

MINUTES
MALIBU CITY COUNCIL
REGULAR MEETING
MARCH 26, 2018
COUNCIL CHAMBERS
6:30 P.M.

CALL TO ORDER

Mayor Mullen called the meeting to order at 6:30 p.m.

ROLL CALL

The following persons were recorded in attendance by the Recording Secretary:

PRESENT: Mayor Rick Mullen; Mayor Pro Tem Jefferson Wagner; and Councilmembers Lou La Monte, Skylar Peak (via teleconference), and Laura Rosenthal

ALSO PRESENT: Christi Hogin, City Attorney; Reva Feldman, City Manager; Lisa Soghor, Assistant City Manager; Heather Glaser, City Clerk; Craig George, Environmental Sustainability Director; Bonnie Blue, Planning Director; Bob Brager, Public Works Director; Matt Myerhoff, Media Information Officer; Kelsey Pettijohn, Deputy City Clerk; Susan Dueñas, Public Safety Manager; Kristin Riesgo, Community Services Deputy Director; Chris Dean, Contract Geologist; Mark Johnson, Environmental Programs Coordinator; Christine Shen, Environmental Sustainability Analyst; Didier Murillo, Assistant Planner; Lilly Rudolph, Contract Planner; and Rob DuBoux, Assistant Public Works Director

PLEDGE OF ALLEGIANCE

Lester Tobias led the Pledge of Allegiance.

PUBLIC COMMENT ON CLOSED SESSION

None.

The following items were listed on the Closed Session agenda:

Conference with Real Property Negotiators pursuant to Government Code Section 54956.8:

1. Properties: APN 4458-022-011 (23575 Civic Center Way)
APN 4458-020-015 (Webb Way and Civic Center Way)
APN 4458-021-007 (Webb Way and Civic Center Way)
APN 4466-021-028 (Heathercliff Road and Pacific Coast Highway)
City Negotiator: City Manager Feldman
Property Negotiator: Malibu Bay Company
Under Negotiation: Price and terms of payment

CLOSED SESSION REPORT

City Attorney Hogin reported that the Regular meeting convened at 5:30 p.m. at which time the City Council recessed to a Closed Session pursuant to Government Code Section 54956.8 with all Councilmembers present, Councilmember Peak attending via teleconference. She stated the Council discussed the item listed on the Closed Session agenda, took no reportable action, and concluded at 6:09 p.m.

APPROVAL OF AGENDA

MOTION Councilmember Rosenthal moved and Councilmember La Monte seconded a motion to approve the agenda. The question was called and the motion carried unanimously.

REPORT ON POSTING OF AGENDA

City Clerk Glaser reported that the agenda for the meeting was properly posted on March 15, 2018.

ITEM 1 CEREMONIAL/PRESENTATIONS

A. Proclamation Declaring March 30, 2018 as the 75th Anniversary of the Warsaw Ghetto Uprising

Mayor Mullen presented the proclamation to John Honigsfeld.

Mr. Honigsfeld thanked the Council for its support and discussed the commemoration event taking place on March 30, 2018.

ITEM 2.A. PUBLIC COMMENTS

Shane Howerton discussed starvation of veterans, citizens and children.

Craig Gold discussed Sycamore Park and stated the Mountains Recreation and Conservation Authority (MRCA) required a conditional use permit (CUP) for its park project in the rural residential zone.

Elizabeth Robinson deferred her time to Ken Kearsley.

Barbara Kearsley deferred her time to Ken Kearsley.

Ken Kearsley stated MRCA was applying for \$250,000 of Proposition 84 funds to restructure a road in Sycamore Park. He stated the City had issued a notice of violation for signs and benches. He requested the City require MRCA to obtain a CUP. He requested the Council hold a public hearing to establish a policy to prevent the use of gates on public property. He discussed a group of communities that would form to protect neighborhood privacy.

Neil Gray deferred his time to Britney Stephens.

Cheryl Calvert deferred her time to Britney Stephens.

Britney Stephens discussed Sycamore Park and requested information regarding Notices of Violation that had been filed.

Howard Rudzki discussed the interpretation of Malibu Municipal Code (MMC) Section 17.40 as it related to placement of a gate in the private neighborhood of Sycamore Park. He stated the Council needed to step in and assist the community since the Planning Department had already done what it could.

Ryan Embree discussed temporary use permits. He stated the City was responsible for protecting private property rights. He discussed a Council Policy regarding prior employees and Councilmembers contracting with the City.

William Hammond read the *The Wrong Side of History* by poet IN-Q.

ITEM 2.B. COMMISSION / COMMITTEE / CITY MANAGER UPDATES

City Manager Feldman introduced new staff members Environmental Sustainability Analyst Christine Shen, Environmental Programs Coordinator Mark Johnson, and Assistant Planner Didier Murillo. She stated the Library Needs Assessment was still available to the community via the City website. She announced the rescheduled Easter Hoppening event would be held on March 30, 2018, at Malibu Bluffs Park. She provided traffic updates for various projects on Pacific Coast Highway.

ITEM 2.C. SUBCOMMITTEE REPORTS / COUNCIL COMMENTS

Councilmember La Monte thanked Mr. Hammond.

In response to Councilmember La Monte, Planning Director Blue stated Code Enforcement had reached out to MRCA regarding code violations on its property in Sycamore Park and a notice of violation had been sent. She stated she was unaware of a records request having been filed for information on notices of violation. She stated Code Enforcement had required MRCA to remove the improvements and cover the signs as a first step. She stated the Planning Department had determined a gate for vehicular access would not have an adverse effect on traffic flow. She stated a pedestrian access gate had been suggested. She stated a coastal development permit was required by the Local Coastal Program to process the access gate, which was likely to take a few months to get to a hearing.

Councilmember La Monte stated he would like the Council to review the interpretation of MMC Section 17.40. He stated he attended the National League of Cities Congressional City Conference in Washington, D.C. He stated the

Southern California Association of Governments (SCAG) Legislative/Communications and Membership Committee approved Assembly Bill (AB) 3162 unanimously. He stated he attended a panel in Newport Beach with Dave Aronberg, State Attorney for Palm Beach County, Florida. He stated he attended and spoke at the annual Meals on Wheels event in Santa Monica. He stated Councilmembers Rosenthal, Wagner, and he attended the Offshore Oil Drilling's Threat to Our Coast forum hosted by the Malibu Township Council (MTC). He stated he served as judge at the 46th Pepperdine Songfest.

Councilmember Rosenthal welcomed the Pepperdine University journalism students in the audience. She thanked Mr. Hammond. She stated she attended the March for our Lives event in Santa Monica. She wished everyone a happy Passover and Easter. She stated she attended the Malibu Area Conservation Coalition (MACC) meeting. She stated the Santa Monica-Malibu Unified School District (SMMUSD) was looking at putting two separate bonds on the 2018 ballot, one for Santa Monica and one for Malibu. She stated she spoke at the Malibu Chamber of Commerce Breakfast event. She stated she attended an open house event hosted by Supervisor Sheila Kuehl, as well as a SMMUSD Board of Education meeting regarding unification. She stated the Board voted to conditionally move forward with a 50-year financial sharing plan to separate to a Santa Monica Unified School District and a Malibu Unified School District. She requested the Council consider requesting the Los Angeles County Office of Education to put the City petition for unification on hold.

Mayor Mullen requested the Council review the SMMUSD Board of Education presentation at the next Council meeting and decide how to respond from there.

CONSENSUS

By consensus, the Council directed staff to bring an item back at the April 9, 2018 Regular City Council meeting to respond to the Santa Monica-Malibu Unified School District Board of Education meeting of March 20, 2018.

Councilmember Rosenthal stated she attended the Malibu Library Speaker Series event and the Offshore Oil Drilling's Threat to Our Coast forum hosted by MTC. She stated SCAG would consider endorsement of AB 3162 on April 5, 2018. She stated the April 2, 2018 Regular Planning Commission meeting had been cancelled. She stated March 30, 2018, was the last day to apply for the General Fund Grant Program. She announced the next Library Speaker Series event on April 11, 2018. She announced a household hazardous waste and electronic waste disposal event, as well as a document shredding event, on April 21, 2018. She announced a screening of the movie, *The Journey is the Destination: The True Story of Dan Eldon*, on March 27, 2018. She announced a Creative Activist Coffeehouse event on April 10, 2018.

Councilmember Peak thanked Mr. Hammond. He discussed the challenges MRCA was presenting in neighborhoods.

Mayor Pro Tem Wagner stated he attended the Offshore Oil Drilling's Threat to Our Coast forum hosted by MTC. He discussed the methods the City utilized to update the community. He stated he was working with Pepperdine University to establish an Ombudsman's Office in the City. He welcomed new City staff members and discussed his hope of establishing an Environmental Commission. He announced an Adamson House Board of Directors meeting on March 28, 2018.

Mayor Mullen stated he attended the SMMUSD Board of Education meeting. He stated he attended an open house event hosted by Supervisor Sheila Kuehl. He discussed his work on the Federal Aviation Administration Next Generation Air Transportation System issues. He discussed the Sycamore Park matter.

In response to Mayor Mullen, City Attorney Hogin stated the preliminary step of issuing a notice of violation to MRCA would lead to action taken by her office.

Mayor Mullen stated the City was working on the challenges MRCA was presenting in neighborhoods. He welcomed the Pepperdine University journalism students in the audience. He discussed his background in journalism. He discussed freedom of speech.

Mayor Pro Tem Wagner stated he spoke at the Democratic Club meeting on March 25, 2018. He discussed MRCA and suggested the homeowner groups work together.

ITEM 3 CONSENT CALENDAR

Item Nos. 3.B.4. and 3.B.7. were pulled by the public. Item Nos. 3.B.4, and 3.B.8. were pulled by the Council. The following items were pulled from the consent calendar for individual consideration:

4. Amendment to Memorandum of Understanding for Malibu Library
Recommended Action: Authorize the City Manager to execute Amendment No. 1 to the Memorandum of Understanding (MOU) between the City and the County of Los Angeles governing the use of property tax dollars apportioned to the County Library.

Ryan Embree discussed the library.

City Manager Feldman stated the amendment extended an existing agreement with the County.

Councilmember Rosenthal discussed the MOU with the County of Los Angeles, which allowed for many events and library operations in the City.

MOTION

Councilmember Rosenthal moved and Mayor Pro Tem Wagner seconded a motion to authorize the City Manager to execute Amendment No. 1 to

the Memorandum of Understanding (MOU) between the City and the County of Los Angeles governing the use of property tax dollars apportioned to the County Library.

Mayor Pro Tem Wagner stated the community needed to provide input on how funds were being used.

The question was called and the motion carried unanimously.

7. Floodplain Variance – 24300 Malibu Road

Recommended Action: Adopt Resolution No. 18-13 granting a variance from the floodplain coastal high hazard requirements for the construction of a bulkhead within a coastal floodplain at 24300 Malibu Road.

John Mazza stated the MTC event on March 24, 2018, was nonpolitical and nonpartisan. He stated a CDP, required for a variance, had not been discussed by the Planning Commission and the variance should have been noticed as a public hearing.

Lester Tobias stated the Planning Commission considered and approved the CDP on December 6, 2017.

City Manager Feldman stated a CDP had been approved by the Planning Commission.

City Attorney Hogin stated the variance under consideration was under Chapter 15 of the building code and did not require a public hearing.

Assistant Public Works Director DuBoux stated a CDP had been approved. He discussed the development restrictions and explained the need for a variance.

MOTION

Councilmember Rosenthal moved and Councilmember La Monte seconded a motion to adopt Resolution No. 18-13 granting a variance from the floodplain coastal high hazard requirements for the construction of a bulkhead within a coastal floodplain at 24300 Malibu Road. The question was called and the motion carried unanimously.

8. Records Retention Schedules

Recommended Action: Adopt Resolution No. 18-14 adopting records retention schedules, authorizing the destruction of certain City records and repealing Resolution No. 17-23.

Mayor Pro Tem Wagner stated he pulled the item to ensure the community had an opportunity to comment on the City retention schedules.

MOTION

Mayor Pro Tem Wagner moved and Councilmember La Monte seconded a motion to adopt Resolution No. 18-14 adopting records retention

schedules, authorizing the destruction of certain City records and repealing Resolution No. 17-23. The question was called and the motion carried unanimously.

MOTION Councilmember Rosenthal moved and Councilmember La Monte seconded a motion to approve the Consent Calendar, except for Item Nos. 3.B.4., 3.B.7., and 3.B.8. The question was called and the motion carried unanimously.

The Consent Calendar consisted of the following items:

A. Previously Discussed Items

1. Second Reading and Adoption of Ordinance No. 433

Recommended Action: Conduct second reading, unless waived, and adopt Ordinance No. 433 reauthorizing Ordinance No. 311 and the public, educational, and governmental (PEG) fee on state video franchise holders operating within the City of Malibu and finding the action exempt from the California Environmental Quality Act.

B. New Items

1. Waive Further Reading

Recommended Action: After the City Attorney has read the title, waive full reading of ordinances considered on this agenda for introduction on first reading and/or second reading and adoption.

2. Approve Warrants

Recommended Action: Allow and approve warrant demand numbers 52953-53056 listed on the register from the General Fund and direct the City Manager to pay out the funds to each of the claimants listed in Warrant Register No. 613 in the amount of the warrant appearing opposite their names, for the purposes stated on the respective demands in a total amount of \$374,007.16. City of Malibu payroll check numbers 4898-4902 and ACH deposits were issued in the amount of \$190,554.72.

3. Approval of Minutes

Recommended Action: Approve the minutes for the February 26, 2018 Malibu City Council Regular meeting.

5. Amendment to Professional Services Agreement with Raftelis Financial Consultants, Inc.

Recommended Action: Authorize the City Manager to execute Amendment No.1 to the Professional Services Agreement with Raftelis Financial Consultants, Inc. in the amount of \$47,816 for additional consulting services to develop and submit the 2018 wastewater charges to property tax roll and to develop the billing system for recycled water service for the Civic Center Wastewater Treatment Facility.

6. Award the La Costa Area Pedestrian Improvements Project to PTM General Engineering Services, Inc.

Recommended Action: 1) Approve the award and authorize the City Manager to execute a construction contract with PTM General Engineering Services, Inc. (PTM) in the amount of \$169,109 for the La Costa Area Pedestrian Improvements Project, Specification No. 2054; and

- 2) Authorize the Public Works Director to approve any potential change orders up to 25% of the contract amount.

In response to Mayor Pro Tem Wagner, City Manager Feldman explained the notification system utilized by the City for lane closures, traffic hazards, emergencies and power outages.

ITEM 4 ORDINANCES AND PUBLIC HEARINGS

- A. Zoning Text Amendment No. 17-002 – An amendment regarding short-term rental of property (also known as vacation rentals) in residential and multi-family zones

Recommended Action: Continue this item to a date uncertain.

This item was continued upon approval of the agenda.

RECESS At 7:50 p.m. Mayor Mullen called a recess. The meeting reconvened at 8:00 p.m. with all Councilmembers present.

- B. Appeal No. 17-010 - Appeal of Planning Commission Resolution No. 17-55 (20272 Inland Lane; Appellant: Hak P. Wong; Applicant: Johnathen Day; Property Owner: The Jonathan L. Congdon Revocable Trust)

Recommended Action: Adopt Resolution No. 18-15, determining the proposed amendment is categorically exempt from the California Environmental Quality Act (CEQA), denying Appeal No. 17-010 and approving Coastal Development Permit Amendment (CDPA) No. 15-005 amending Coastal Development Permit (CDP) No. 11-037, Variance (VAR) No. 11-018 and Minor Modification (MM) No. 12-007, which approved a one-story, single-family residence with a variance from the City's geotechnical standards and a minor modification of the setbacks, to modify the design of the home, creating a two-story flat roof design and constructing a cabana, including Site Plan Review (SPR) No. 15-039 for the roof height in excess of 18 feet, up to 24 feet for a flat roof; and Time Extension No. 16-031 to extend the expiration date of the original CDP a second time by two years, located in the Single-Family Low Density (SFL) zoning district at 20272 Inland Lane (The Jonathan L. Congdon Revocable Trust).

Contract Planner Rudolph presented the staff report.

Joshua Hopstone, on behalf of the appellant, stated the proposed project was different from the original project approved in 2012. He expressed opposition to the 755 cubic yards of excavation required for the proposed CDPA project. He stated the project was unsafe and was not the least environmentally damaging alternative. He expressed concern regarding the active landslide and stated the project had not been tested for safety in the event of an earthquake. He discussed the procedural defects for processing the time extension.

Donald Kowalewsky discussed the geotechnical aspects of the project. He stated all structures had to be evaluated for seismic activity. He stated the project did not

meet the minimum safety requirements.

Norm Haynie, on behalf of the applicant, stated the project met all side, back, and front yard setback requirements without a variance and discussed the minor modification. He discussed the elevations of the project. He stated the average home size in a 500-foot radius, minus the largest 10 percent and smallest 10 percent, was 2,740 square feet. He stated the CDPA project square footage was 3,337 square feet versus the original project square footage of 3,084 square feet.

Johnathan Congdon, applicant, discussed the view impact reduction of the CDPA project. He stated he had spoken with everyone that opposed the project.

John Mazza stated the project was conditioned to require Quality Control and Maintenance Manual reports. He discussed the CDP that expired on December 10, 2016, and stated an extension needed to be submitted in writing and before the expiration.

Arnold Abrams indicated support for the appeal. He stated the CDP had already expired and the proposed structure did not provide safe setbacks. He thanked Mayor Mullen and Mayor Pro Tem Wagner for meeting with concerned residents. He stated the project changed the neighborhood character.

Johnathan Day discussed the project view corridor. He stated the time extension request was due during the holiday season when then Contract Planner Jasch Janowicz was part-time and was handing the project off to a different planner. He stated it was his impression the intent of the applicant was understood by the City as the project was actively being altered. He stated the project included a solar component.

Nora Cohen indicated support for denying the appeal.

Lindsay Luzader indicated support for denying the appeal.

Rebecca Congdon declined to speak.

Brittany Somerville indicated support for denying the appeal.

Sam Congdon declined to speak.

Rosemarie Ihde stated she had witnessed many slides in her neighborhood. She indicated opposition to two-story homes, minor modifications, and excavating the hillside.

Mr. Hopstone discussed safety for the surrounding properties and the public. He stated aesthetics and view corridor were in the discretion of the Planning Commission and the Council, but safety matters were not.

Mark Barrett stated the home was being built on pylons.

Fred Gaines stated the Congdon family had spent a lot of time working with the neighbors regarding the CDPA. He stated the opposition did not want any project to move forward.

Councilmember La Monte stated he visited the project site. He stated four out of five of the Planning Commissioners stated no findings could be made to prevent the home from being built. He stated drainage on Inland Lane should be addressed by the neighborhood.

Councilmember Rosenthal stated she visited the project site. She expressed concern over the geology of the project but stated she had to rely on the Planning Commission and City staff to provide expertise.

In response to Councilmember Rosenthal, Contract Geologist Dean discussed the Big Rock Mesa landslide. He stated movement was in tenths of inches during the rain events of 1995, 1998, and 2005. He discussed the 1993 firestorm and fire rebuilds. He stated stability could not be demonstrated. He discussed the intent of the variance allowed by Local Implementation Plan (LIP) Section 13.26.5(B) and the various methods taken to ensure safety.

In response to Councilmember Peak, Contract Geologist Dean stated the project home, and all the homes on the slide, did not meet the minimum safety requirements adopted by the Council in 2013 for new development in the City. He stated a recent approval had been issued for a burnout lot on PCH under the same guidelines.

Contract Planner Rudolph discussed homes built from 1996 to 2000.

Councilmember Peak stated the applicant had been cooperative in remedying neighbor concerns regarding the project. He expressed concern for the safety of the project.

In response to Councilmember Peak, Mr. Congdon stated it was his impression from Contract Planner Jasch Janowicz that an extension request was not necessary. Councilmember Peak disclosed he spoke with Mr. Haynie and had not learned anything that was not already presented.

In response to Councilmember Peak, Contract Geologist Dean stated the Big Rock Mesa landslide prevented the home from meeting the minimum factors for safety. He stated one house could not destabilize the landslide are.

In response to Councilmember Peak, City Attorney Hugin stated a previous case in Rancho Palos Verdes made it clear that cities could not require a 1.5 factor of safety as a bright-line rule. She stated the City relied on Contract Geologist Dean to carefully analyze projects using industry standards and best practices to make

sure projects were being approved within guidelines with the addition of slide waivers.

Mayor Pro Tem Wagner disclosed he visited the site, met with numerous homeowners at Mr. Wong's home, and met with Mr. Haynie and had not learned anything that was not already presented. He stated an extension request should have been filed on time. He stated the applicant had worked with the neighbors regarding the view. He questioned the lack of a landscape plan. He stated the project was balanced.

In response to Mayor Pro Tem Wagner, Planning Director Blue stated the color palette was generally on the construction drawings and reviewed when plan check was started.

Contract Planner Rudolph stated no landscaping was proposed for the project.

In response to Mayor Pro Tem Wagner, Contract Geologist Dean stated an assumption of risk and release for geotechnical hazards was required before permit issuance.

Mayor Pro Tem Wagner stated there were a number of complications with the project.

Mayor Mullen disclosed he met with Mr. Wong, neighbors, and Mr. Haynie. He stated he appreciated it when property owners were conscientious of the desires of neighbors.

In response to Mayor Mullen, Mr. Congdon stated an open space easement had been granted to increase the view corridor and allow use by neighbors.

In response to Mayor Mullen, Planning Director Blue explained the CDP application history. She stated staff interpreted the CDPA application submitted before the CDP expiration as amending the design and requesting an extension.

In response to Mayor Mullen, Contract Geologist Dean stated there was no way for a new home built on the Big Rock Mesa slide to meet the intent of the 2013 guidelines. Mayor Mullen stated the project was not significantly larger or taller than other homes in the neighborhood. He stated a two-story home set into the hill did not have any visual impact and the Congdons had been sensitive to the desires of their neighbors. He stated the permit extension had been implied by the ongoing work.

MOTION

Mayor Mullen moved and Councilmember La Monte seconded a motion to adopt Resolution No. 18-15, determining the proposed amendment is categorically exempt from the California Environmental Quality Act (CEQA), denying Appeal No. 17-010 and approving Coastal Development Permit Amendment (CDPA) No. 15-005 amending Coastal Development Permit (CDP) No. 11-037, Variance

(VAR) No. 11-018 and Minor Modification (MM) No. 12-007, which approved a one-story, single-family residence with a variance from the City's geotechnical standards and a minor modification of the setbacks, to modify the design of the home, creating a two-story flat roof design and constructing a cabana, including Site Plan Review (SPR) No. 15-039 for the roof height in excess of 18 feet, up to 24 feet for a flat roof; and Time Extension No. 16-031 to extend the expiration date of the original CDP a second time by two years, located in the Single-Family Low Density (SFL) zoning district at 20272 Inland Lane (The Jonathan L. Congdon Revocable Trust).

In response to Mayor Pro Tem Wagner, Planning Director Blue stated the LIP only required homes be earth tone when visible from scenic areas. Contract Planner Rudolph stated landscaping could not be installed as part of the project or in the future. Councilmember Rosenthal discussed primary view determinations. Planning Director Blue stated the violation on the property next door was being worked through and had not been constructed by the applicant.

The question was called and the motion carried 4-1, Mayor Pro Tem Wagner dissenting.

ITEM 5 OLD BUSINESS

None.

ITEM 6 NEW BUSINESS

None.

ITEM 7 COUNCIL ITEMS

- A. Assembly Bill (AB) 3162 Revising Licensure and Regulation of Alcoholism or Drug Abuse Recovery or Treatment Facilities – SUPPORT (Councilmember La Monte)

Recommended Action: Authorize the Mayor to send a letter to the California State Assembly Committee on Health in support of AB 3162, legislation that would revise the Health and Safety Code with regard to licensure and regulation of alcoholism or drug abuse recovery or treatment facilities.

Councilmember La Monte presented the item.

MOTION Councilmember La Monte moved and Councilmember Rosenthal seconded a motion to authorize the Mayor to send a letter to the California State Assembly Committee on Health in support of AB 3162, legislation that would revise the Health and Safety Code with regard to licensure and regulation of alcoholism or drug abuse recovery or treatment facilities.

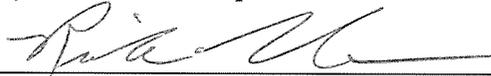
Mayor Mullen indicated appreciation for the work Councilmember La Monte had put into moving the bill forward over so many years.

The question was called and the motion carried unanimously.

ADJOURNMENT

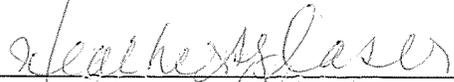
At 10:06 p.m., Mayor Mullen adjourned the meeting in memory of Bill Chadwick.

Approved and adopted by the City Council of the
City of Malibu on April 23, 2018.



RICK MULLEN, Mayor

ATTEST:



HEATHER GLASER, City Clerk
(seal)