



## MINUTES

Wednesday, September 7, 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)  
  
Nancy Amadeo, David W. Brown, Gail Morton, Mayor Pro-Tem/Vice Chair Frank O’Connell, Mayor/Chair Bruce C. Delgado
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 Existing Litigation - (Paragraph (1) of subdivision (d) of Section 54956.9) Name of case: Choates v. City of Marina (Superior Court, County of Monterey Case No.: M131188 )
  - b. Conference with Legal Counsel - Anticipated Litigation – Significant exposure to litigation pursuant to paragraph (2) or (3) of subdivision (d) of CA Govt. Code Section 54956.9 – One Case
  - c. Real Property Negotiations
    - (1) Property: 3240 Imjin Road, Hangar 510  
Negotiating Party: Rick Wilcoxson, Driven Performance, LLC  
Property Negotiator: City Manager  
Terms: All terms and conditions

- d. Labor Negotiations
  - i. Marina Professional Firefighters Association
  - ii. Marina Public Safety Managers Association
  - iii. Department Directors
    - a. Community Development Director
    - b. Finance Director
    - c. Fire Chief
    - d. Police Chief
    - e. Recreation & Cultural Services Director

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

7:00 PM - RECONVENE OPEN SESSION AND REPORT ON ANY ACTIONS TAKEN IN CLOSED SESSION

City Attorney Deborah Mall reported out closed session: The Council met at 5:30 and discussed three matters. 3a. Council received information and gave direction to legal counsel. 3b. Council received information, gave direction to legal counsel. 3c(1). Council received information and gave direction to its negotiator.

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

5. SPECIAL PRESENTATIONS:

- a. Introduction of Fred Aegerter, Community Development Director
- b. Proclamations
  - i. National Recovery Month
- c. Certificates of Appreciation
  - i. Marina Fire Department - Soberanes Fire Strike and Station Backup Team
- d. Marina Coast Water District Groundwater Sustainability Agency Presentation
- e. Recreational Announcements

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.*

- Alfrieda\_Wilken, Learning For Life Charter School – Announced that she is the new secretary for the school and would be coming by once in a while to present school updates. Attended the Town Hall meeting and found it to be very good.
- Mike Owen – Provided statistical information on CA Incorporated Mayors related to terms of 2-years vs. 4-years and also commented on the two ways to become mayor.

- Margaret Davis – Save the date for November 12<sup>th</sup> for the 7<sup>th</sup> Annual Veterans Day Celebration at the Marina Equestrian Center from 10:30am-1:00pm.
- Paula Pelot – Announced on September 10<sup>th</sup> is the Preston and Abrams Park Annual Community Garage Sale.
- Michelle Saunders – Commented on son’s past; commented on Colorado’s regulations on medical marijuana.
- JD. Moore – announced that he would like to help the city with streamlining the sign permit process. Lot of local businesses would like to change “banners” to sign but sign permit process take too long.
- Council Member Morton – Clarified on the Veteran’s Day activity, that it’s Vietnam era Veteran’s, anyone who served during the Vietnam era. The years of 1955-1974. If someone served in your family or in your sphere of influence please be sure to have them come to the event so they can be recognized.
- Council Member Amadeo – Marina In Motion Candidate Forum on Saturday, September 17, 2016 from 1:00-3:00pm in the council chambers. Forum will be taped and televised by AMP.
- Mayor Delgado – Wanted to give thanks and shout-outs to all the Labor Day Parade volunteers and participants. There were approximately 50 volunteers and over 1500 participants in the parade this year. Thanks to our largest sponsors Shea Homes and the City’s In-Kind donation; Marina Motorsports, Marina Grange and Monterey Peninsula Engineering. Thanks to the VTC and the Kei Ki O’hané Outrigger Canoe Club for all their volunteers. Thanks to the Marina Chamber of Commerce for their contribution for the Beer and Wine Garden.

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 79656-79823, totaling \$791,844.77  
Wire transfers from Checking and Payroll (June & July 2016) totaling:  
\$3,468,563.53

b. MINUTES:

- (1) August 16, 2016, Regular City Council Meeting
- (2) August 29, 2016, Special City Council Meeting
- (3) August 31, 2016, Adjourned Special City Council Meeting

- c. CLAIMS AGAINST THE CITY: None
- d. AWARD OF BID:
- e. CALL FOR BIDS: None
- f. ADOPTION OF RESOLUTIONS:
  - (1) City Council consider adopting **Resolution No. 2016-131**, authorizing the Mayor to execute Letter of Support for inclusion to the National Endowment Application for a Planning Grant under the Arts “Our Town” Category in the amount of \$50,000 for the Arts Village located in the City of Marina subject to final review by the City Attorney.
  - (2) City Council consider adopting **Resolution No. 2016-132**, approving Marina City Council request to transfer the land use related plans and functions of the Former Marina Redevelopment Agency.
  - (3) City Council consider adopting **Resolution No. 2016-133**, supporting Senate Bill 270 Plastic Bag Ban.
- g. APPROVAL OF AGREEMENTS:
  - (1) City Council consider adopting **Resolution No. 2016-134**, authorizing the City Manager to execute a side letter agreement between the City of Marina and the Marina Public Safety Management Association, and; authorizing adjustments to City Compensation Plan including adjustments to the salary schedule, health benefit allowance and other specified terms and conditions of employment specified in the Side Letter, and authorizing Finance Director to make appropriate accounting and budgetary entries.
  - (2) City Council consider adopting **Resolution No. 2016-135**, authorizing the City Manager to execute a side letter agreement between the City of Marina and the Department Directors Informal Employees Association, and; authorizing adjustments to City Compensation Plan including adjustments to the salary schedule, health benefit allowance and other specified terms and conditions of employment specified in the Side Letter, and; authorizing Finance Director to make appropriate accounting and budgetary entries.
  - (3) ~~City Council consider adopting Resolution No. 2016 , approving Amendment No. 1 to the Communications Site Lease Agreement between the City of Marina and Sprint Spectrum Realty Company, LLC, of Overland Park, Kansas, for a lease term extension; and authorizing Finance Director to make necessary accounting and budgetary entries; and authorizing City Manager to execute Amendment No. 1 and related documents on behalf of the City, subject to final review and approval by City Attorney. ***Pulled by Council Member Morton, becomes agenda item 11b***~~
  - (4) ~~City Council consider adopting Resolution No. 2016 , authorizing City Manager to execute a Side Letter Agreement between the City of Marina and the Marina Professional Firefighter Association; authorizing adjustments to City Compensation Plan including adjustments to the salary schedule, health benefit allowance and other specified terms and conditions of employment specified in the Side Letter, and; authorizing Finance Director to make appropriate accounting and budgetary entries. ***Removed from agenda***~~

h. ACCEPTANCE OF PUBLIC IMPROVEMENTS:

- (1) City Council consider adopting **Resolution No. 2016-136**, accepting Capital Improvement Program Projects, and; authorizing filing of Notice of Completion with Monterey County Recorder’s Office.

i. MAPS: None

j. REPORTS: (RECEIVE AND FILE):

k. FUNDING & BUDGET MATTERS: None

l. APPROVE ORDINANCES (WAIVE SECOND READING): None

m. APPROVE APPOINTMENTS: None

Mayor Pro-Tem O’Connell request to pull agenda item 8f(1) for a question; agenda items 8f(3) 8g(1) and 8g(2) to be voted on separately as he will be voting no on them

Council Member Morton requested to pull agenda item 8g(3) for modifications to lease amendment

**DELGADO/BROWN: TO APPROVE THE CONSENT AGENDA MINUS 8f(1); 8f(3); 8g(1); 8g(2) and 8g(3). 5-0-0-0 Motion Passes**

Agenda Item 8g(1) and 8g(2)

**DELGADO/AMADEO: TO ADOPT AGENDA ITEMS 8g(1) AND 8g(2). 4-1(O’Connell)-0-0 Motion Passes**

Agenda Item 8f(3)

**DELGADO/BROWN: TO APPROVE RESOLUTION NO. 2016-, SUPPORTING SENATE BILL 270 PLASTIC BAG BAN. 3-2(Morton, O’Connell)-0-0 Motion Passes**

Public Comments on Motion

- Paula Pelot – Support the comments heard by Council Member Morton. Does not see passing this having an effect on the State of California. Waste of staff time
- Margaret Davis – Agreement with Mayor Pro-Tem on the monies collected and about that this will have no effect on the state vote. Meaningless drill that over burdens staff.

Agenda Item 8f(1)

Mayor Pro-Tem O’Connell asked if City was to put up matching monies and if this area was part of The Dunes Project?

**AMADEO/DELGADO: TO ADOPT RESOLUTION NO. 2016-, AUTHORIZING THE MAYOR TO EXECUTE LETTER OF SUPPORT FOR INCLUSION TO THE NATIONAL ENDOWMENT APPLICATION FOR A PLANNING GRANT UNDER THE ARTS “OUR TOWN” CATEGORY IN THE AMOUNT OF \$50,000 FOR THE ARTS VILLAGE LOCATED IN THE CITY OF MARINA SUBJECT TO FINAL REVIEW BY THE CITY ATTORNEY. 5-0-0-0 Motion Passes**

9. PUBLIC HEARINGS: None

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. 2016-137**, approving the First Amendment to Operating Covenant and Agreement with Monterey Peninsula Hotels, LLC; and authorize the City Manager to execute amendment on behalf of the city subject to final review and approval by the City Attorney.

Karen Tiedmann presented the staff report.

Proposed is an extension of the timeline for opening the hotel to March 31, 2017 in exchange for the city to agreeing to that date the developer would give up several things in the “agreement”.

- (1) Developer would pay to the city \$100,000 in turn for this extension. Payment would be paid over time and secured by a promissory note given by the developer to the city and a deed of trust on the property;
- (2) First payment would be no later than the Third Anniversary of the opening of the hotel; and final payment no later than the Fifth Anniversary of the opening of the hotel
- (3) \$100,000 would earn interest rate at Libor Rate plus 3.75% and the interest rate would be variable every year
- (4) Agreement would be reformed so that there is NO additional extension of the time. March 31, 2017 is the final date for the opening of the hotel, if that’s not met the developer would have to pay both the impact fees and the \$100,000.
- (5) If the March 31, 2017 deadline is met the impact fees would continue to be paid through 50% of the Transient Occupancy Tax (TOT) generated in the first four (4) years of operation of the hotel. If the TOT exceeded the impact fee there would be no opportunity for the developer to get a TOT rebate.

Finally, this is not in the agreement in the packet but this is a change that would be made before the agreement was signed: (6) “the Agreement currently provides that the developer has to continuously operate the hotel for five (5) years after opening and failure to do so would result in the developer having to pay the impact fees.” ***That five (5) year period would be extended to a ten (10) year period.*** If at any time during that ten (10) year period the hotel ceases to operate and comply with the standards in the agreement, the terms of the type of hotel the developer would have to pay back the full impact fee with interest.

Noted that the agreement in the packet contains most of the changes but noted that there are a couple of changes that are not in the agreement that we would make before the agreement is signed. The first one was already discussed but to make it clear the agreement in your packet is an amendment to the existing covenant so we would be adding the new section to that amendment that would amend what is currently Section 2 of the Operating Covenant. Section 2 was the provision that requires that the hotel operate for five (5) years after opening. That would be added to the first amendment in order to **change the five (5) year to a ten (10) year period**, and to make conforming changes to ensure all the cross references are correct.

The other change is a technical change in the First Amendment to the Operating Covenant in Section 2 –Impact Fees: (7) The second paragraph of Section B in the first line of that section it indicates that if the developer fails to meet the conditions set forth in Section 1(a) the developer has to pay the city

impact fees. That needs to be revised to say “*if the developer fails to meet any of the conditions set forth in Section 1(a) and Section 2, ten (10) year operating covenant*”. We will make sure all the section references are correct.

Public Comments:

- Mike Owen – Seems more involved and complex to realize if this is a good or bad deal. Is “unforeseen circumstances” no longer part of the agreement? When they cited “weather” as an unforeseen circumstance, what was the weather that was unforeseen? Death of manager, is that something that’s supposed to halt constructions? Wasn’t there an assistant general manager being it’s a major corporation?
- Paula Pelot – Submitted 15 questions in advance of the meeting and have not received a replay back, will answers be provided tonight to those 15 questions? It seems the city is trying to make the best of a bad situation. Why did we not foresee this? Why were we not monitoring this? Why did we not know about this before July 30<sup>th</sup> that this was a problem? Why did we not hear requests for an extension or that these problems existed until after we sent a demand for payment? These are a responsibility of the city to follow.
- Margaret Davis – Commented on Lombardo letter. What is this extension based on? Asked if Council and staff intended on answering Ms. Pelot questions.
- Kathy Biala – Democratic process involving the public comment can be a bit disconcerting to us public. Case in point being the issue of the hotel developer contract without any official information available at the last meeting. Though I did not have a full understanding at that time I now appreciate the work of this council in deciding upon a course of action. Worried before that there would be further incentivizing of the developer because of their situation rather than exercising our full rights and legal contract. Pleased council has struggled as a group to come up with an agreement that is well thought out and benefits Marina. Hope resolution will be passed.
- Harvey Dadwal – appreciates the opportunity to come here and explain the circumstances with the construction of the hotel and possible first amendment to the Operating Covenant & Agreement. Hopes council will approve the First Amendment and allow him to continue the hotel construction and operation.
- Doug Yount – Marina Community Partners is in support of an agreement that you can come up with that is mutual benefit to the hotel developer and the city and its interest to move forward in a very expeditious manner so that the hotel will open as quickly as possible. Critical not just to the momentum of The Dunes project overall but clearly for the resources that the city needs, the jobs that are created, the additional incomes those jobs bring to the community. Encourage council to come to an agreement to grant the extension.

City Council and staff went through and answered each of the 15 questions submitted by Paula Pelot.

**DELGADO/AMADEO: TO APPROVE THE PACKAGE BEFORE US WITH THE ADDITIONS TO FIRST AMENDMENT AS NOTED BY KAREN TIEDEMANN:**

- (1) **DEVELOPER WOULD PAY TO THE CITY \$100,000 IN TURN FOR THIS EXTENSION. PAYMENT WOULD BE PAID OVER TIME AND SECURED BY A PROMISSORY NOTE GIVEN BY THE DEVELOPER TO THE CITY AND A DEED OF TRUST ON THE PROPERTY;**
- (2) **FIRST PAYMENT WOULD BE NO LATER THAN THE THIRD ANNIVERSARY OF THE OPENING OF THE HOTEL; AND FINAL PAYMENT NO LATER THAN THE FIFTH ANNIVERSARY OF THE OPENING OF THE HOTEL**

- (3) \$100,000 WOULD EARN INTEREST RATE AT LIBOR RATE PLUS 3.75% AND THE INTEREST RATE WOULD BE VARIABLE EVERY YEAR
- (4) AGREEMENT WOULD BE REFORMED SO THAT THERE IS NO ADDITIONAL EXTENSION OF THE TIME. MARCH 31, 2017 IS THE FINAL DATE FOR THE OPENING OF THE HOTEL, IF THAT'S NOT MET THE DEVELOPER WOULD HAVE TO PAY BOTH THE IMPACT FEES AND THE \$100,000.
- (5) IF THE MARCH 31, 2017 DEADLINE IS MET THE IMPACT FEES WOULD CONTINUE TO BE PAID THROUGH 50% OF THE TRANSIENT OCCUPANCY TAX (TOT) GENERATED IN THE FIRST FOUR (4) YEARS OF OPERATION OF THE HOTEL. IF THE TOT EXCEEDED THE IMPACT FEE THERE WOULD BE NO OPPORTUNITY FOR THE DEVELOPER TO GET A TOT REBATE.
- (6) THE AGREEMENT CURRENTLY PROVIDES THAT THE DEVELOPER HAS TO CONTINUOUSLY OPERATE THE HOTEL FOR FIVE (5) YEARS AFTER OPENING AND FAILURE TO DO SO WOULD RESULT IN THE DEVELOPER HAVING TO PAY THE IMPACT FEES." THAT FIVE (5) YEAR PERIOD WOULD BE EXTENDED TO A TEN (10) YEAR PERIOD. IF AT ANY TIME DURING THAT TEN (10) YEAR PERIOD THE HOTEL CEASES TO OPERATE AND COMPLY WITH THE STANDARDS IN THE AGREEMENT, THE TERMS OF THE TYPE OF HOTEL THE DEVELOPER WOULD HAVE TO PAY BACK THE FULL IMPACT FEE WITH INTEREST.
- (7) THE SECOND PARAGRAPH OF SECTION B IN THE FIRST LINE OF THAT SECTION IT INDICATES THAT IF THE DEVELOPER FAILS TO MEET THE CONDITIONS SET FORTH IN SECTION 1(A) THE DEVELOPER HAS TO PAY THE CITY IMPACT FEES. THAT NEEDS TO BE REVISED TO SAY "IF THE DEVELOPER FAILS TO MEET ANY OF THE CONDITIONS SET FORTH IN SECTION 1(A) AND SECTION 2, TEN (10) YEAR OPERATING COVENANT".

**Motion Vote: 3-2(Morton, O'Connell)-0-0 Motion Passes**

- b. City Council consider adopting **Resolution No. 2016-138**, approving Amendment No. 1 to the Communications Site Lease Agreement between the City of Marina and Sprint Spectrum Realty Company, LLC, of Overland Park, Kansas, for a lease term extension; and authorizing Finance Director to make necessary accounting and budgetary entries; and authorizing City Manager to execute Amendment No. 1 and related documents on behalf of the City, subject to final review and approval by City Attorney. *Pulled by Council Member Morton, was agenda item 8g(3)*

Council Member Morton sent questions to attorney's office related to (1) page 85 of the staff report referencing the "building" in the fourth sentence, which seem inaccurate because it does not define a building or needs definition. (2) Asked if prevailing wage would be required for relocation of this tower. (3) Initial lease term states "right for quiet enjoyment during the term of the lease", what if FAA revoked the lease? (4) Indemnification "damage to roof"

Attorney Mall feels the (1) reference to the word "the building" can be dropped. (2) "Prevailing Wage" attorneys looked into the FORA Resolution and prevailing wage would net seem to be required. (3) FAA really looks at the grant and whether the lease fulfills the terms of the grant. The FAA doesn't really go out and revoke leases. Attorney's office determined there is no need to make changes to the

“quiet enjoyment” section. (4) Page 94 Section 12(b) of lease specifically says “if there’s any damages to the roof lessee has to pay for the repairs”. Indemnification is required.

**MORTON/O’CONNELL: TO APPROVE WITH THE TWO MODIFICATION AS NOTE BY ATTORNEY. 5-0-0-0 Motion Passes**

12. COUNCIL & STAFF INFORMATIONAL REPORTS:

a. Monterey County Mayor’s Association [Mayor Bruce Delgado]

Mayor Delgado did not attend the Mayor’s Association meeting, waiting for minutes from that meeting.

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.

Mayor Delgado asked the City Manager if the restaurant are still on schedule to open by Thanksgiving. Also asked about the status of the Courtyard in front of theater. VA/DoD Clinic Celebration for October 14<sup>th</sup> and is the opening date still planned for April 2017? Any progress on the Airport Restaurant?

City Manager Long – Restaurant are still on schedule. No information on Courtyard. Marilyn has asked for an update from them and has not yet received a response back and opening is still planned for spring 2017. We should have a proposal by the end of the week.

Mayor Pro-Tem O’Connell asked about the status of the loan number confusion related to Preston Park loan.

City Manager Long – We have worked through all those issues and the loan has been repaid from the funds collected back to the General Fund.

Council Member Amadeo asked about Del Monte Blvd/Beach Road construction start date.

13. ADJOURNMENT: The meeting adjourned at 9:59 PM

\_\_\_\_\_  
Anita Sharp, Deputy City Clerk

ATTEST:

\_\_\_\_\_  
Bruce C. Delgado, Mayor