

MINUTES OF THE REGULAR MEETING
OF THE LA PALMA CITY COUNCIL

January 2, 2001

Mayor Aragona called the regular meeting of the La Palma City Council to order at 7:03 p.m. on Tuesday, January 2, 2001, in the Council Chambers of La Palma City Hall, 7822 Walker Street, La Palma, California.

PLEDGE OF ALLEGIANCE

Councilmember Duke led the Pledge of Allegiance to the United States Flag.

INVOCATION

Pastor Simon Kim of St. Irenaeus Catholic Church gave the Invocation.

ROLL CALL:

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

Councilmembers absent: None

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

PRESENTATIONS

Mayor Aragona introduced Lions Club President Steve Di Leo and the members of the Lion Club present this evening and explained that this year the Lions Club had taken this event over from the City as a community partner. She also introduced this year's judges. Mayor Aragona then called on Mr. Di Leo and the Lions Club members to present the awards to the winners of the La Palma Home Decorating Contest.

Recreation and Community Services Coordinator Tina Hanson highlighted the activities of the Young Adult Teen Committee and made presentations to the Board Members of the 1998-2000 Young Adult Teen Committee in recognition of their service to the City of La Palma. Mayor Aragona thanked Director of Recreation and Community Services Jan Hobson, Recreation

Supervisors Janet Cates and Mike Belknap, and Recreation Coordinator Tina Hansen for their superior work with the YATC.

ORAL COMMUNICATIONS

La Palma Vector Control Representative Larry Herman addressed the Council to give an update on the Red Imported Fire Ant situation. He stated that calls have been down partly due to the weather and darkness; however the ants are still active. He explained that treatment continues every three weeks for a one-year period once a colony has been identified and the treatments are achieving close to 100% eradication. In La Palma they recently treated the La Palma center medians on Moody Street from Crescent Avenue to La Palma Avenue, mostly as a precautionary measure and they will be spending more time looking at center medians in cities because sometimes the medians get overlooked and they are a good source for ants to develop. They also treated the Edison right-of-way near Furman Road.

Mr. Herman stated that a Raccoon problem has been identified and the Vector Control District is looking at a city anti-wildlife feeding ordinance recommendation. The Policy Committee is currently working on this and when the ordinance becomes available he will bring it back to the Council for their consideration. He reported that most raccoons carry a parasite that can affect very young children and cause serious brain damage, blindness, and death. Surveys of Orange County raccoons show that 60 to 78% are infected with a parasitic round worm. These animals distribute very large numbers of long-lived infective cysts and fecal droppings deposited in neighborhoods, which can include playground sand boxes or mulch or anything of a pliable matter that they can dig in. Putting dirt containing the parasite eggs into their mouths infects toddlers. He stated that public education, including passage and enforcement of anti-feeding of wildlife ordinances, are recommended to reduce the attraction of raccoons into urban neighborhoods.

Councilmember Blake asked Mr. Herman if an adult digging in the dirt that came in contact with this parasite would become infected. Mr. Herman responded that the parasite must be ingested through the mouth, not just through contact.

Councilmember Duke commented that when she was walking the neighborhood during her campaign she received raccoon complaints as well as skunk complaints.

Mr. Bill Baum, 5082 Bransford Drive, addressed the Council to state he is present this evening with concern and outrage because the citizens that addressed the Council at the last meeting were totally ignored and their questions were not answered. He stated he wished to present a list of questions that he would like answered regarding the policies concerning the use of deadly lethal force, what non-lethal weapons does the La Palma Police Department have and how are they made available to the officers, what policies are in place for the use of non-lethal weapons, and the awarding of a medal for questionable police work which results in the death of a citizen. He recommended the appointment of a committee, which would include the City Manager, Chief of Police, a representative of the Police Union, and citizens to look into the concerns and questions presented. He added that he feels this committee should be chaired by a citizen, possibly even a Councilmember, and should be open to everyone and should be held in the evening so interested citizens can attend.

Interim City Manager Len Wood stated after the last meeting he had asked the Chief to listen to the tape of the meeting concerning this issue and pull out and identify some of the key items that were discussed. He then called on Chief Giampa to provide clarification on some of these items.

Chief Giampa presented a brief summary of the events that occurred on May 17, 1999. He then explained that the La Palma Police Department, like police departments all across the state, are trained in the use of a variety of less lethal weapons including batons, tazers, less lethal fire arms and also chemical agents. Each of these weapons is effective in certain types of circumstances. For example, tazers and less lethal firearms are effective in subduing individuals who are acting erratically and refusing to comply with an officer's order to stop but who is not necessarily either directly threatening anyone or close enough to be a threat to someone. Batons and some types of less lethal firearms are appropriate in certain types of crowd control situations where people are unruly damaging property but are not, again, attempting to kill anyone. Under established procedures the use of any less lethal weapons would have been entirely inappropriate in confronting the situation with Brian Baum on May 17, 1999. Less lethal weapons are not used when someone is in the act of committing assault or attempted murder because less lethal weapons frequently do not suspend the perpetrator's conduct. He stated that had La Palma Police Officers attempted to use less lethal force on Brian Baum while he was in the process of stabbing his roommate it is entirely possible that those less lethal weapons would not have had the desired effect and Brian Baum may have been successful in his effort to murder his roommate. Regrettably Mr. Baum's violent conduct on May 17, 1999 and his refusal to respond to multiple and repeated orders to drop his weapon and stop stabbing his roommate left the officer no choice but to use lethal force in accordance with departmental policies of the city and most other police departments in the State of California.

Chief Giampa stated a question had been raised as to whether La Palma Police Officers, when they entered the house, fired indiscriminately at the first person they saw, not having identified the aggressor. Chief Giampa stated the answer to that question is, yes, they did identify the aggressor. The officer who ultimately shot Mr. Baum was the first officer on the scene and he was the first officer to identify who the assailant was and at that time Mr. Baum had raced out into the front yard wearing only his underwear, and with blood covering his hands, chasing the individual who happened on the crime scene and was the one who called 911. The officer, at that time, ordered Baum to stop but he ran back into the house. As a result, when the officer went into the back bedroom later when Mr. Baum was in the process of stabbing his roommate, he readily identified the bloody, partially clothed, knife-wielding individual as the aggressor he had seen earlier outside the house. The investigation later concluded that the officer was correct.

Chief Giampa stated that with regard to the use of less than deadly force; in fact the police officer in this incident used less than lethal force five times before he was forced to fire a lethal blow. Chief Giampa added that on television we frequently see actors portraying policemen shooting guns out of assailant's hands or jumping on top of an assailant holding a gun or a knife. These activities are unrealistic and are contrary to established police practice both in La Palma and throughout the State of California. Police officers are trained not to approach an individual holding a knife or a gun, particularly when the assailant is threatening another victim. In this case the officer followed all department policies by attempting a number of times to use his weapon to wound the assailant and cause him to stop his attack. The officer yelled repeatedly at Mr. Baum

to stop attacking his roommate and drop his knife. When Mr. Baum failed to respond to these orders the police officer fired his first shot into Mr. Baum's lower back with the intent of disabling, but not mortally wounding the aggressor. Unfortunately this blow had no effect. All told, the officer fired five non-lethal rounds into Mr. Baum's lower back and buttocks while continually ordering the aggressor to stop his attack. Only when it became apparent that these non-lethal blows were ineffective and that Mr. Baum might well succeed in murdering his roommate, was the officer forced to discharge a lethal round to the aggressor's head. For these reasons the La Palma Police Officer in question acted entirely appropriately.

Lastly, Chief Giampa addressed the issue concerning the recognition that the officers received at last year's awards banquet. He stated that it was mentioned that he had made heroes out of these officers for shooting Brian Baum, nothing could be further from the truth. The officer did not receive a medal for shooting the suspect. He received a medal for, without regard for his own personal safety, entering the residence of an armed, violent suspect for the purpose of rendering aid to a seriously wounded stabbing victim. After learning that another victim was being attacked in the back of the house, the officer took action then to rescue that victim by ending that vicious attack. Chief Giampa added that this entire case was investigated by an independent agency, the Orange County District Attorney's Office, and an internal investigation was also conducted, as is standard procedure in these matters. Neither investigation resulted in any issues concerning lack of training or equipment by the officers. Both investigations concluded that the officers acted appropriately in all cases.

Interim City Manager Len Wood stated that at this time he felt it is appropriate for City Attorney Joel Kuperberg address the Council on its role in this process.

Mr. Kuperberg stated that the Council really does not legally have a significant role that it can play in incidents like this. The role of the City Council is a little bit like Congress or a Board of Directors of a corporation, to set agency-wide policy in a macro sense and not to become involved in either management or operational issues. In California, under the Council/Manager form of government, they serve in a volunteer capacity putting in lots of hours without real pay while the City has a paid professional staff that handles the operational and day-to-day business. Particularly, when it comes to issues dealing with public safety and especially with tactical issues that may involve operations or incidents, its normally completely outside the realm of policy making and is the sort of thing that Councilmembers don't get involved in. It's the type of issue that is vested in the Police Chief who is trained as a sworn officer, has extensive academic as well as professional training, and the City Manager who is essentially the CEO of the organization. The City Council really isn't legally allowed to get involved in personnel type issues. In California, under the laws that we have, all of the employees with the exception of the City Manager, City Clerk, and City Attorney serve as classified employees and these employees cannot be disciplined or terminated or suspended by the City Council. They are terminated or disciplined only by their department heads or by the City Manager and only by following very carefully established rules that have been laid down by the United States Supreme Court and the California Supreme Court regarding procedural due process issues. Indeed, any inquiry into a police officer's conduct immediately triggers something called the police officers bill of rights which is a fairly complex set of laws that the state legislature has put in place to ensure that any review of a police officer's conduct comports with these procedural due process issues for a variety of public policy reasons. The

Council really doesn't have any role to play. The Council does have obvious policy setting roles of allocating money for equipment, personnel, training and things like that that the City Council does during the normal budgetary process; however, La Palma like pretty much every other city in the State of California has essentially the same types of weapons, the same types of policies, the same types of procedures and that is because in this state, police standards are set through the State Department of Justice, the Attorney Generals office and an organization called P.O.S.T. which stands for Police Officers Standards in Training. Thus, there is a state umbrella, which basically dictates most of the parameters within which local police departments and sheriffs departments operate. So the procedures and policies that La Palma has are functionally identical to those of every other agency in the state and the way in which they are implemented is functionally the same.

Mr. Kuperberg stated he feels it is necessary to point out that as an institution the City is to some degree restrained in responding to comments from the public regarding what are admittedly very regrettable incidents such as this. In this case the Orange County District Attorneys Office undertook a comprehensive investigation, the La Palma Police Department did also. As a general rule those reports are not available for the public because they can be very sensitive, they can be very upsetting, they can reveal things about peoples lives that, but for the investigation, would have remained private information. In this case he, the City Manager and the Police Chief have had occasion to review a substantial part of this analysis in the course of their official duties. Without divulging any confidences he feels it is fair to say that those investigations revealed significant information relating to Mr. Baum, both regarding his conduct on the day of this unfortunate incident and regarding activities prior to that date. The City cannot fully respond to some of the issues that underlie what may have occurred because this information has not been made public. As painful as this incident is, obviously, to the family there is really not very much that the City Council can do under the Council/Manager form of government.

Mr. Wood stated that as the City Attorney has pointed out, this is not the forum to address this type issue. He suggested that if Mr. and Mrs. Baum desire to have another look at this he would appreciate a letter from them identifying specific issues they would like to have looked at. He will then go ahead and review those issues with the help of the City Attorney and deal with it in that regard.

Mayor Aragona asked if there was any member of the public who wished to address the Council on any other matter.

RECESS

Mayor Aragona recessed the City Council to convene as the Community Development Commission at 7:50 p.m. (See separate Community Development Commission Minutes.)

RECONVENING

Mayor Aragona reconvened the meeting in regular session at 8:23 p.m.

CONSENT CALENDAR

Mayor Pro Tem Walker pulled Item No. 4.

Councilmember Blake made a motion to approve the following items on the Consent Calendar:

APPROVED THE DECEMBER 19, 2000 CITY COUNCIL MEETING MINUTES

ADOPTED RESOLUTION NO. 2001-01 APPROVING A REGISTER OF DEMANDS JANUARY 2, 2001

APPROVED THE ATTENDANCE OF MAYOR ARAGONA AND COUNCILMEMBER BARNES AT THE LEAGUE OF CALIFORNIA CITIES EMPLOYEE RELATIONS INSTITUTE IN MONTEREY, CALIFORNIA

APPROVED THE NOTICE OF COMPLETION AND ACCEPTANCE OF WORK FOR THE REHABILITATION OF CITY HALL AND CITY COUNCIL CHAMBERS TO MEET AMERICANS WITH DISABILITIES ACT (ADA) STANDARDS, CITY PROJECT NO. 98-BLDG-01

APPROVED THE APPOINTMENT OF TERRY GOEN, HENRY HUANG AND CLIFF ISHII FOR FOUR YEAR TERMS ON THE DEVELOPMENT COMMITTEE EXPIRING ON DECEMBER 31, 2004

APPROVED THE REVIEW OF COUNCIL POLICY NO. 38 RELATING TO REQUESTS FOR CONTRIBUTIONS/DONATIONS FROM THE CITY OF LA PALMA

The motion was seconded by Councilmember Duke and carried on the following roll call vote:

AYES: Aragona, Barnes, Blake, Duke, Walker

NOES: None

ABSENT: None

SENIOR TRANSPORTATION RIDER FEE

Mayor Pro Tem Walker commented he thought the City was paying Laidlaw for this service out of the budget and questioned the rider fee.

Director of Recreation and Community Services Jan Hobson responded that the City is paying a contractual fee but there was always discussion about having some type of a ridership fee. She added that once you implement a program and there are no fees, when you go back later on down the road and try to implement something it is more difficult. She explained that staff checked the current fees and felt that 50 cents is a reasonable fee to charge for this service. This service will be on-call demand within a five-mile radius.

Mayor Pro Tem Walker made a motion to adopt a 50-cent one-way fee for riders using the CAT – Commute Around Town Senior Transportation Program. The motion was seconded by Councilmember Duke and carried on the following roll call vote:

AYES: Aragona, Barnes, Blake, Duke, Walker
NOES: None
ABSENT: None

COUNCILMEMBER REPORTS FROM CITY-AFFILIATED COMMITTEES

Councilmember Blake stated that he attended the Orange County Fire Authority Executive Board meeting and reported it was basically a closed session to discuss labor issues.

COUNCIL REMARKS

Councilmember Blake reported that Janet Cates, Tina Hanson, and Jan Hobson would be making a presentation on the City's new strategic plan at the Community Services State Policy Committee. Her personally thanked them for agreeing to make this presentation.

Councilmember Blake commented that he read in the paper that the Christmas tree pick up is from December 26th through January 2nd and expressed concern because none of his neighbors had put their trees out yet. He asked Mr. Noorbaksh if he would make sure that Park Disposal would pick up the trees for the remainder of the week.

Mayor Pro Tem Walker wished everyone a Happy New Year and stated hopefully there were no eventful events in La Palma.

Councilmember Blake reported that he had learned of an incident on New Year's Eve where a bullet had come through his son's English teacher's roof and landed on the staircase.

Mayor Aragona stated she has received several calls about the maintenance of the Edison right-of-way and she commended Ismile Noorbaksh for his prompt response and advice to these complaints, which included a telephone call by Mr. Noorbaksh after working hours to explain the situation.

Mayor Aragona stated that the City had won a grant from the CJPIA for emergency kiosks in the Edison right-of-way and commented that JPIA is going to expect the City to make a presentation in July and asked the status of the kiosks because she wants to make sure the City is ready for that presentation.

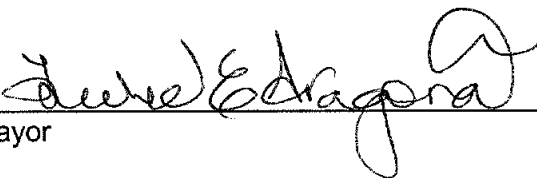
Mr. Wood responded that there would be a status report in the Friday Newsletter.

CLOSED SESSION

City Attorney Joel Kuperberg stated that at this time the City Council would recess to a Closed Session pursuant to Government Code Section 54957.6 to confer with Labor Negotiator; the Agency Negotiator is Len Wood, Interim City Manager; Employee Organizations: La Palma General Employees Association, Non-Represented Employees, La Palma Police Association.

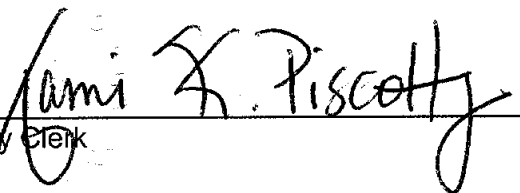
ADJOURNMENT

The City Council reconvened and adjourned at 10:25 p.m.



Mayor

ATTEST:



City Clerk