

MINUTES
MALIBU CITY COUNCIL
REGULAR MEETING
APRIL 27, 2020
TELECONFERENCED - VARIOUS LOCATIONS
6:30 P.M.

The following meeting was held pursuant to the Governor's Executive Orders N-25-20 and N-29-20 and fully teleconferenced from various locations during the coronavirus disease (COVID-19) pandemic.

MEETING CALL TO ORDER

Mayor Farrer called the meeting to order at 6:35 p.m.

ROLL CALL

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

PRESENT: Mayor Karen Farrer; Mayor Pro Tem Mikke Pierson; and Councilmembers Rick Mullen; Skylar Peak; and Jefferson Wagner

ALSO PRESENT: Christi Hogin, City Attorney; Reva Feldman, City Manager; Lisa Soghor, Assistant City Manager; Heather Glaser, City Clerk; Jesse Bobbett, Community Services Director; Yolanda Bundy, Environmental Sustainability Director; Bonnie Blue, Planning Director; Kelsey Pettijohn, Deputy City Clerk; Lilly Rudolph, Contract Planner; and Susan Dueñas, Public Safety Manager

REPORT ON POSTING OF AGENDA

Deputy City Clerk Pettijohn reported that the agenda for the meeting was properly posted on April 24, 2020.

APPROVAL OF AGENDA

MOTION Councilmember Wagner moved and Councilmember Peak seconded a motion to approve the agenda. The question was called and the motion carried unanimously.

ITEM 1 CEREMONIAL/PRESENTATIONS

A. Staff Update on COVID-19

City Manager Feldman stated the majority of City staff was working remotely. She stated employees with job duties that could not be performed outside of City Hall were on leave either utilizing accrued leave or federal funding. She stated the temporary 5% pay increase initially implemented for emergency operations center staff had been discontinued. She stated emergency messaging would be scaled back to once a day. She stated 11 days of COVID-19 testing had been performed at City Hall through the City's partnership with Community Organized Relief Effort

(CORE) and Malibu Medical. She stated 3,000 people had been tested with 48 positive cases. She stated 28 positive cases had been reported to date in Malibu. She stated many positive results were from people who were asymptomatic. She stated the Community Emergency Response Team (CERT) had volunteered over 400 hours to the City since stay-at-home orders had been issued. She thanked CERT and the Volunteers on Patrol (VOP) for their assistance during the COVID-19 pandemic. She encouraged the community to visit www.malibucity.org/virtualrec.

ITEM 2.A. PUBLIC COMMENTS

Jonathan Kaye was not present at the time of hearing.

Barry Haldeman was not present at the time of the hearing.

Kraig Hill discussed the process of tracking and tracing COVID-19 infection. He stated Congress needed act quickly to allow universal vote by mail ballots for the November 2020 Election.

William Winokur stated not everyone was observing guidelines for safety through the COVID-19 pandemic. He discussed lack of enforcement for people experiencing homelessness.

Hamish Patterson questioned how herd immunity would be achieved while everyone was under stay-at-home orders. He expressed concern the City would experience a spike in crime, homelessness, and civil unrest. He discussed the Councilmembers obligation to uphold the Constitution.

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

City Manager Feldman stated the benches were refinished throughout Legacy Park. She stated Legacy Park rehabilitation and park maintenance continued through stay-at-home orders. She stated the temporary skate park was moving along. She stated trail repair at Charmlee Wilderness Park would be aided by volunteer assistance in order to get the Park reopened. She stated staff was moving forward with the Emergency Warning Siren Study. She stated 92 building permits for Woolsey Fire rebuilding had been issued to date. She stated the La Paz project had been permitted and demolition had begun. She stated intermittent closures along Civic Center Way were due to not only the La Paz project but also the Santa Monica College Malibu Satellite Campus project. She stated Southern California Edison (SCE) would replace 38 poles along Malibu Canyon Road, two of which were within the City limits. She announced the City was able to accept electronic payments for fees normally paid in City Hall and that the City could now digitally stamp plans and permits. She stated she was working with the County of Los Angeles on a Safe Parking Program as well as a shelter at the old County Courthouse location for people experiencing homelessness as requested by the Council. She stated the Council would have its first consideration of the Proposed Budget for Fiscal Year 2020-2021 at a Special meeting on April 29, 2020.

In response to Mayor Farrer, City Manager Feldman stated the County of Los Angeles had not yet announced a date for lifting the stay-at-home order. She stated San Francisco had recently extended its stay-at-home orders through the end of May 2020.

ITEM 2.C. SUBCOMMITTEE REPORTS / COUNCIL COMMENTS

Councilmember Wagner discussed fiat money. He stated he had a one-hour Zoom meeting with Pepperdine University President Jim Gash, Assistant City Attorney Rusin, several professors at the university, and students that would participate in establishing an Ombudsman office in Malibu.

Councilmember Mullen thanked CERT, VOPs, City Manager Feldman. He stated homelessness was a statewide long-term problem. He stated human nature was straining at the bridle to get back to normal.

Councilmember Peak indicated agreement with Councilmember Mullen. He stated he hoped everything could get back to normal as soon as possible.

Councilmember Wagner discussed an Ombudsman office in the City. He discussed establishing temporary housing on California State Park property at Topanga. He discussed *Janet Garcia v. City of Los Angeles* .

Mayor Pro Tem Pierson stated stay-at-home orders were hard and an imperfect approach. He stated he requested to be on City of Los Angeles Mayor Eric Garcetti's part of the group outlining reopening as a representative from the beach cities. He stated the City had received a lot of conflicting feedback about the amount and type of communication from the City. He stated staff was working hard to make sure Council meetings were still happening and shorter than normal noticing was due to the ever-changing situation as a result of COVID-19. He expressed concern about problem short-term rental. He stated Mayor Farrer, City Manager Feldman, Planning Director Blue, and he met virtually with the California Coastal Commission (CCC). He thanked everyone involved in making COVID-19 testing happen at City Hall. He thanked the City staff, CERT, VOPs, Arson Watch, the Los Angeles County Sheriff's Department, and other agencies.

Mayor Farrer discussed phased reopening of California. She expressed concern that not opening in a thoughtful way would negate the progress made through stay-at-home orders. She stated there were challenges related to persons experiencing homelessness. She thanked CART and Alex Gittinger with The People Concern. She thanked City Manager Feldman and City staff for working through the challenges everyone was experiencing throughout the COVID-19 pandemic. She thanked Sean Penn and CORE, Dr. Lisa Benya and her staff, and CERT for organizing COVID-19 testing at City Hall. She thanked Jane Albrecht and the Malibu Democratic club for organizing and hosting "A Night In" with Congressman Ted Lieu, State Senator Ben Allen, the presidents of four neighboring Democratic Clubs, Mayor Pro Tem Pierson and herself. She stated she attended a

Las Virgenes-Malibu Council of Governments (COG) virtual meeting. She stated the City's financial conservation was paying off and expressed appreciation the City was able to receive the settlement with SCE for the Woolsey Fire when it did. She stated she attended a meeting with CCC Executive Director Jack Ainsworth and staff.

ITEM 3 CONSENT CALENDAR

MOTION Councilmember Peak moved and Councilmember Mullen seconded a motion to approve the Consent Calendar. The question was called and the motion carried unanimously.

The Consent Calendar consisted of the following items:

A. Previously Discussed Items

None.

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 60043-60162 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. 658 in the amount of the warrant appearing opposite their names, for the purposes stated on the respective demands in a total amount of \$1,561,994.07. City of Malibu payroll check numbers 5096-5099 and ACH deposits were issued in the amount of \$241,407.85.

3. Senate Bill 1 Road Maintenance and Rehabilitation Account Funding and Project List

Recommended Action: Adopt Resolution No. 20-17 approving the Fiscal Year 2020-2021 project list for Senate Bill 1 (Road Repair and Accountability Act of 2017) Road Maintenance and Rehabilitation Account funding.

ITEM 4 ORDINANCES AND PUBLIC HEARINGS

A. Fiscal Year 2020-2021 Schedule of Fees

Recommended Action: 1) Adopt Resolution No. 20-18 establishing the Fiscal Year 2020-2021 schedule of fees; and 2) Provide recommendation on setting the fee for Planning Department appeals.

Assistant City Manager Soghor presented the report.

Jo Drummond requested the Council not raise the Planning appeal fee from \$500 to \$1,000.

Colin Drummond indicated support for Ms. Drummond's comments. He stated raising the appeal fee would send a message that was inappropriate and did not cater to Malibu residents that were not billionaires or celebrities.

Christopher Cunningham stated raising the Planning appeal fee would give the impression the City was pro-development. He indicated opposition to increasing the appeal fee.

John Mazza questioned why February of each year was used to calculate the cost of living adjustment (COLA) percentage. He discussed the history of the Planning Department appeal fee. He stated public should not be priced out of its ability to participate in the process and appeal a decision. He stated the fee should not favor the wealthy or developers.

Kraig Hill indicated agreement with Mr. Mazza. He discussed the appeal fee. He recommended raising all development fees instead of raising the appeal fee.

Assistant City Manager Soghor stated a February number was used for the COLA percentage was because it was the latest available month of information that could be used before developing the next year's budget. She clarified staff was not recommending full cost recovery for Planning appeals but was requesting direction from the Council.

City Attorney Hogin stated the appeal fee was not set at an amount to discourage appeals and did not favor one side or another. She stated the fee could not be market based since California State law required a fee be no more than the actual cost to the City. She stated a fee of less than full recovery was an offset of the actual cost of considering a matter that may only affect a certain portion of the public. She stated all taxpayers would then share in paying for the remainder of the cost to the City not recovered through the fee.

In response to Councilmember Peak, Planning Director Blue stated there were around six to 12 Planning appeals per year. She stated staff had not examined what surrounding cities charged.

City Manager Feldman stated the Planning appeal fee had not changed in many years and staff could gather additional information to bring back with the budget consideration.

Councilmember Peak indicated support for a slight fee increase to the appeal fee.

Councilmember Wagner stated making the Planning appeal process revenue neutral would not be achievable while still being fair for the entire community.

Councilmember Mullen stated it was important for everyone to be able to participate in the appeal process. He indicated opposition to the fee being raised to

the point of full cost recovery. He indicated support for the fee being possibly raised to up to \$1,000.

Mayor Pro Tem Pierson questioned what other COG cities were charging. He stated he was curious about why the fee had been lowered to \$500 in the past. He indicated support for possibly raising the Planning appeal fee.

Mayor Farrer expressed concern that the cost to the City for a Planning appeal was so much higher than what was being recovered. She indicated support for increasing the fee to \$750.

MOTION Councilmember Peak moved and Councilmember Mullen seconded a motion to: 1) adopt Resolution No. 20-18 establishing the Fiscal Year 2020-2021 schedule of fees; and 2) direct staff to bring back an item to increase the fee for Planning Department appeals from \$500 to \$750.

Councilmember Wagner stated the fee had been previously lowered to \$500 due to requests from the public to lower the fee.

The question was called and the motion carried unanimously.

ITEM 5 OLD BUSINESS

None.

ITEM 6 NEW BUSINESS

A. Malibu Direction on whether to Negotiate with Applicant on a Development Agreement Associated with a Proposed Hotel Development

Recommended Action: 1) Receive presentation by the property owner of 22729 and 22941 Pacific Coast Highway; and 2) Determine whether to direct staff and the City Attorney to negotiate a development agreement that would allow a new overlay zone with a 0.52 floor area ratio for the development of a hotel in exchange for public benefits.

Planning Director Blue presented the staff report.

City Attorney Hogin stated a decision on what the public benefit should be could be decided later. She stated staff was looking for general input from the Council as it did not seem the cash offer proposed warranted the benefits of a development agreement. She requested the Council weigh in on how much and of what type of public benefit it would be interested in, if any.

Norm Haynie stated, if approved, the project would not set a precedent for other projects. He stated the City would realize \$85,000 a month in transient occupancy tax (TOT) and an increase in property tax. He stated a hotel or motel was a different use than average commercial use. He stated the majority of the requested increase

in floor area was already approved and permitted for the existing building. He stated he was requesting 7,000 square feet of additional square footage. He stated the traffic on Pacific Coast Highway would be reduced by 20-40% over the existing building use. He discussed the La Paz project.

Kraig Hill stated the item should be continued due to a wrong address in the staff report. He stated the 72-hour notice provided for the item was not enough. He stated the existing .3 floor area ratio (FAR) was already two and a half times the current allowance and Mr. Haynie was asking for .52 FAR. He discussed developed intensity bonus and stated it did not apply to a commercial hotel. He stated the proposed terms of the agreement were not close enough for the City to consider negotiation yet. He questioned potential public impacts and burden. He stated a larger and ongoing public benefit should be required.

Hamish Patterson stated the item should not be considered during the COVID-19 pandemic. He stated the 72-hour notice provided for the item was not enough. He stated the \$400,000 public benefit was not enough.

Paul Grisanti stated nearly all the square footage of the proposed project was already legally in place. He stated the City was not obligated to approve anything even if it decided to consider negotiating a development agreement. He stated the TOT potential could help wean the City off TOT received from short-term rentals.

City Attorney Hogin stated Mr. Haynie would make an application that would go before the Planning Commission for a public hearing. She stated the matter before the Council was whether to allocate resources to explore a public benefit in exchange for a development agreement. She stated any development agreement drawn up would also be heard by the Planning Commission and the Council.

Councilmember Mullen stated the project had a long way to go before it was decided on. He stated there would plenty of opportunity for public comment on the proposed project in the future.

In response to Councilmember Mullen, City Attorney Hogin requested the Council provide direction on whether a cash payment would be considered or if a different public benefit would be required. She stated TOT was a set percentage but staff could look at profit-sharing or a guaranteed payment amount if TOT did not hit a certain level as part of an agreement structure for a few years after occupancy.

Councilmember Wagner stated the water pressure system on Pacific Coast Highway (PCH) was low. He stated rectifying a deficiency in a Los Angeles County Waterworks District No. 29 (District 29) valve was part of the proposed project and would be a benefit to the public.

In response to Councilmember Peak, Planning Director Blue stated the General Plan allowed Commercial Visitor Serving – 2 (CV-2) a .15 FAR, or .25 FAR with public benefits. She discussed the possibility of an overlay district to apply to the

two parcels Mr. Haynie was developing. She stated an overlay district may not be necessary if the two properties were not being merged and a whole new development was not being considered. She stated most of the additional square footage was being developed on the lower parcel.

Councilmember Peak indicated support for a cash payment split between the General Fund or park improvements. He expressed concern for the size of the project and stated he did not want to set a precedent. He stated he did not think there would actually be a reduction in traffic from the project.

Mayor Pro Tem Pierson stated the project was unique in that most of it was already built. He discussed a cash benefit or recreation benefit.

Mayor Farrer stated she thought a valet was built into the proposed project. She stated the old gas station was a blight in the middle of town. She stated the majority of the project structure was already there. She indicated support for negotiation of a development agreement.

Councilmember Peak stated a final development agreement should come back to Council at a meeting not held during COVID-19 pandemic. He indicated support for a cash amount higher than what had been proposed.

City Attorney Hogin stated the hearings were essential. She stated the most orderly way to handle the process was to vet it through the Planning Commission first and then come to the Council for a public hearing.

MOTION

Councilmember Peak moved to allow the City Attorney and staff to negotiate a development agreement with the property owner of 22729 and 22741 Pacific Coast Highway with a public benefit informed by the Council discussion and further with the understanding that the project will undergo robust public hearings after the City is holding in-person meetings.

Councilmember Peak stated a guarantee of TOT would be difficult if there was a downturn in the economy. He indicated support for getting something upfront. Councilmember Peak stated TOT would be remitted on a quarterly basis but a guarantee of 85% occupancy would be difficult for someone to agree to.

Councilmember Mullen stated TOT was a touted benefit of the proposed project.

Councilmember Peak recommended considering a guarantee of 50% occupancy so the business would succeed.

Councilmember Mullen stated a guaranteed amount of yearly TOT was the long-term benefit to the City.

Councilmember Wagner stated infrastructure improvements could be considered as a public benefit.

Councilmember Peak stated infrastructure improvements may be required as a condition of approval by the Fire Department or District 29.

Councilmember Wagner expressed concern over tying infrastructure improvements to conditions of approval.

Councilmember Mullen seconded the motion. The question was called and the motion carried unanimously.

ITEM 7 COUNCIL ITEMS

A. Assembly Bills 2436, 3074 and 2367 – Support (Mayor Farrer)

Recommended Action: At the request of Mayor Farrer, authorize letters of support for: 1) Assembly Bill (AB) 2436, which will help consumers comply with applicable building codes in place after a major property loss; 2) AB 3074, which would require the California Department of Forestry and Fire Protection to update its guidance on or before January 1, 2023 to include creation of an ember-resistant zone within five feet of a structure; and 3) AB 2367, which would create the Wildfire Resilience Task Force, to establish minimum standards for fire-hardened homes and communities.

Mayor Farrer presented the report.

MOTION

Councilmember Peak moved and Councilmember Mullen seconded a motion to authorize letters of support for: 1) Assembly Bill (AB) 2436, which will help consumers comply with applicable building codes in place after a major property loss; 2) AB 3074, which would require the California Department of Forestry and Fire Protection to update its guidance on or before January 1, 2023 to include creation of an ember-resistant zone within five feet of a structure; and 3) AB 2367, which would create the Wildfire Resilience Task Force, to establish minimum standards for fire-hardened homes and communities.

Councilmember Mullen thanked Mayor Farrer. He stated the City would keep an eye on the bills as they moved forward.

Councilmember Wagner stated there were some potential deficiencies that could be cleaned up in the bills.

The question was called and the motion carried unanimously.

ADJOURNMENT

At 8:45 p.m., Mayor Farrer adjourned the meeting.

Approved and adopted by the City Council of the
City of Malibu on May 26, 2020.

Karen Farrer

KAREN FARRER, Mayor

ATTEST:

Heather Glaser

HEATHER GLASER, City Clerk
(seal)