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3 **CITY OF LA HABRA HEIGHTS**
4
5 **MINUTES OF A REGULAR MEETING**
6
7 **OF THE PLANNING COMMISSION**

8
9 **MARCH 23, 2010**
10

11
12 **OPENING CEREMONIES**
13

14 **1. CALL MEETING TO ORDER**
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16 Chairman Larry Black called the March 23, 2010 Regular Planning Commission Meeting to
17 order at 7:00 p.m. in the multi-purpose Room, 1245 Hacienda Road, La Habra Heights,
18 California.
19

20 **ROLL CALL**
21

22 Present: Chairman Larry Black, Vice Chairperson Margarita McCoy; Commissioners
23 Dominick DiMario, Ray Fernandez and Judi Steffle.
24

25 Staff Present: City Manager Shauna Clark, City Planner Katherine Laufenburger and Planning
26 Commission Attorney Scott Porter.
27

28 **2. FLAG SALUTE**
29

30 Chairman Black led the flag salute.
31

32 **3. ITEMS FROM THE PUBLIC NOT ON THE AGENDA**
33

34 Stephen Blagden, Citron Road, noted that it would be better if there was some way to provide
35 such things as agendas and staff reports to the residents like the City website provides for the
36 City Council. The Planning Commission has an important job for the City and its residents.
37 Detail needs to be restored to the Planning Activity Report, such as the building size. It is good
38 to see the Code Report back as it was at the City Council meeting. It would also be good to
39 have some resolution to the cases. He also encouraged the Planning Commission to review
40 plans and projects going on and Call for Review interesting projects.
41

42 **George Edwardz** spoke about proposed new taxes for La Habra Heights. We still want no
43 raise in taxes and preserve one-acre parcels. The City is overspending and wants to raise
44 several kinds of taxes to take care of this. Mr. Edwardz stated that it is up to the residents to let
45 the Council know that they do not approve. The residents were not invited to view the budget
46 process this year. The residents should let the Council know that we really want other avenues
47 explored to find the money.
48

49 **CONSENT CALENDAR**
50

51 4. **APPROVAL OF MINUTES FOR FEBRUARY 23, 2010**
52
53 **RECOMMENDATION: That by Minute Action the Planning Commission approve**
54 **Planning Commission Minutes for February 23, 2010.**

55
56 Vice Chairperson McCoy asked the meaning on line 115 of the minutes where a number is
57 listed.

58
59 City Planner Laufenburger noted that this was just a typo and to delete it.

60
61 **Commissioner Fernandez moved to approve the February 23, 2010 Planning Commission**
62 **Minutes as corrected. Seconded by Vice Chairperson McCoy and approved as follows:**

- 63
64 **AYES: Black, DiMario, Fernandez, McCoy and Steffle.**
65 **NOES: None**
66

67 **PUBLIC HEARINGS**

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69 5. **CONTINUED FROM FEBRUARY 23 - DRAFT WIRELESS TELECOMMUNICATION**
70 **ORDINANCE**

- 71
72 **A. Presentation by Jonathan Kramer, Principal Attorney for Telecom Law Firm**
73 **B. Draft Wireless Telecommunications Ordinance**
74

75 **RECOMMENDED MOTION: That the Planning Commission continued the public**
76 **hearing until April 27, 2010 to allow staff additional time to include the DAS standards**
77 **and any additional changes as recommended by vote of the Commission**

78
79 City Planner Laufenburger presented the Staff Report and noted that staff is recommending that
80 this item be continued as they received some further information late last week that needs to be
81 considered in regards to Distributed Antenna Systems (DAS). The City has someone here
82 tonight to speak on that. The City has a reformatted Draft Ordinance ready. Ms. Laufenburger
83 introduced Mr. Jonathon Kramer with Kramer Telecom Law Firm to speak on this new system.

84
85 Jonathon Kramer gave a PowerPoint presentation, and stated his qualifications. Mr. Kramer
86 noted that DAS is likely to come into the City and provided pictures of various ways DAS can
87 be presented in cities. DAS moves the larger cabinets from the poles to somewhere else so they
88 have a smaller footprint. The DAS people are not wireless carriers, but are controlled by two
89 main companies. They bring in fiber optic cables and want to use right-of ways. This has to be
90 done responsibly. The City tries to minimize the visibility. It is important to protect right-of-
91 way issues in the Ordinance. The City needs to be sure that the Clearwire entity has a separate
92 treatment in the Ordinance. They do not have public right to the right-of-ways. The City needs
93 to be sure that if on public property, it is compensated for. He stated that it is the goals and
94 Ordinance that give the guidance needed by the City. It has been decided by the FCC that a
95 reasonable time to process an application is 90 to 150 days from the application to the time of a
96 potential appeal. That is a fairly short time due to some of the items that have to be considered.
97 The FCC does not provide the possibility to reset the clock. Mr. Kramer showed examples of
98 both well done and poorly constructed poles. How they are built is important to the
99 community. He stated that the Draft Ordinance is now pretty good, but there are just a few
100 more ideas that can make it better.

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Commissioner Steffire asked if he was a facilitator of cell systems.

Mr. Kramer explained that his company is a law firm working for governments around the country to help them fine tune their Ordinances and the issues of technology.

Commissioner Fernandez asked if Mr. Kramer has had a chance to read the Draft Ordinance and if there is anything specifics that he thinks would help our City.

Mr. Kramer answered that he has read it. He stated that the process is to now work through the attorneys and staff and let them decide how they want to change it for fine tuning.

Vice Chairperson McCoy asked Mr. Kramer what his purpose was in the fine tuning.

Mr. Kramer stated that the fine tuning helps those making the Ordinances to avoid items that could become lawsuits against the City. He felt there were a few opportunities to make the Draft Ordinance better in this area so cell companies could be encouraged without suits against the City.

Planning Commission Attorney Porter stated that he has worked with Mr. Kramer before and he would welcome assistance from him on these issues. Mr. Kramer is both a lawyer and an Engineer.

City Manager Clark explained that she had invited Mr. Kramer here because of the new DAS which the City the had not considered before and thought staff needed the information.

Mr. Kramer explained that the DAS is not a cell company, but telephone companies. They are regulated differently.

City Manager Clark asked the Commission to take the Draft Ordinance the City has and make the changes they want and then add this new technology so we cover everything. They are not required to get our permission to place their technology in our right-of-way. The City needs some control on this.

Commissioner DiMario expressed his approval on this further step.

Mr. Kramer explained that this new technology is already here. The principle advantage that the DAS offers is that one site can support multiple telephone companies at the same time. How the technology is deployed is very important.

City Manager Clark explained that we are not trying to limit the number of these providers, but rather we are trying to make sure that it is done in a way compatible with the community and acceptable to the industry.

Mr. Kramer explained that if the time limit is blown, it gives the DAS a chance to sue. The suits cover time, location or aesthetics.

Chairman Black asked what a city can do when something has been promised but not fulfilled.

150 Mr. Kramer stated that Code Enforcement is an important issue. It can be used to clean up
151 situations. It is important for the City to ask applicants questions. Ask for a photo simulation
152 and ask them if it is an accurate representation of the project they are going to build. Have the
153 answer on your record.

154
155 Chairman Black asked if the City is liable to be looking at further new ideas in the future that
156 we are not covering.

157
158 Mr. Kramer noted that generally the answer is no.

159
160 Chairman Black opened the Public Hearing for Comment on Item 5.

161
162 **George Edwardz** asked if the City has calculated the cost of hiring Mr. Kramer, and is there a
163 liability of us getting into the DAS situation. Do we really have that kind of money? What
164 companies has the City approached to get information for this Ordinance? He stated that the
165 present Ordinance is riddled with possible lawsuits as it is. The City does not need to add
166 something else. He noted that there is much more in the Ordinance that nobody is talking
167 about.

168
169 **Stephen Blagden, Citron Road**, asked Mr. Kramer if the cable cabinets on the right-of-way or
170 otherwise will be regulated as to aesthetics, and can this be done with this Ordinance. Also,
171 should the City have clear applications requirements and stick to them before accepting the
172 application? Mr. Blagden noted some of the unsightly looking panel antennas the cell
173 companies are putting up. He noted that the new Code allows for pole mounted boxes without
174 screening or very cheap minimal screening. In the new Ordinance it looks like "View"
175 consideration has vanished. Routine lighting should be prohibited in keeping with our "Dark
176 Skies" policy. There should be an annual CUP fee to cover the cost of the City's compliance
177 monitoring. Mr. Blagden stated several corrections that need to be made to the new Ordinance:
178 On page 2 under No. 1 under 7.8.30 at "A", it should be added "not co-located" and add "at a
179 facility approved by this Ordinance." At the bottom of page 2, the City needs an Encroachment
180 Ordinance. At the top of page 3, No. 2 conflicts with 7.8.60 – I. On page 8 – K, the pole
181 conduits should be painted a color that will look nice and wiring not done sloppily. Page 10,
182 No. 9 concerning noise control, the City's noise limits are too high as this is a continuous hum,
183 and there should be a standard that the noise should not be heard at neighboring homes. Page
184 12 – No. 2, if walls are used for screening ground mounted equipment, they should be
185 landscaped. Use the same idea for No. 3 for electrical meter cabinets for screening. The
186 bottom of page 12, No. 7, rather than a limit of 18 inches for landscaping from the road, it
187 should be 36 inches. Since we don't have many curbs, it should say, "or edge of road." On the
188 next page a No. 10 should be added stating that antennas and conduits should be color-coded to
189 the pole. Also, 7.8.80 should be stricken or very much tightened up. At 7.8.100, these same
190 CUP conditions should be applied to Administrative Decisions for permits also. At the end of
191 that section add a letter "F" for an Annual Compliance Fee as determined by the City Council,
192 and also adding that at Section 7.8.110 at 3. 7.8.110 is about signage size and should be more
193 specific due to the time limits. On "C" about removing graffiti, change "and" to "or" on the
194 time limit. 7.8.120-B-2, add "and the facility uses the current least impactful technology".
195 There should be a definition for Ground Mounted Facility.

196
197 **John Moreland, Core Communications**, stated that he has not worked with DAS, only
198 wireless industries. He stated that the Planning Commission should definitely take the
199 suggestions and let Mr. Kramer and the staff work out whatever is necessary to keep away legal

200 battles. He stated that in undergrounding the equipment it may take a larger space and this may
201 cause a problem with the narrow right-of-ways. Because of the massive rains a number of T-
202 Mobile facilities were flooded. He did not feel that landscaping is necessary in every case and
203 should be decided on a case by case decision. He stated that he has never heard of a
204 jurisdiction that charges an Annual Compliance Fee. It should be made sure that everything
205 complies with the plans before the Certificate of Occupancy is granted.
206

207 **Roy Cummings, Canonita Drive**, noted the importance of amateur radio in problems such as
208 earthquakes and asked that the Planning Commission does not eliminate the possibility of
209 amateur radio use in La Habra Heights.
210

211 Chairman Black closed the Public Hearing and brought it back to the Commission.
212

213 Commissioner Steffire stated that she would like to see the location of all cell towers or
214 equipment in La Habra Heights and who they belong to.
215

216 City Manager Clark noted that we do not have that information yet as we have not required a
217 permit for them.
218

219 Chairman Black asked what the Planning Commission can look forward to pertaining to cell
220 towers.
221

222 City Manager Clark stated that there are some that are co-located on telephone poles that did
223 not need our permission. What you will be looking at for fees is the application process to
224 make sure they are in compliance with the Code. If it is going to be located in the right-of-way,
225 they will have to get an encroachment permit. You are creating those guidelines.
226

227 Commissioner Fernandez noted that in rewriting this Ordinance the numbering has all been
228 changed. He stated that it would have been nice to see the changes made on the new Draft
229 Ordinance. He mentioned that he had not liked the rules for ground mounted equipment in the
230 right-of-way and could not find it now.
231

232 City Planner Laufenburger stated that when they bring the Draft Ordinance back next time it
233 will have a comprehensive showing the re-organization of the Ordinance. She noted that the
234 height and size rules of ground-mounted equipment in the right-of-way are now under
235 Development Standards on page 13-No. 6. It was changed to a maximum height of 6 feet with
236 a footprint of 20 feet. It was verified with Core Communications that those figures were
237 workable. She stated that now she has all Development Standards in one place and Design
238 Standards all in one place instead of scattered all over, which was confusing.
239

240 Commissioner Fernandez noted that there were three pages of Application Requirements and
241 he was not sure what more Mr. Blagden wanted to make the requirements clear when a
242 telecommunications provider is applying. He also did not agree with an Annual Compliance
243 Fee for them. The City does not ask this of home builders. He stated that there is still a
244 requirement in the Ordinance to provide a story pole. How can someone put up a 55 foot story
245 pole?
246

247 City Planner Laufenburger explained that they left the story pole in the Ordinance because it is
248 the norm for the City, but a lot of cities require photo simulations of what it would look like. If
249 the Commission thinks that would be adequate it can be changed to that.

250
251 Chairman Black stated that he thought the Commission should consider this as it is not a
252 residential structure. He thought it should be changed.
253
254 Commissioner Steffire asked the meaning of "Cell on Wheels".
255
256 City Planner Laufenburger explained that this is just a temporary pole possibly on a truck to
257 replace service when a cell goes down while they are fixing it. They have to get approval from
258 Staff to bring this into the City. We would charge them an application fee to review it.
259
260 Commissioner Steffire noted a rule that a cell facility cannot be located within 500 feet of
261 another cell facility and asked how the City will know this if the location is not known.
262
263 Ms. Laufenburger stated that as the City checks new facilities, staff will watch for other ones to
264 make sure they are not too close, and eventually the City will know where everything is. They
265 should be able to figure out who the provider is.
266
267 Commissioner Steffire noted that the cell pole cannot be lighted, but a flag pole has to be
268 lighted at night.
269
270 City Manager Clark stated that the City has a Dark Sky Ordinance that prohibits continuous
271 lighting at night, so there is a dichotomy on this.
272
273 Planning Commission Attorney Porter stated that a monopole is different from a flag pole.
274
275 City Planner Laufenburger explained that the maintenance requirement for a flag is because
276 often if a flag is placed on a monopole, they do not maintain it, but rather just ignore it and let it
277 get tattered.
278
279 Commissioner Fernandez noted that on page 1 it lists the antennas that are exempt from the
280 Ordinance.
281
282 The Commission discussed whether the exemptions allowed only one satellite dish or TV
283 antenna per residence.
284
285 Mr. Kramer noted that the FCC has a ruling on the over-the-air receiving devices. TV antennas
286 over 12 feet above the roof are subject to local regulation. There is a federal exemption for
287 satellite dishes up to 1 meter in diameter. There is both a federal and state limitation for ham
288 radio antennas (a number is not listed by them). We should do the least regulation on the ham
289 radio antennas, which are considered Health and Safety issues.
290
291 Chairman Black stated that he did not think they can get too explicit on these rules, but he
292 thought it was necessary to make the language clearer whether there can be more than one
293 receiver antenna dish or TV antenna at a residence. He was not aware what other cities are
294 doing in this area.
295
296 The Public Hearing was reopened for a comment from Mr. Edwardz.
297

298 **George Edwardz** suggested that there might be three allowed at a residence due to different
299 levels or different directions in which they might want a dish pointed. This could be quite
300 legitimate.

301 Chairman Black brought the meeting back to the Commission. He felt it should be left fairly
302 open.
303

304 Planning Commission Attorney Porter suggested for No. 2 - Satellite Dishes should say, "up to
305 5 ground or building mounted receive only radio or television satellite dishes".
306

307 Mr. Kramer noted that you might want to place an exemption for someone having one of the
308 pre-existing old large style dishes.
309

310 Commissioner Fernandez noted that No. 1 stated the height of a receiving antenna does not
311 agree with the FCC height allowance.
312

313 Planning Commission Attorney Porter noted that they will change the wording "a" to "any" for
314 the how many receiving antennas would be allowed on a residence.
315

316 Vice Chairperson McCoy expressed her concern with 7.8.20 about ham radio operators. The
317 condition of interference from the ham radios is much improved, but there is still occasionally a
318 problem for neighbors in the area.
319

320 Mr. Kramer noted that he has been an amateur radio operator for many years, and the City
321 cannot deal with the issue of interference with an Ordinance. If interference occurs the FCC
322 has a process to deal with it.
323

324 Vice Chairperson McCoy stated that she thought there should be some kind of building
325 inspection occur on new towers for safety.
326

327 Mr. Kramer stated that there is a legitimate basis for requiring permitting because it is a health
328 and safety issue. Within the FCC and State rules, this would be a permitted activity. He
329 recommended that some sort of permitting process be involved for public health and safety.
330

331 Vice Chairperson McCoy asked what a climbing leg is on a tower.
332

333 Mr. Kramer explained that it was one leg of a tower that is used to climb the tower, and it does
334 not start the ability to climb on it until further up the tower.
335

336 Vice Chairperson McCoy noted that the City should put in the Ordinance who was going to
337 make the decision on sustainability.
338

339 City Planner Laufenburger explained that for the permit, the applicant would have to get a
340 CUP, and they would have to come before the Planning Commission for the decision.
341

342 Planning Commission Attorney Porter noted that the City will add language making it clear that
343 this determination can only be issued as part of a CUP application.
344

345 Chairman Black asked if existing towers would be any way affected by this.
346
347

348 Planning Commission Attorney Porter explained that the Ordinance does not directly affect any
349 existing facility. If any of the existing facilities want to change something, they will have to
350 comply with the new requirements. Mr. Porter called attention to 7.8.20, which says "most
351 ham radio operators will be exempted." If the tower is more than a certain height, you will
352 have to come to the City. You will have to get a CUP if it is above the decided height. Is this
353 framework agreeable or do you want something else? The FCC rule PRB-1 says that we can't
354 regulate this too much. If you make the height limitation too low, it will cause you trouble.
355 The height limit will be your decision.
356

357 Chairman Black stated that he thought there should be some limitation and he asked for advice.
358

359 Planning Commissioner Attorney Porter stated that the City could say that you can get a CUP if
360 certain findings are made. The City will work with Mr. Kramer on what the correct height will
361 be.
362

363 Mr. Kramer stated that this is a reasonable approach to the situation. There seems to be a range
364 used from 35 to 65 feet. He will suggest a number when the Draft Ordinance comes back. It
365 actually is the process for the decision that is important.
366

367 **Vice Chairperson McCoy moved to continue the consideration of Chapter 7.8 to the April**
368 **27, 2010 Planning Commission Meeting. Seconded by Chairman Black and approved as**
369 **follows:**
370

371 **AYES: Black, DiMario, Fernandez, McCoy and Steffle**

372 **NOES: None**
373

374 **ITEMS FROM THE PLANNING COMMISSION**
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376 **6. N/A**
377

378 City Manager Clark explained that they had considered Commissioner Fernandez' suggestion
379 that the Planning Commission get information on Code Enforcement each month and after
380 discussing this with the our Attorney we came to the decision that we would update the Report
381 each month and give it to the City Council. You will be able to get this information on line
382 each month. This is very expensive to update each month and it is not under the purview of the
383 Planning Commission.
384

385 **ITEMS FROM STAFF**
386

387 **7. MONTHLY COMMUNITY DEVELOPMENT DEPARTMENT REPORT**
388

389 **RECOMMENDATION: Receive and File Report**
390

391 **Chairman Black asked to Receive and File the Community Development Report.** He
392 opened the meeting for Public Comment on Item 7.
393

394 **George Edwards** stated that it would be nice to get more information on who works for the
395 Community Development Department and what they do. He stated that the Planning
396 Commission should have interest in the code enforcement of projects that they had approved.
397

398 City Manager Clark pointed out that this is the planning side not the building side.

399
400 Chairman Black stated that he personally likes to look at current information on things and
401 keep up to date on what is going on. I think that is better for all of us and the more that is on
402 the website the better for all of us.

403
404 City Manager Clark stated that in the future when an application comes before you, you will be
405 advised of what Code violations have happened.

406
407 **ADJOURNMENT**

408
409 **8. ADJOURNMENT OF THE MEETING BY THE CHAIRMAN**

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411 Chairman Black advised everyone to volunteer in any situations you can. He adjourned the
412 March 23, 2010 Planning Commission Meeting at 9:21 p.m.

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416

LARRY BLACK, CHAIRMAN

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KATHERINE LAUFENBURGER, CITY PLANNER