beverly Hills, L.P. are appealing the findings of the Assistant Director of Administrative Services - Finance related to a Business Tax Assessment Hearing conducted on April 11, 2012 and a Supplemental Filing to the April 12, 2012 Administrative Hearing dated May 8, 2012. The Assistant Director of Administrative Services - Finance found that Specialty Surgical Center, LLC and Specialty Surgical Center of Beverly Hills, L.P. were properly classified and that a liability for unpaid business taxes for calendar years 2003 through 2011, including penalties and interest thereon through June 30, 2012 was \$5,536,365.48. The notice of the hearing was published as required by law and an affidavit to this effect is on file with the City Clerk.

The records and files of the Department of Administrative Services and the report of the Special Counsel concerning this matter shall be entered into the record.

Mayor Brien and Councilmember Gold recused themselves from the item.

Councilmember Bosse disclosed her attendance at the October 3, 2012 Town Hall meeting. She reported that there was no additional information disclosed at the meeting that was not already contained in the Council packet. Vice Mayor Mirisch also disclosed that he met in September with several residents for them to express their concerns, and there was no new information presented. Assistant City Attorney David Snow reviewed the procedures that will be followed during the hearing.

The City's Administrative Services Department Special Counsel Christie Hogan presented the staff report. She explained the City's business tax structure and provided examples of types of businesses with multiple uses. She provided a historical background on the considerations used for the tax assessment. Acting Director of Administrative Services Noel Marquis answered questions from Council.

Councilmember Bosse asked the following questions: another model of a business structure with tax F, the methodology used for the 75% calculation, the change in tax calculation from January 2012 to five months later, what other cities use classification F for surgery centers, reasons for the administrative changes in gross receipts in 2006, previous Council's unanimous support to the tax changes, explanation of bifurcating with doctors being able to use their own facilities, facility space fee referred to in the June 7 staff findings report, MBIA services provided, and what will happen to the other surgery centers after the SSC appeal.

Councilmember Brucker asked whether doctors who perform surgeries are required to own an equity position, whether businesses with different gross incomes pay the same tax level, and other cities paying taxes based on headcount rather than gross income.

Vice Mayor Mirisch asked whether hospitals would fall under the classification C or F.

Allan Cooper, Attorney for the appellant, questioned whether the City's tax code meets the constitutional requirements, and whether it is constitutional to increase taxes without voter approval and just based on administrative decision. He provided code definitions of professional and semi-professional classifications, and clarifications on the meanings of renting/leasing. He questioned the staff's lack of methodology in reaching the 75%.

Councilmember Brucker asked Mr. Cooper to clarify his statement that the City cannot reclassify a business after it has filed under a classification for a number of years without being audited. He also asked the following questions: whether Symbion is classified as a professional, whether it is a requirement to have demised premises to be a rental facility, reason for classifying SSC as a professional, explanation of a facility fee, whether non-equity owners can book a room and perform surgery, and whether the classification changes if the surgeon brought in his own team.

Vice Mayor Mirisch asked whether there would be any tax liability if the law was not clear, and whether a surgery center is considered a person.

Speaking:

1. Peter Cornell, MD
2. James Khodabakhsh, MD
3. Jon Hofbauer, MD
4. Shoshana Geffner
5. Linda Dymon
6. Mark Egerman
7. Alma Ordaz
8. Matthew Finerman, MD
9. Grenda David
10. Sherry Tedeschi
11. Woodrow Clark, PhD
12. Fred Wilson, MD
13. Alison Galloway
14. Jessica Generazio
15. Ellen Tran
16. Kenneth Wright, MD
17. Thomas White, Municipal League of Beverly Hills - Vice Mayor Mirisch read his statement into the record
18. Babak Azizzadeh, MD
19. Michel Levesque, MD
20. Roberto Padilla, Jr.

The hearing was closed at 11:37pm.

Ms. Hogan clarified that the increase is not an unconstitutional change that requires voter approval, the classification was not changed, Mr. Marquis did not hear his own appeal, and the tax code is not unclear. She also explained the definition that staff used to classify SSC.

Councilmember Brucker asked Mr. Marquis how convalescent hospitals are classified.

Mr. Cooper stressed that SSC is a professional and not a commercial company. He also addressed former Mayor Stephen Webb's letter. Councilmember Brucker asked what percentage of the daily gross goes to employees' salaries.

Councilmember Bosse reviewed the tax timeline and how it all started, and addressed the comments that were suggested in the staff report. She expressed her concerns on the process used, and suggested to have clear definitions and transparency moving forward. She indicated her support for the appeal.

Councilmember Brucker commented that people have different interpretations of the definitions/classifications and that he personally thinks that surgery centers fall in a different category than what they do now. He expressed support of the process being transparent.

Vice Mayor Mirisch thanked everyone who spoke. He clarified that the issue before the Council tonight is about fair application of the tax code as it stands. He expressed concern on the process and calculations used, and suggested that these things be looked into in the future. He indicated his support for the appeal.

MOVED by Councilmember Bosse, seconded by Vice Mayor Mirisch, to direct the City Attorney to prepare a "Resolution Setting Forth Findings in Support of Reversing the Imposition of a Business Tax Liability for Specialty Surgical Center, LLC and Specialty Surgical Center of Beverly Hills, LP, and Reversing the Hearing Officer's Decision."

Ayes: Vice Mayor Mirisch, and Councilmember Bosse.
Noes: Councilmember Brucker.
Recuse: Mayor Brien, and Councilmember Gold.

CARRIED

ITEM D-1: APPEAL GRANTED

E. CONTINUED AND NEW BUSINESS

None

F. CITY COUNCIL CONSENT CALENDAR

MOVED by Councilmember Gold, seconded by Councilmember Brucker to remove Item F-7 for separate discussion and vote, approve remaining items on the consent calendar and direct that the appropriate accounts be charged on Items F-2 and F-3.

Minutes

1. CONSIDERATION BY THE CITY COUNCIL OF THE MINUTES of the Regular meeting of October 2, 2012.

Demands Paid

2. REVIEW OF BUDGETED DEMANDS PAID, report dated September 22 - October 5, 2012.
3. PAYROLL DISBURSEMENT REPORT, report dated October 23, 2012.

Other Business

ORDINANCE OF THE CITY OF BEVERLY HILLS:

4. ESTABLISHING DEFINITIONS, DESIGNATING USE, AND ADOPTING LOCAL PLANNING AND APPROVAL REQUIREMENTS FOR EMERGENCY SHELTERS, TRANSITIONAL AND SUPPORTIVE HOUSING, COMMUNITY CARE FACILITIES, AND SINGLE ROOM OCCUPANCY UNITS AND AMENDING THE BEVERLY HILLS MUNICIPAL CODE. Second Reading - For Adoption. Comment: This ordinance complies with State requirements under Senate Bill 2 and implements Housing Element Program 12.1 "Zoning Text Amendments for Special Needs Housing".

ITEM F-4: ADOPTED ORD# 12-O-2633

RESOLUTIONS APPROVING:

5. A. CALLING AND GIVING NOTICE OF THE HOLDING OF A REGULAR MUNICIPAL ELECTION TO BE HELD ON TUESDAY, MARCH 5, 2013, FOR THE ELECTION OF CERTAIN OFFICERS AS REQUIRED BY THE PROVISIONS OF THE LAWS OF THE STATE OF CALIFORNIA RELATING TO GENERAL LAW CITIES;

ITEM F-5A: ADOPTED RES# 12-R-12896

B. CONSENTING TO AN ELECTION CONSOLIDATION WITH THE CITY OF LOS ANGELES, INCLUDING THE LOS ANGELES COMMUNITY COLLEGE DISTRICT AND THE LOS ANGELES UNIFIED SCHOOL DISTRICT AND ORDERING THAT THE THREE (3) SEATS ON THE BOARD OF TRUSTEES OF THE LOS ANGELES COMMUNITY COLLEGE DISTRICT AND THE ONE (1) SEAT ON THE BOARD OF EDUCATION OF THE LOS ANGELES UNIFIED SCHOOL DISTRICT APPEAR ON THE BALLOT OF THE REGULAR MUNICIPAL ELECTION TO BE HELD ON TUESDAY, MARCH 5, 2013;

ITEM F-5B: ADOPTED RES# 12-R-12897

C. REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES TO DIRECT THE COUNTY REGISTRAR/RECORDER TO RENDER SPECIFIED SERVICES TO THE CITY RELATING TO THE CONDUCT OF A REGULAR MUNICIPAL ELECTION TO BE HELD ON TUESDAY, MARCH 5, 2013; AND

ITEM F-5C: ADOPTED RES# 12-R-12898

D. ADOPTING REGULATIONS FOR CANDIDATES FOR ELECTIVE OFFICE PERTAINING TO CANDIDATES' STATEMENTS SUBMITTED TO THE VOTERS AT THE REGULAR MUNICIPAL ELECTION TO BE HELD ON TUESDAY, MARCH 5, 2013. Comment: Requests adoption of resolutions relating to the conduct of the March 5, 2013 General Municipal Election.

ITEM F-5D: ADOPTED RES# 12-R-12899

APPROVAL OF:

6. AN AGREEMENT WITH MARTIN & CHAPMAN CO. FOR ELECTION SERVICES AND SUPPLIES FOR THE MARCH 5, 2013 GENERAL ELECTION; AND APPROVE A PURCHASE ORDER IN THE AMOUNT OF \$107,000 TO MARTIN & CHAPMAN CO. FOR ELECTION SERVICES AND SUPPLIES. Comment: Provides for election services and supplies needed to conduct the Regular Municipal Election taking place on March 5, 2013.

ITEM F-6: APPROVED AG# 471-12

7. AN AGREEMENT WITH WILLY BIETAK PRODUCTIONS, INC. FOR A HOLIDAY ICE SKATING RINK AT BEVERLY GARDENS PARK; AND APPROVAL OF A PURCHASE ORDER IN A NOT-TO-EXCEED AMOUNT OF \$331,637.00 FOR THESE SERVICES. Comment: This is a funding agreement between the City of Beverly Hills and Willy Bietak Productions, Inc. for a holiday ice skating rink at Beverly Gardens Park. The City Council is also asked to approve a purchase order in a not-to-exceed amount of \$331,637.00 for these services.

Speaking:

1. Fia Hoffman
2. Alan Berro

Councilmember Brucker expressed his concerns and thanked the residents who came forward to speak. Marketing and Economic Sustainability Manager Megan Roach and Conference and Visitors Bureau Executive Director Julie Wagner addressed the various concerns. Councilmember Bosse also aired her concerns and suggested having a clear back up plan, and tabling the item until the next Council meeting to give an opportunity to sit down with residents. Mayor Brien directed the Council liaisons to meet with staff and residents, and continue the item to the November 13, 2012 City Council meeting.

ITEM F-7: COUNCIL DIRECTED STAFF AND COUNCIL LIAISON TO MEET WITH RESIDENTS AFFECTED BY THE SKATING RINK AND RETURN THE ITEM TO THE NEXT CITY COUNCIL MEETING WITH AN UPDATE; ITEM CONTINUED TO NOVEMBER 13, 2012 CITY COUNCIL MEETING

8. AN AGREEMENT FOR POLICE AND CITY TOWING SERVICES WITH CLASSIC TOW, INC. DBA TIP TOP TOW SERVICE Comment: This is an agreement between the City of Beverly Hills Police Department and Tip Top Towing to provide towing services throughout the city.

ITEM F-8: APPROVED AG# 472-12

9. AMENDMENT NO. 1 TO AN AGREEMENT WITH KAPLAN CHEN KAPLAN ARCHITECTS & PLANNERS FOR ARCHITECTURAL AND ENGINEERING DESIGN SERVICES RELATED TO GREYSTONE MANSION FIREHOUSE REHABILITATION PROJECT;

AND APPROVAL OF A CHANGE PURCHASE ORDER IN THE AMOUNT OF \$44,880 FOR THE SERVICES. Comment: Provides for the design services from design development phase through construction documents related to rehabilitation of the Firehouse at Greystone Estate for seismic/fire safety upgrades and park restrooms. The total amount of this agreement with the amendment is \$92,240.

ITEM F-9: APPROVED AG# 473-12

10. TERMINATION OF A COVENANT THAT REQUIRES THE PROPERTY LOCATED AT 9953 SOUTH SANTA MONICA BOULEVARD TO PROVIDE 11 OFF-SITE PARKING SPACES FOR THE PROPERTY LOCATED AT 133 SPALDING DRIVE. Comment: The property owner of 9953 South Santa Monica Boulevard has requested to terminate a covenant for 11 off-site parking spaces that were previously required to be provided to the property located at 133 Spalding Drive. The property located at 133 Spalding Drive has since been redeveloped, and the off-site parking spaces are no longer needed to satisfy code requirements.

ITEM F-10: APPROVED

11. ACCEPTANCE OF THE CONTRACT WORK FOR THE "NORTH SANTA MONICA BOULEVARD SIGNAL SYNCHRONIZATION" PROJECT BY KDC, INC. DBA DYNALECTRIC, IN THE FINAL AMOUNT OF \$2,027,851.67; AND AUTHORIZATION OF CITY CLERK TO RECORD NOTICE OF COMPLETION. Comment: It is recommended that the described work with KDC, Inc. dba Dynalectric be accepted and authorization be given for the recordation of the Notice of Completion.

ITEM F-11: APPROVED

12. APPROPRIATION OF \$56,000 FROM THE SEIZED & FORFEITED PROPERTY FUND TO ENHANCE POLICE DEPARTMENT OPERATIONS WITH THE PURCHASE OF EQUIPMENT. Comment: Seeks appropriation of restricted funds received as a result of asset seizures for ammunition, safety supplies, and equipment.

ITEM F-12: APPROVED

13. APPROPRIATION OF \$42,000.00 FROM THE SEIZED & FORFEITED PROPERTY FUND TO ENHANCE POLICE DEPARTMENT OPERATIONS BY USING A WORKER'S COMPENSATION COORDINATOR. Comment: Seeks appropriation of restricted funds received as a result of asset seizures for a temporary part-time position to monitor police department employees who are off work due to a work-related injury or on light-duty status.

ITEM F-13: APPROVED

14. A PURCHASE ORDER IN A NOT-TO-EXCEED AMOUNT OF \$650,000 TO MOTOROLA SOLUTIONS INC. FOR THE RADIO PROGRAMMING SERVICES RELATED TO NARROW-BANDING AND PROJECT 25 COMPLIANCE. Comment: Staff recommends that the City Council award Bid No. 13-08 to Motorola Solutions Inc. for radio programming services related to P25 compliance and mandatory narrow-banding as required by the FCC and authorize a purchase order for the services in an amount not to exceed \$650,000.

ITEM F-14: APPROVED

15. A PURCHASE ORDER TO LOS ANGELES TRUCK CENTER, LLC DBA LOS ANGELES FREIGHTLINER FOR A TOTAL NOT-TO-EXCEED AMOUNT OF \$662,131.58 FOR PURCHASE OF TWO (2) COMPRESSED-NATURAL-GAS-FUELLED SOLID-WASTE-COLLECTION VEHICLES. Comment: Provides for purchase of two (2) CNG Refuse-collection trucks from Los Angeles Truck Center, LLC dba Los Angeles Freightliner to replace an equal number of job-worn trash trucks assigned to the Department of Public Works & Transportation, Solid Waste Division.

ITEM F-15: APPROVED

16. VARIOUS CITY PURCHASING AND BUDGET TRANSACTIONS AS DESCRIBED HEREIN:

ITEM A AGREEMENT WITH WILLDAN ENGINEERING FOR COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) ADMINISTRATION AND PROGRAM IMPLEMENTATION OF THE HANDYWORKER SERVICES PROGRAM FOR SINGLE FAMILY UNITS IN 2012-2013; AND,

APPROVAL TO ISSUE A PURCHASE ORDER IN THE AMOUNT OF \$137,482 FOR SERVICES DESCRIBED. Comment: Jewish Family Service discontinued their Handworker Program. Staff sent out Request for Proposal (RFP) and the review team selected Willdan Engineering as the most qualified vendor to continue the Handyworker services.

ITEM F-16A: APPROVED AG# 474-12

ITEM B AGREEMENT WITH WILLDAN ENGINEERING FOR COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) ADMINISTRATION AND PROGRAM IMPLEMENTATION OF THE HANDYWORKER SERVICES PROGRAM FOR MULTI FAMILY UNITS IN 2012-2013; AND,

APPROVAL TO ISSUE A PURCHASE ORDER IN THE AMOUNT OF \$88,988 FOR SERVICES DESCRIBED. Comment: Jewish Family Service discontinued their Handworker Program. Staff sent out Request for Proposal (RFP) and the review team selected Willdan Engineering as the most qualified vendor to continue the Handyworker services.

ITEM F-16B: APPROVED AG# 475-12

ITEM C AMENDMENT NO. 2 TO THE AGREEMENT WITH CARL WARREN & COMPANY FOR SELF-INSURANCE ADMINISTRATION SERVICES; AND,

APPROVAL OF A PURCHASE ORDER IN A NOT-TO-EXCEED AMOUNT OF \$95,000 FOR SAID SERVICES. Comment: The current contract expired on August 31, 2012, and City Council approval is requested for a three year extension of the existing contract.

ITEM F-16C: APPROVED AG# 476-12

ITEM D A PURCHASE ORDER FOR RICHARDS, WATSON & GERSHON, A PROFESSIONAL CORPORATION, FOR LEGAL SERVICES IN THE AMOUNT OF \$1,100,000. Comment: Staff recommends that City Council move to authorize a purchase order between the City of Beverly Hills and Richards, Watson and Gershon for Litigation & Special Services, which includes non tort litigation, labor and environmental issues not to exceed \$1,100,000.

ITEM F-16D: APPROVED

ITEM E A CHANGE ORDER FOR RICHARDS, WATSON & GERSHON, A PROFESSIONAL CORPORATION, FOR LEGAL SERVICES IN THE AMOUNT OF \$150,000. Comment: Staff recommends that City Council move to approve a change purchase order between the City of Beverly Hills and Richards Watson and Gershon for legal services related to Parcels 12 and 13 not to exceed \$224,036.

ITEM F-16E: APPROVED

Vote on Consent Calendar:

Ayes: Mayor Brien, Councilmember Brucker, Councilmember Bosse, and Councilmember Gold.
Noes: None.
Absent: Vice Mayor Mirisch.

CARRIED

**G. COMMISSION SYNOPSIS
NO ACTION TAKEN ON "G" ITEMS**

1. CHARITABLE SOLICITATIONS COMMISSION - Regular Meeting of September 12, 2012
- FINE ART COMMISSION - Special Meeting of September 20, 2012
- HEALTH AND SAFETY COMMISSION - Regular Meeting of September 24, 2012
- RECREATION AND PARKS COMMISSION - Special Meeting of September 25, 2012
- CULTURAL HERITAGE COMMISSION - Special Meeting of October 2, 2012
- PUBLIC WORKS COMMISSION - Special Meeting of October 2, 2012
- TRAFFIC & PARKING COMMISSION - Regular Meeting of October 4, 2012
- DESIGN REVIEW COMMISSION - Regular Meeting of October 4, 2012

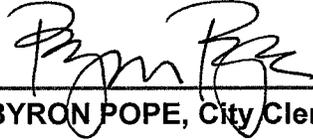
H. OTHER BUSINESS

None

I. ADJOURNMENT

There being no further business, Mayor Brien, with the consent of the Council, adjourned the meeting at 12:15am on October 24, 2012.

PASSED, Approved and Adopted
this 20th day of November, 2012


BYRON POPE, City Clerk

WILLIAM W. BRIEN, MD, MAYOR

This meeting was broadcast on live television, on City of Beverly Hills municipal government television access Channel BHTV10 Time Warner Cable.