



MINUTES

Tuesday, January 5, 2016

5:30 P.M. Closed Session
6:30 P.M. Open Session

**REGULAR MEETING
CITY COUNCIL, AIRPORT COMMISSION,
MARINA ABRAMS B NON-PROFIT CORPORATION, PRESTON PARK SUSTAINABLE
COMMUNITY NON-PROFIT CORPORATION AND SUCCESSOR AGENCY OF THE
FORMER MARINA REDEVELOPMENT AGENCY**

Council Chambers
211 Hillcrest Avenue
Marina, California

1. CALL TO ORDER
2. ROLL CALL & ESTABLISHMENT OF QUORUM: (City Council, Airport Commissioners, Marina Abrams B Non-Profit Corporation, and Successor Agency of the Former Redevelopment Agency Members)

MEMBERS PRESENT: David W. Brown, Gail Morton, Mayor Pro-Tem/Vice Chair Frank O'Connell, Mayor/Chair Bruce C. Delgado

MEMBERS ABSENT: Nancy Amadeo (Excused)
3. CLOSED SESSION: *As permitted by Government Code Section 54956 et seq., the (City Council, Airport Commissioners, Marina Abrams B Non-Profit Corporation, and Redevelopment Agency Members) may adjourn to a Closed or Executive Session to consider specific matters dealing with litigation, certain personnel matters, property negotiations or to confer with the City's Meyers-Milias-Brown Act representative.*
 - a. Conference with Legal Counsel-Anticipated Litigation. Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9: (Number of potential cases - one)
 - b. Conference with legal counsel, re a matter of existing litigation – one case – Choates v. City of Marina
 - c. Labor Negotiations
 - i. Marina Employee Association
 - ii. Marina Management Employees Association
 - iii. Marina Public Safety Officers Association
 - iv. Marina Public Safety Manager's Association

- v. Marina Professional Firefighters Association
- vi. Department Directors
 - 1. Community Development Director
 - 2. Finance Director
 - 3. Fire Chief
 - 4. Police Chief
 - 5. Recreation and Cultural Services Director

City Negotiators: Layne P. Long, City Manager and Employee Relations Officer

- d. Performance Evaluation, Unrepresented Employee – City Manager

6:30 PM - RECONVENE OPEN SESSION AND REPORT ON ANY ACTIONS TAKEN IN CLOSED SESSION

Assistant City Attorney Deborah Mall reported out closed session: Council met at 5:30 pm. There were three items on the closed session. Conference with legal counsel, anticipated litigation, direction was given to legal counsel; conference with legal counsel regarding existing matter of litigation which was Choates vs. Marina and direction was given to legal counsel; and the third matter discussed was labor negotiations and direction was given to the city negotiator.

- 4. MOMENT OF SILENCE & PLEDGE OF ALLEGIANCE (Please stand)

- 5. SPECIAL PRESENTATIONS: None

- 6. SPECIAL ANNOUNCEMENTS AND COMMUNICATIONS FROM THE FLOOR: *Any member of the Public or the City Council may make an announcement of special events or meetings of interest as information to Council and Public. Any member of the public may comment on any matter within the City Council's jurisdiction which is not on the agenda. Please state your name for the record. Action will not be taken on an item that is not on the agenda. If it requires action, it will be referred to staff and/or placed on a future agenda. City Council members or City staff may briefly respond to statements made or questions posed as permitted by Government Code Section 54954.2. In order that all interested parties have an opportunity to speak, please limit comments to a maximum of four (4) minutes. Any member of the public may comment on any matter listed on this agenda at the time the matter is being considered by the City Council.*

- John Kaza – Citizens advocate for the National Motors Association. Commented about the December 17, 2015 DUI Check point on Del Monte Blvd. The roadblock on that night was in front of the business at 3056 Del Monte Blvd. Police coned off entrances which provided access to the businesses without any permission or any recognition to the business. Never witnessed open businesses being shut down like this. Indicated he was ordered to leave the area where he was protesting, which was in the median and if I did not leave the Sergeant in charge at the roadblock was going to arrest me. I'm a single person with a sign. Indicated that there will be several claims from several of those businesses coming. The funding is from the OTS (Office of Traffic Safety) which provides overtime for a group of officers far more than they need for that roadblock to stand there most of the night and stop the cars. Ask the council to proclaim an emergency proclamation to hold that the police will not block open businesses nor will they subject a lawful protestor to arrest.
- Kevin Saunders – Announced his intent to run for Mayor in the 2016 Election. Will be running on a cannabis/tourism platform, specifically to turn Fort Ord, Marina's part, into the world's largest cannabis research farm.

- Nobia Mounsuret – Announced her intent to run for Council in the 2016 Election. Indicate that over the last several years she has been advocating for change in this community related to medicinal marijuana. Would like to bring Marina into the 21st century.
- Tim Ledesma – Wanted to let the public know that there are several vacancies on various city commissions (Planning Commission, Economic Development Commission and the Public Works Commission). Filing deadline is January 15th by 5:00pm. Commented on the El Nino Preparedness information.

7. CONSENT AGENDA FOR THE SUCCESSOR AGENCY TO THE FORMER MARINA REDEVELOPMENT AGENCY: *Background information has been provided to the Successor Agency of the former Redevelopment Agency on all matters listed under the Consent Agenda, and these items are considered to be routine. All items under the Consent Agenda are normally approved by one motion. Prior to such a motion being made, any member of the public or the City Council may ask a question or make a comment about an agenda item and staff will provide a response. If discussion or a lengthy explanation is required, that item will be removed from the Consent Agenda for Successor Agency to the former Marina Redevelopment Agency and placed at the end of Other Action Items Successor Agency to the former Marina Redevelopment Agency.*

8. CONSENT AGENDA: *Background information has been provided to the City Council, Airport Commission, Marina Abrams B Non-Profit Corporation, and Redevelopment Agency on all matters listed under the Consent Agenda, and these items are considered to be routine. All items under the Consent Agenda are normally approved by one motion. Prior to such a motion being made, any member of the public or the City Council may ask a question or make a comment about an agenda item and staff will provide a response. If discussion or a lengthy explanation is required, that item will be removed from the Consent Agenda and placed at the end of Other Action Items.*

a. ACCOUNTS PAYABLE:

- (1) Accounts Payable Check Numbers: 77509-77663, totaling \$2,650,731.82
Wire transfers totaling: \$324,628.83

b. MINUTES:

- (1) December 15, 2016, Regular City Council Meeting

c. CLAIMS AGAINST THE CITY: None

d. AWARD OF BID: None

e. CALL FOR BIDS: None

f. ADOPTION OF RESOLUTIONS: None

g. APPROVAL OF AGREEMENTS:

- (1) City Council consider adopting **Resolution No. 2016-01**, approving Assignment and Assumption of agreement with Robert H. Abrams of San Carlos, California, for consultant services relating to a technical review of groundwater modeling conducted for the Monterey Peninsula Water Supply Project Draft Environmental Impact Report, by Jacobson James & Associates, Inc. of Roseville, California, and; authorizing the City Manager to execute Agreement subject to final review and approval by the City Attorney.

- (2) City Council consider adopting **Resolution No. 2016-02**, approving a budget amendment of \$9,026 representing the City of Marina’s cost sharing allocation for participation in the 911 Dispatch JPA Project Study; authorize the City Manager to execute documents if necessary for continued participation in the JPA Study; authorize the Finance Director to make necessary accounting and budgetary entries, with the funds for this study coming from unallocated fund balance

- h. ACCEPTANCE OF PUBLIC IMPROVEMENTS: None

- i. MAPS: None

- j. REPORTS: (RECEIVE AND FILE): None

- k. FUNDING & BUDGET MATTERS: None

- l. APPROVE ORDINANCES (WAIVE SECOND READING): None

- m. APPROVE APPOINTMENTS: None

DELGADO/MORTON: TO APPROVE THE CONSENT AGENDA. 4-0-0-1(Amadeo) Motion Passes

9. PUBLIC HEARINGS:

- a. City Council to receive staff report and adopt an ordinance and urgency ordinance to amend Marina Municipal Code, Title 17 (zoning) to add Section 17.04.464 to define “Marijuana Delivery,” Section 17.04.210.5 to define “Cultivation of Marijuana,” and 17.06.020, Subsections P and Q to prohibit the cultivation of marijuana and the delivery of marijuana in all zones.

Assistant City Attorney Deborah Mall presented the staff report with the following information:

1996 - Compassionate Use Act was approved. Allows qualified patients and primary caregivers to be free from state prosecution for cultivation and possession of marijuana, upon doctor recommendation of use (Proposition 215); 2003 - Medical Marijuana Program enacted. Created a voluntary program for issuance of ID cards to qualified patients and primary caregivers. Allowed limited transportation, processing, administering and distribution of medical marijuana to qualified patients. Cultivation of marijuana plants was specifically limited. California Supreme Court held patients and caregivers could possess a reasonable amount of marijuana; 2013 - California Supreme Court upheld a city’s right to ban medical marijuana dispensaries as a part of its land use authority

Governor has signed a comprehensive package of bills which comprises the Medical Marijuana Regulations and Safety Act. AB 266 establishes a Bureau of Medical Marijuana Regulation, a licensing structure, uniform health and safety standards for testing, security and transport of medical marijuana; AB 243 regulates the licensing and regulation of indoor and outdoor cultivation sites and creates a Medical Cannabis Cultivation Program within the Department of Food and Agriculture to, develop standards for pesticide application, production and labelling of edible products, and evaluate environmental impacts from cultivation; SB 643 regulates physicians’ recommendations, contains some licensing requirements and uphold local powers to levy fees and taxes.

Two of the bills recently passed, as part of the Act, directly impact municipalities and create the need for the City to take immediate action; AB 266 requires local jurisdictions that wish to prevent delivery services from operating within their borders to enact an ordinance affirmatively banning this activity;

AB 243 provides that cities that do not have an ordinance regulating or prohibiting cultivation in place by March 1, 2016, will lose the authority to regulate or ban cultivation within their city limits; The City currently bans medical marijuana dispensaries, but has no regulation or ban on cultivation or delivery of medical marijuana.

Recommendations: City, by ordinance, ban cultivation and delivery by March 1, 2016, or lose the authority to regulate or ban cultivation within their city limits; Second reading of the ordinance must occur on or before January 29, 2016 and must be effective by February 28, 2016; It is recommended the ordinance be adopted as an urgency ordinance, since there has not been time to seek Planning Commission review. The adoption of an urgency ordinance requires a 4/5th vote; Staff recommends this matter be brought back to City Council in one year, for a report on the efficacy of the ban and further review and or adoption of a permanent ban or ordinance to regulate cultivation and delivery of medical marijuana.

Police Department Concerns: Department recommends not allowing the delivery, cultivation and processing of marijuana in the City; Objection based on experiences of several California cities who experienced increases in police services associated with marijuana cultivation, processing and distribution activities; Marijuana and the cash it generates are commodities highly sought after and any type of marijuana distribution leads to illegal activity to obtain marijuana and cash. Activities: 1. Illegal sales and distribution of marijuana; 2. Trespassing; 3. Theft; 4. Violent Robberies; 5. Burglary

City has experienced many of the crime problems addressed above; Many crimes associated with marijuana and other illegal drug activities frequently go unreported as victims fear prosecution because of their involvement and fear of retaliation; Marijuana distribution, cultivation and processing consistently results in quality of life issues/complaints in the areas where they occur leading to additional police calls for service and potentially calls for service from other City departments; Strong unpleasant odors related to the cultivation of marijuana creates an attractive nuisance, alerting persons to the location of the plants, creating a risk of various types of criminal activity.

The State of California has passed legislation stating it will take the lead on marijuana regulation.

However, Primary issues surrounding compliance and enforcement of regulations to ensure compliance will fall to local government.

An example would be the State's regulation of alcohol laws and massage establishments. The State has oversight, but, almost all compliance and regulation is left to local entities.

Any Regulation of marijuana distribution by the Marina Police Department or Code Enforcement would divert resources from other law enforcement or regulatory priorities

Recommended Ordinance Revisions: (1) Section 17.04.464 – Marijuana Delivery; (2) Section 17.04.210.5 – Marijuana Cultivation; (3) Section 17.06.020, Subsection (P) – Cultivation of Marijuana as a Prohibited Use and/or activity; (4) Section 17.06.020 (Q) – Delivery of Marijuana as a Prohibited Use and/or Activity.

Fiscal Impact: The fiscal impact is unknown. There may be a minor tax revenue benefit if medical marijuana were cultivated or distributed within the City and then taxed, this benefit is minimized by the cost to regulate, issue licenses. There is of an impact on police services if the uses are wholly banned.

Council discussed concerns related to delivery and compliance with the Compassionate Care Act for persons too ill to travel to obtain medicinal marijuana from a dispensary, continued cultivation of personal use if city were to ban cultivation, delivery by secondhand person (caregiver/provider), rush on "delivery" ordinance if there is no deadline, work load impact, taxing cultivating permittees',

administrative fines assessed for violation of the municipal code by police, amending delivery language to say the deliveries are banned by dispensaries.

Mayor opened the public hearing for public comments:

- Tim Ledesma – Read statement from Peoples vs. Mauer: “Patients have the same right to marijuana as to any legally prescribed drug”. Commented that a year and half ago a group of people tried to help the city with your ordinance/moratorium on dispensaries so in reality if the city would have taken those initial baby steps a year and half ago we would even be having this discussion. In reality you’re not in control anyway other than holding back the progress and the process of a new industry. People are surviving because of medical marijuana. Announced he’s been a patient for 24 years. This is a compassionate care act and you’re not in control. It’s a state rule that the people passed.
- Nobia Mounsuet – Commented on a letter from Jim Woods on AB21, sent copies of letter to council and also sent a power point that explains MERSA to the council. Read excerpt from Jim Woods letter stating his intent to remove the deadline has support from stakeholders and bipartisan and that the governor’s office is prepared to partner with my office to ensure local control on this issue, appreciates governor’s acknowledgement of drafting error and willingness to resolve the problem, received legal feedback confirming that once urgency measure is in effect jurisdictions will retain local control needed. You are being given an opportunity to regulate marijuana.
- Kevin Saunders – Commented on his hardships as he believes was caused by Marina not supporting medicinal marijuana. If council bans the delivery, think about the people who do not have vehicles or are unable to commute to obtain their medication. If you ban deliveries how are people to get their medication? The ban is the wrong idea.
- Sam Rashkin – We can agree on 3 things: 1) we can agree that an unregulated black market really isn’t good for anyone and that’s why state passed this regulation; 2) the new state cannabis regulations are extremely complicated; 3) commercial cannabis is already here in Monterey County. Provided council an information sheet on AB266, SB642 & AB243. Noted there are 17 type of licenses established under AB266 and SB643 and Type 7 should be really looked at. Comments that Salinas is repealing their ban because they see the economic structure is enormous.
- Unnamed speaker – Had experience in the dispensary business and parted ways with that industry due to what has caused many cities to ban dispensaries. There is an adherent danger and flaw in the business, it does bring a lot of negative aspects to it if it’s not regulated properly. Concerned about the nature of a complete ban. “Grows” need to be treated as a business and regulated. In the future this could be a taxed commodity. One loophole that you may want to consider that in order to deliver medical marijuana to a patient you will have the same doctor’s recommendation to procure the medicine for your patient so as a caregiver there is not distinction in this regulation that would show the difference between an actual caregiver and the patient themselves.
- Nancy Amadeo – Believes that in order to do an ordinance well and it be well written, well vetted, all affected parties being able to give input you need to go through the appropriate process. In order to do that and to do it well, to do it right, having a ban, an urgency ban and giving direction for this to go back to the planning commission and to go through the process so that we can have safe access, well regulated, guarantee of efficacy, all of those things are really important and it is important that our police department have clear guidelines as to what is acceptable and not acceptable. We’re dealing with a lot of “what ifs”. If we have a true ordinance by putting a ban in place tonight and then moving forward those “what ifs” will get resolved. Hope council will consider putting the ban in place and then directing immediately for this to go before the planning

commission and have them look at zoning and general plan changes that many need to be made in order to do this well for the benefit of our citizens and community as a whole.

- Elia Salinas – Made comment on the Jim Woods letter. There is an error on the March 1st deadline but it's only for cultivation. Provided council samples of the many different forms of medicinal marijuana. There are CBD which are non-psycho active of product that marijuana is made into that people use to inhale, a balm, and a patch which starts right away easing your pain. There are a lot of changes coming over the next couple of years. Full bans are bad for everyone. They harm the patients, they deny economic opportunities for cities and counties. It's here now, why not regulate and try to have more control over it. Asked council to not vote on this ban, there is no urgency on it, do a moratorium. Council should consider all types of marijuana industry in the city but in a safe and properly zoned location.
- Margaret Davis – Council has asked great questions that show the complexity of writing a good front loaded ordinance that minimizes crime and problems. This body should not relinquish its rights to exercise discretion and craft laws in the best interest of Marina. Urged council to adopt this temporary ban, to let it go before the planning commission and let that begin making its course, get the benefit of research by Chief Rodriguez, by the City Attorney's office and by the public. The general public has not had input in this issue. If it comes before the planning commission and it's just a low key issue I think more people would come forward and make their arguments and speak their minds. There are a lot of issues to explore in crafting an ordinance and some of them have been alluded to. How to potentially tax, should be distribution be by nonprofit only, should there be a ballot measure? Urged council to adopt this temporary measure.
- Mike Owen – Commented on the grow houses in Marina that had a structural fire which was in the Monterey Bay Estates and which is why we resurrected Neighborhood Watch and another which had weapons. Appreciates the Police chief pointing out the negative points but it seems like he really didn't continue the story which is that these are illegal. If you legalize it then that's going to address that problem. Put it out of the residential area. The smart/wise thing to do is to go ahead and do a ban right now with the obvious stressing to the police chief about the prioritization of enforcement during the ban.

Mayor closed public hearing for public comments.

Brown/Delgado: to refer to staff the ordinance, to redraft so as to 1) not include a ban or regulation on delivery; and 2) to prohibit the cultivation of more than three (3) marijuana plants on a residence own rented or owned home inside the dwelling or on land included in the rental or owned property; and no more than three (3) plants per resident holding a valid medical marijuana card and residing there.

Mayor Delgado asked motion maker if he would be willing to modify his motion to bring it up to "status quo" so that those who are currently within the state law growing up to twelve (12) plants (6 producing and 6 seedlings) in the matter just mentioned could continue to do so.

Modified Motion

Brown/Delgado: Refer the matter to staff to redraft an ordinance so as to not ban or regulate delivery but to prohibit the cultivation of more than twenty (20) plants including no more than a maximum of ten (10) mature plants on a person's own rental or owned home inside the dwelling or outside on land that's included in the rented or owned property; per resident holding a valid medical marijuana card and residing there.

Substitute Motion

O'Connell/Delgado: to amend the MMC by ordinance, and urgency ordinance to add a definition for Cultivation of Marijuana and Ban the Cultivation of Marijuana in all zones and Direct Staff to bring this issue back to the City Council within one year or as soon as possible, for review and to determine

whether the ban is still warranted and has properly functioned, whether there have been any changes in state law, which impact on a ban in the City and whether a permanent ban or further regulation or licensing is warranted. 1-3(Brown, Morton, Delgado)-0-1(Amadeo) Substitute Motion Fails

Council Member Morton asked for a friendly amendment to *direct staff to take immediate actions to commence the planning process and to direct staff to deprioritize enforcement.*

O’Connell: I would take the friendly amendment to the staff giving it immediate attention but not to deprioritize.

Final Motion

BROWN/DELGADO: TO REFER TO STAFF THE ORDINANCE TO REDRAFT IT SO AS TO NOT BAN OR REGULATE DELIVERY AT THIS TIME; AND SO AS TO PROHIBIT CULTIVATION OF MORE THAN TWENTY (20) PLANTS, TEN (10) OF WHICH MAY BE MATURE ON A RESIDENTS OWN RENTED OR OWNED HOME INSIDE THE DWELLING OR ON LAND INCLUDED IN RENTED OR OWNED PROPERTY PER RESIDENT HOLDING A VALID MEDICAL MARIJUANA CARD AND RESIDING THERE; AND DIRECTING STAFF IMMEDIATELY TO BEGIN THE PROCESS OF COMING UP WITH A MORE COMPREHENSIVE ORDINANCE THROUGH THE NORMAL PLANNING PROCESS. 4-0-0-1(Amadeo)

Final Motion Passes by Roll Call Vote: Brown, Yes; Morton, Yes; O’Connell, Yes; Delgado, Yes

Attorney: this would be an urgency ordinance to come back with an urgency ordinance and finding for adoption at the next meeting.

Council Member Brown: It would be, yes.

Mayor Delgado: was it your intent to happen at the next meeting?

Council Member Brown: Well, yes, the Urgency Ordinance would come back in two weeks and if it got 4/5th votes then it would be implemented immediately and then staff would still be directed to come back with a more comprehensive scheme.

10. OTHER ACTIONS ITEMS OF THE SUCCESSOR AGENCY TO THE FORMER MARINA REDEVELOPMENT AGENCY: *Action listed for each Agenda item is that which is requested by staff. The Successor Agency may, at its discretion, take action on any items. The public is invited to approach the podium to provide up to four (4) minutes of public comment.*
11. OTHER ACTION ITEMS: *Action listed for each Agenda item is that which is requested by staff. The City Council may, at its discretion, take action on any items. The public is invited to approach the podium to provide up to four (4) minutes of public comment.*

Note: No additional major projects or programs should be undertaken without review of the impacts on existing priorities (Resolution No. 2006-79 – April 4, 2006).

- a. City Council consider adopting **Resolution No. 2016-03**, authorizing: 1) Amendments to City Compensation Plan, Classification Plan, Job Descriptions and Salary Schedules for various city classifications; 2) Amendments to various Department Head and City Manager employment contracts; appropriate budgetary amendments to Fiscal Year 2015/16 budget.

Delgado/Brown: that we do the seven (7) items in the recommendation excluding item #4. 2-2(Morton, O’Connell)-0-1(Amadeo) Motion Fails

Mayor Pro-Tem O’Connell questioned the amendments to the employment contracts for the police chief and recreation director and why the increase in monthly compensation when labor negotiations are being conducted. Requested copies of the contracts for the police chief and recreation director.

City Manager explained that this increase is not part of negotiations. It is to bring them within the competitive labor market. It’s a wage adjustment with every individual classification. Department Heads are different. As a group I’m not looking at any salary increases across the board with department heads, those will be brought back individually because they each have individual contracts.

Public Comments: None received.

Substitute Motion

O’Connell/Morton: to adopt items 1a-i; delete items 2, 3 and 4 and keep items 5, 6 and 7. 2-2(Brown, Delgado)-0- 1(Amadeo) Substitute Motion Fails

2nd Substitute Motion

Morton/O’Connell: adopt item 1a-i, items 5, 6 and 7 and bring back at the January 20th meeting item 2, 3 and 4 with the appropriate contracts being attached and for full discussion on all the terms. 2-2(Brown, Delgado)-0-1(Amadeo) 2nd Substitute Motion Fails

10:00 PM

Morton/Brown: to extend the meeting to complete this item. 4-0-0-1(Amadeo)

Brown/Delgado: to reconsider the 2nd substitute motion

MORTON/DELGADO: THAT WE ADOPT ITEMS 1a-i, THAT WE ADOPT ITEM 5, ITEM 6 AND ITEM 7; AND THAT ITEMS 2 AND 3 BRING BACK AT A SPECIAL MEETING ON TUESDAY, JANUARY 12TH AT 5:30 TO INCLUDE CLOSED SESSION ITEMS OF LABOR NEGOTIATIONS AND DEFER ITEM 4 TO THE FEBRUARY 2, 2016 COUNCIL MEETING. 4-0-0-1(Amadeo) Motion Passes

12. COUNCIL & STAFF INFORMATIONAL REPORTS:

- a. Monterey County Mayor’s Association [Mayor Bruce Delgado]
- b. Council and staff opportunity to ask a question for clarification or make a brief report on his or her own activities as permitted by Government Code Section 54954.2.

13. ADJOURNMENT: 10:10 PM

Anita Sharp, Deputy City Clerk

ATTEST:

Bruce C. Delgado, Mayor