



MINUTES

Tuesday, June 6, 2017

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

TELECONFERENCE LOCATIONS:¹

Wailea Elua Village
34 Wailea Gateway Place
Wailea, HI 96753

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)

COUNCIL MEMBERS PRESENT: Nancy Amadeo, Gail Morton, Frank O'Connell, Mayor Pro-Tem/Vice Chair, David W. Brown, 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 - Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Govt. Code Section 54956.9 – one potential case
 - b. Conference with Legal Counsel – Significant exposure to litigation pursuant to paragraph (2) or (3) of subdivision (d) of Section 54956.9 – one potential case

¹ Note: Pursuant to Government Code Section 54953(b), this meeting will include teleconference participation by Council Member Gail Morton from the address above. This Notice and Agenda will be posted at the teleconference location.

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

City Attorney Robert Wellington reported out Closed Session: Council met at 5:30 as indicated with regard to the two (2) matters listed both having to do with litigation. On both items Council received information, provided general direction, no reportable action was taken.

4. MOMENT OF SILENCE & PLEDGE OF ALLEGIANCE (Please stand)
5. SPECIAL PRESENTATIONS:
 - a. Recreation Announcements
6. 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.*
7. 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 81894-82045, totaling \$542,023.22
Wire transfers from Checking and Payroll for April 2017 totaling \$378,206.02
 - b. MINUTES:
 - (1) May 16, 2017, Regular City Council Meeting
 - c. CLAIMS AGAINST THE CITY: None
 - d. AWARD OF BID: None
 - e. CALL FOR BIDS: None
 - f. ADOPTION OF RESOLUTIONS:
 - (1) City Council consider adopting **Resolution No. 2017-51**, authorizing staff to submit a grant application to the California Coastal Commission and authorize the City manager to execute the applications, contracts, agreements, and amendments necessary to implement the grant application package.

- (2) City Council consider adopting **Resolution No. 2017-52**, supporting the City of Marina’s participation in the Institute for Local Government’s Beacon Program, an ongoing achievement recognition program that awards participating agencies for accomplishments as they work to achieve long term greenhouse gas reductions, energy savings, and sustainability goals.

g. APPROVAL OF AGREEMENTS:

- (1) City Council consider adopting **Resolution No. 2017-53-**, approving an agreement between Rincon Consultants, Inc. and the City of Marina for planning consulting services related to the Tate/Hasan/Righello General Plan Amendment and rezoning requests for properties located at 428-432 Reservation Road, and; authorizing the City Manager to execute the agreement on behalf of the City subject to final review and approval by the City Attorney.
- (2) ~~City Council consider adopting Resolution No. 2017 , approving Facilities Memorandum Of Understanding between City of Marina and Monterey Peninsula Unified School District.~~ ***Pulled by Mayor Delgado, becomes agenda item 11a***
- (3) City Council consider adopting **Resolution No. 2017-54**, approving designating Granville Homes and/or Valley Coastal Development, LLC as a Pre-Approved Homebuilder pursuant to the Marina Heights Option Agreement.
- (4) City Council consider adopting **Resolution No. 2017-55**, amending the rate adjustment calculation of the franchise agreement with Green Waste Recovery utilizing a sector specific uniform percentage adjustment and approving maximum rates to be charged by Green Waste Recovery effective July 1, 2017 for collection of franchised solid waste, recycling, and organics.
- (5) City Council consider adopting **Resolution No. 2017-56**, authorizing the City Manager to execute a contract with KP Public Affairs for public relations and advocacy services; authorizing Finance Director to make appropriate accounting and budgetary entries.

h. ACCEPTANCE OF PUBLIC IMPROVEMENTS: None

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 Delgado requested to pull agenda item 7g(2) for discussion. Becomes agenda item 11a.

AMADEO/DELGADO: TO APPROVE THE CONSENT AGENDA MINUS 7g(2). 5-0-0-0

Motion Passes by Roll Call Vote

9. PUBLIC HEARINGS:

- a. City Council consider adopting **Resolution No. 2017-57**, finding the current operation of the CEMEX Mine meets the elements required for a public nuisance due to its erosive effects on the southern Monterey Bay Coast and finding that the CEMEX Mine to be in violation of Sections 17.41.260 and 17.25.030 of the Municipal Code.

City Attorney Robert Wellington read out for the record of the correspondence Council received via email regarding this matter: Richard Rosenthal, Save Our Peninsula Committee support the Council anticipated action tonight; Ursula Gallichotte, Monterey Resident asking to do whatever you can to close Cemex; Barbara Henderson, Supports Council's legal action against Cemex; Karyn Witmer-Gow, Monterey Resident, supports resolution; Allan Kramer, Monterey Resident, supports endeavors of Council; Lee & Maria Shahinian, Strong support for resolution; Staley Prom, Surfrider Foundation, support for resolution; Steve Zmak, Marina supports proposed council actions tonight

City Attorney Robert Wellington provided preliminary comments. Council has received comments and correspondence over the last couple of years about the coastal erosion in southern Monterey Bay and Marina and concerns about the potential cause. Question whether it was or was not contributed by Cemex Sand Mining Plant. Two years ago Council authorized the City Manager to write a letter to the Coastal Commission indicating Council's concern and urging the Coastal Commission to look into the matter. One year ago the city was in contact with the Coastal Commission and Council took action and requested that the Coastal Commission, the city seeded some of their authority with regard to the matters of under its local coastal plan and local use plan, to have the Coastal Commission act on behalf of the city with regard to whatever proceedings the Coastal Commission might venture into. Last year Coastal Commission filed a Notice of Intent and enforcement proceeding direct to the Cemex plant. This year Council sent letters to the Coastal Commission and State Lands Commission which had not taken up any position regarding the Cemex Plant but has now sent its own letter to Cemex regarding its concerns.

Last Year the City became aware of the very substantial work and interest of the Stanford Environmental Law Clinic. Stanford Environmental Law Clinic is composed of four (4) lawyer/professors with a group of eight (8) third-year law students that work in the clinic throughout the year and take up a number of causes that have to do with environmental issues. With regard to the concerns the council had we retained them to assist the city in this matter. Stanford Environmental Law Clinic prepared the staff report that's before the council, along with the city retained Professor Robert Young to write a separate specific scientific analysis of coastal erosion, which is also part of the record before the council tonight.

Introduced the Stanford Environmental Law Clinic: Miles Muller, Molly Melious.

Miles Muller spoke about public concerns and emerging scientific consensus on the adverse impact of sand mining and the independent report by coastal geologist Dr. Robert Young who evaluated the impacts for the Cemex Sand Mine. Provided background information on Dr. Robert Young.

Cemex is a 140 acre sand dredging and processing operation, which dredges from an artificial pond located between the shoreline and the dunes drawing the sand from near shore and tidelands during particular high tides and annual storms. A suction dredge in the pond draws extracts sand from the pond floor and feeds it to a processing plant via a pipe.

Cemex has extracting significant volumes of sand from the public tidelands for decades. 20-30 thousand truckloads of sand are being moved each year. Removing this volume of sand from the sand supply budget has contributed significantly to erosion in the southern Monterey Bay, which comes at a high public price. It jeopardizes public health and safety by putting coastal infrastructure at risk, impeding public access in use of beaches and causing habitat lost and property damage.

Based on evidence available in the public record and on an independent evaluation by Dr. Robert Young city staff has determined that Cemex is causing significant erosion in the southern Monterey Bay littoral cell. The impacts of which constitute a “public nuisance” under Section 3479 and 3480 of the California Civil Code.

Nuisance: Anything that obstructs “... the free use of property, so as to interfere with the comfortable enjoyment of life or property,” or unlawfully obstructs “the free passage or use, in the customary manner” of any bay or public park, square, or street. Cal. Civil Code § 3479.

Public nuisance: one which affects “an entire community or neighborhood, or any considerable number of persons.” Cal. Civil Code § 3480.

For these reasons City staff recommends council adopt a resolution and authorize the city attorney to investigate and report back to the Council on the possibility of a civil action against Cemex to declare and abate the sand mine as a public nuisance.

Beach Sand Budget = Annual Sand Input: 326,000 m³; Annual CEMEX Mining Extractions: ~153,000-205,000 m³ (= *CEMEX is removing half of available beach sand in southern Monterey Bay*)

Long-Term Erosion Rates and Trends = Less sand moving along the coast can decrease beach widths, which allows waves to more readily attack back-beach dunes and erode the coast.” *Stanski, NOAA, 2005 (First half of the twentieth century: 1.0 foot/year; By the end of the twentieth century: ~ 4.15 to 4.7 feet per year; These rates are higher than anywhere else in CA; While the exact numbers vary by study, overwhelming evidence supports the dramatically increasing trend in erosion rates in southern Monterey Bay over the past century. Hapke, 2006; Thornton, 2006; Jones and Griggs, 1985; Gref, 2004.)*

Council Questions for the Stanford Environmental Law Clinic: vested rights vs. public nuisance; rate of erosion over years, does it accelerate over time or is it at a steady rate; “vested rights” determination of whether a particular act is a public nuisance is independent of how long the activity has gone on; 2008 AMBAG study on Coastal Erosion recommended that sand mining at Marina would be the most effective way of reducing coastal erosion in southern Monterey Bay, correct; Hwy 1 was thought to be a barrier to sand replenishing the dunes from east to west, is that correct; can beaches grow again over time; 1906 predecessors; asked if Stanford Group seen the documents sent to the city from Cemex Counsel, Gibson, Dunn & Kutcher; would vested rights take second position to the public nuisance; is vested rights paramount what the California Coastal Commission is proceeding with

Jeffrey Dintzer, Gibson, Dunn & Kutcher representing Cemex – Stated that his firm was disappointed that they were not given a fair opportunity to bring forward to you evidence to refute the allegations being made with respect to whether or not the Lapis operations are in fact a public nuisance. We received a 10-day notice, which was received by email which had the Young report, staff report and resolution on Saturday of Memorial Day weekend. We have not had a fair opportunity to present to you all of the evidence accumulated that would demonstrate that Dr. Young’s conclusions are baseless, and not sound science. Dr. Thornton’s analysis is baseless and without sound science and based upon assumptions. 10-days on a holiday weekend is not reasonable notice.

First thing this council needs to do is consider whether or not if you want to know what’s going on out there you’re going to give us an extension of time to present our case. Lapis operation has been out there since 1906. 60-days is a reasonable request to come back and show you that the information you have before tonight is false. Stated that Cemex has provided its annual reports first to the city and then to the state when they assumed the Mine Reclamations Program with copies being sent to the city.

Provided a document from Dr. Stephen P. Leatherman on Causes of Beach Erosion in Southern Monterey Bay for the record who is an expert in beach erosion. Dr. Leatherman is an academy of science author. The Academy of Science is the body of scientists that works for the congress, the premiere academic jester to be a member of the Academy of Sciences. There are a lot of other reasons that causes beach erosion, which are addressed in Dr. Leatherman's report.

Pointed out that if you want to get this right and don't want to get sued, because we'll bring a claim in the Superior Court and bring a petition for Writ of Mandate and on this notice... this is a huge public hearing for this city, very controversial issue. Concerned citizens on both sides and when you have a situation like that you don't get a short script, you give both sides and their opportunity to come in here and make their best case for you. Give them real process before you make any conclusions.

I didn't get a fair chance to show you that want their saying simply is not true.

Council Questions for Jeffrey Dintzer Gibson, Dunn & Kutcher representing Cemex: What began 1906 as number of sand mines in Monterey Bay which mined sand in order to provide sand for the construction mostly of the City of San Francisco following the earthquake; is it true that Cemex and it predecessors started in 1962; who were Cemex's predecessors; claimed not enough time to prepare but you submitted a scientific paper by Dr. Leatherman but hasn't your clients experts been assembling data that shows what you claim; why does the city not receive reports of the volumes of sand extracted as it has in the past; how often are these reports submitted to the State; asked about the California Code 2006Section which was mentioned in his June 1st letter on Due Process; when was Dr. Leatherman's report written; how long was it before it was requested to put this together; it's you position that you and Cemex stand by the content of this document from Dr. Leatherman; asked Mr. Dintzer to read into the record page 9, last sentence, next to the last paragraph: *"in addition, the Lapis Plant in no way acts as a littoral barrier like a jetty, and the portion of sand that is moved to the dredge pond relative to the longshore sediment transport is totally unknown and may be a small amount based on overwash studies elsewhere."* ; is Dr. Leatherman saying when he prepared this and submit to you there are certain factors that are important that are totally unknown to him; asked Mr. Dintzer to read into the record page 9, last paragraph *"Finally, as noted above, it is not clear is the net longshore sediment transport in this area is northward or southward. If it is northward, as indicated by reliable sources such as the Monterey Bay Aquarium Research Institute, then all sand from this area would be lost into the Monterey Bay Submarine Canyon and any sand lost due to the Lapis Plant would be of little to no effect on the shoreline stability."* And do you stand by this; when Leatherman cited his 1977 paper based on overwash studies elsewhere rather than the Monterey Bay, do you know where the elsewhere was; November 2008 Ed Thornton authored a study about the sand budgets in southern Monterey Bay, do you think that from 2008 it's possible that your legal associates have neglected or overlooked looking at that study from 2008; same question for the 2006 US Geological Survey on Shoreline Change; don't you think that we sitting up here should assume that in the last 9 years your team has had a chance to see this 2006 document, which is also presented in what was given to us for tonight; why is there a lack of references in Dr. Leatherman's report; lands commission annual reports, did the city received original or copies; what do you consider to be the undeveloped shore of the southern Monterey Bay; does Cemex support and agree with the contents of Dr. Leatherman's report; it would be safe to assume that the city council should not accept this as being gospel since Cemex is a little concerned as to what exactly it says as to the accuracy of the opinions; is this a quasi-adjudicatory proceeding and if so or not why is it not;

Mayor Delgado opened the public hearing for public comments:

- Chandler Roland, resident – Commented on the sales of sand and noted the State Board of Equalization has not record of Cemex having a permit for the sale of the sand. Thinks Cemex owe the city a lot of money because they sold sand locally as per their manager and never had a permit for sales.
- Jeff Chester, resident – Supports moving forward with the resolution, concerned for a number of years about the effects of the sand mine and the effect on our beaches. Beaches are our most valuable natural public resources. Also concerned about the rise in sea levels. Removal of the levels sand that is happening here will have an adverse effect and contribute to the erosion problems that we're having.
- Rafea Nunez, – need to listen to the experts and supports moving forward and declaring this a public nuisance. They are stealing our precious sand.
- Mary Linzer – Concerned about the whole health of the bay area, feel bad for the Cemex employees and families if the plant is closed, but it's time for a divorce just because the plant was given the right quite a few years ago does not think it should continue and we should not question whether it's healthy for the environment and the people who live here.
- Katherine O'Dea, Exec. Dir. Save Our Shores – Our mission to protect the Monterey Bay National Marine Sanctuary. Working in collaboration with the Surfrider Foundation we have been looking into this issue and have relied on the studies that have been published. Pointed out that they are not single-minded environmentalists. Not seeking to put Cemex out of business but seeking to have them operate with a social consciousness and with a clear understanding of the sustainability issues and the stewardship of the Monterey Bay.
- Harvey Biala, resident – Supports resolution, city has much to lose if the sand mining is allowed to continue unevaded. Walks our beaches daily and have been blocked from free passage along the beach by the ocean flowing into the Cemex dredging pond. The sand mining has changed our beaches. Hopes council goes forward with approving this nuisance declaration.
- Steve Hanley – Lives in Monterey, owns property in Marina. Opinion of others and himself that this will end up going to court. It's all about the money and it averages out to be about \$100 million a year to Cemex, so they will fight. Believes what's happening by Cemex's choice is invading property rights of others, because sand is the foundation to most homes. Cemex is asking for an extension and they have had plenty of time.
- Sara Farnsworth, Cal-State Marine student – Voiced support of this resolution due to the detrimental effects of the sand mining operation along the coast line. Stands by the scientific information that has been presented. Erosion caused by the sand mining will only lead to more damage in the future. Urged council to pass the resolution, take action to look into the sand mine further whether that leads into court cases or not. It's important to look at the options.
- Jose Rendo, resident – over last two years have gone to the Marina State beach and seen what looks to be erosion over the southwest portion of the walkway and parking lot and saw capitation where you have undermining in that area. Worried that's a liability risk for us as well as the loss of beaches and habitat for our children. Hopes that the Mills Legal Clinic will give a projection as to what 94 feet of erosion over 20 years will mean in terms of cost, not financial cost but what that means to homeowners.
- Tiffany Morra, Cemex Employee – We all have families, homes and if the plant closes for us our selves it would be devastating but not only for us but for all the mom and pop businesses who purchase the sand we mine for building. A lot of businesses will be affected is Cemex closes.

- Kevin Miller, Chair Monterey County Chapter of Surfrider Foundation – By passing this resolution Cemex still has more than enough time to respond to the resolution. Cemex has known about this issue for a long time so the complaint that they did not have sufficient time to compile materials is not germane in this matter. Believes that if Cemex was really interested in the value its employees jobs they would been more involved in these issues because these things were being brought up as early as 2008 and we did not hear anything from them in that time.
- Elizabeth Billingsley, resident – showed a picture of Marina beach as it appeared 50-years ago and it has changed over those years, it does not look the same. Supports the resolution and asked council to do what they can.
- Jennifer Smith, resident – commented on the removal of Stilwell Hall and commended the council on their leadership and supports the resolution to explore options. There is a huge gap in the beach and it's difficult to cross in the Cemex area. this has been going on for a long time and we need to think about the public good.
- Kathy Biala, resident – Support the resolution. Erosion along the southern portion of Monterey Bay has been clearly documented over several years by numerous local researchers. City has taken time to verify the data by an independent outside geologist. Commended council for listening to the residents on this matter. Should the sand mining operation cease there may be an unfortunate loss of 20 or less union jobs and hopes that the unions will advocate for, relocate and or retrain these union members. Based upon nuisance report the most immediate, economically beneficial intervention is to cease the mining of the sand.
- Rebecca McCallon, resident – spoke about being able to walk out onto the beach with a small slope, now it drops off at the parking lot. Hard to believe that all just natural erosion. Listening to both sides supports the city council to move forward to look at options. It's time.
- Jan Shriner, resident – Agrees with some of the previous speakers the dunes used to be a lot higher. Commented on the slant well and the Monterey Peninsula Water Supply Project draft EIR and its stated "*the subsurface slant well would be located in the City of Marina about 2miles south of the Salinas River in the retired mining area of the Cemex Sand Mining facility*". Why is called retired if it's not? This is a nuisance and I support this declaration. This is a regional problem.
- Manuel Panera, resident –These are people's jobs and lives we're talking about at the sand plant. There was a total of 6 sand plants on this peninsula over the last 35 years. Council should reconsider taking action tonight, gather and look at more evidence. Let put our money somewhere else.
- Ximena Waissbluth, Surfrider Foundation – support much of what has been said as far as supporting the resolution. What was not said by the last speaker was the reason why some of those mines shuttered in the 1990's by the Army Corp of Engineers is because of Coastal Erosion. The reason this one is not shuttered is because of its artificial pond. It was stated that this was controversial but it's not. Very strong support from the community to shut Cemex down.
- Angie Nader, resident – agrees with a lot that has been said. Asked council to think if this was the last coast mine in the US why would we keep it if everybody else has decided that is was not good for them. If Cemex does not has a sales license how do they sell to local businesses? Why is Cal-Am allowed on their site and not allow another researcher? They have not vested interest in Marina, it's about money.
- Margaret-Ann Coppernoll, resident – Concurs whole heartedly with the proposed resolution, salutes council for having the courage to step up to the plate and take action to preserve and protect our natural resources, out habitat. As it was pointed out earlier Cemex is not the only entity threatening our natural resources, the slant well is threatening our only water supply resource.

- Carol Roberts, resident – can see the erosion taking place over the last 2-years. Commend and support the council and encourage the council to go forward to look into this more deeply.
- Ron Chesshire, CEO of Monterey-Santa Cruz Building Construction Trades Council – walked the beaches for a long time but what’s people to remember the ocean rise. The ocean and beach used to be several miles out, 300 foot down. That’s when the icecap was at its greatest. We’re going through change. It doesn’t matter how much sand you drop out onto that beach or what you stop, you’re not going to stop what’s going on until nature stops what’s going on. Think about what you’re doing and approach this slowly and cautiously. It’s a big decision. That sand plant supplies a lot of this area and a lot of California with a precious resource. You have to figure out what the common good it and balance it.
- Jim Riley, Representative for operating Engineers Local #3 – Cemex employees are scared of their livelihood of losing their jobs. Been a part of moving sand over my career and watching the coastal literal drift, see coast eroding, beached build/disappear, worked up and down the coastline. We have replenished beaches. It is not Lapis’s/Cemex fault the coastlines are disappearing. Noted that in 1906 the coastline moved 20 feet in one earthquake. Reminded the mayor that the other mayors did not support this resolution last Friday at the Mayor Association meeting and hops this council will not support it.

Mayor Delgado closed public hearing comments

City Attorney Comments: relative to Mr. Dintzer’s quotes on law on “Not adequate notice” – the City Council could have considered and adopted this resolution at a hearing without any notice. Council could have simple had gone into a closed session, discussed the matter, come out and decided to file a lawsuit for nuisance. Related to that, that comes down and relates to the issue of due process. He cited the Janovich Case and that involved a formal abatement action by the zoning administrator and that was a final action that closed down that facility.

Here, all we have is a determination of directing the City Attorney to come back with some direction relative to what might be recommended to the council. In that regard we have, and I have provided to you and Cemex’s attorney a letter which indicated that with regard to that final paragraph 5 that we would like to amend that paragraph 5 with the following language so that it includes that is directs the city attorney to report back to the council with regard to which of the above listed litigation options, he recommends to requests to the council direction whether to proceed or not. It makes it clear that this is not a final action that has any impact upon the property rights of Cemex.

As the Mayor Pro-Temp indicated, exactly what would happen is at such time as the litigation is filed, at that time the issue of due process arrives in court and that’s when it’s taken care of.

Back briefly to the notice hearing, I just briefly remarked that this didn’t prevent the Cemex folks on June 1st which is last Wednesday, which delivered to the city over 2000 pages of documents for the council to review. He (Mr. Dintzer) mentioned “well I’m sure no one reviewed it”, well in fact I know the Mayor and other council members have reviewed it, our office reviewed every page. Briefly we’ll note that there is a number of substantial pages have to do with “Vested Rights”, which was pointed that was not relevant to this proceeding. 250 pages was this council’s, the transcript of this council’s hearing of the CalAm Slant Wells, not pertinent to this proceeding. There were all the proceedings in the coastal commission on the slant wells was included in there, again not pertinent. There was a 1928 study about sand matters and a 1972 study 45-years ago. There was very little about coastal erosion and so they were able to provide over 2000 pages to us last Wednesday and we only get the Leatherman report today. If we would have had the Leatherman report last week it would have made all the difference with regard to what was in front of you. So, I think they had more than their fair opportunity to provide the information they’ve asked you to review.

10:00pm

Delgado/Amadeo: to continue the meeting until 10:10pm – 5-0-0-0

BROWN/AMADEO: THAT THE CITY COUNCIL APPROVE RESOLUTION NO. 2017-57, AND ON ITEM #5 OF THE RESOLUTION WHICH READS:

NOW, THEREFORE BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF MARINA DOES HEREBY:

- 1. APPROVE THIS RESOLUTION**
- 2. AUTHORIZE THE CITY ATTORNEY TO PURSUE THE POSSIBILITY OF A CIVIL ACTION AGAINST CEMEX TO DECLARE AND ABATE THE LAPIS SAND MINE AS A PUBLIC NUISANCE UNDER SECTIONS 3479 AND 3480 OF THE CALIFORNIA CIVIL CODE, PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURES SECTION 731; AND**
- 3. AUTHORIZE THE CITY ATTORNEY TO PURSUE THE POSSIBILITY OF COMMENCING ACTION OR PROCEEDINGS FOR ABATEMENT UNDER SECTIONS 17.60.040 OF MUNICIPAL CODE DUE TO CEMEX’S CONTINUED VIOLATIONS OF THE REPORTING REQUIREMENTS UNDER SECTION 17.41.260 OF THE MUNICIPAL CODE; AND**
- 4. AUTHORIZE THE CITY ATTORNEY TO PURSUE THE POSSIBILITY OF COMMENCING ACTION FOR PROCEEDINGS FOR ABATEMENT UNDER SECTION 17.25.030 OF THE MUNICIPAL CODE; AND**
- 5. DIRECT THE CITY ATTORNEY AT SUCH TIME AS HE DEEMS APPROPRIATE TO REPORT BACK TO THE CITY COUNCIL IN CLOSED SESSION WITH REGARD TO WHICH OF THE ABOVE LISTED LITIGATION OPTIONS HE RECOMMENDS AND TO REQUEST COUNCIL DIRECTION ON WHETHER TO PROCEED OR NOT. 5-0-0-0 Motion Passes by Roll Call Vote**

The meeting adjourned at 10:10 PM

Mayor Delgado reconvened the meeting so that we could have Special Announcement and Communications from the Floor:

- Mike Owen – What is the policy on putting the item for public comments on items not on the current agenda at the very end? This is the second time in a row which previously I had to make a point of order to bring it up. It shouldn’t be a reoccurring item with the chaos like this. The mayor is very proud of having 4 minutes of public comment, that’s entirely defeated when you end the meeting without having anything. I had public comment before but I’m too upset with this violation of Brown Act.
- Steve Hanley – first time before the city council and wanted to thank and commend the council for the way the meeting was handled, how discrete it was, how cogent it was. You did a spectacular job of handling a very difficult situation.
- Council Member Amadeo – Rotary, as a result of partnering with the City of Marina for the use of Vince DiMaggio Park the Rotary raise through its Car Show a great deal of money that we put back into the community. Rotary is donating \$6,000 towards the Senior Program for a new Bingo machine; \$3,000 for 3 scholarships for Marina High School students; \$2,500 to project Helping Hand; we donate to Marina Youth Soccer, Marina Pony Baseball, Marina City Halloween Parties, to Marina Senior Citizen Holiday Party etc.

- Mayor Delgado – Saturday, June 10th from 9:00am-3:00pm volunteer work party at the Oak Woodland Restoration Project at the Marina Library.
- Council Member O’Connell – indicated the city did fail to take the steps that were appropriate for the comments on matters not on the agenda. it certainly was not intentional and we need to pay close attention to things like this.

10. 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*

11. 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.*

- a. ~~City Council consider adopting Resolution No. 2017 , approving Facilities Memorandum Of Understanding between City of Marina and Monterey Peninsula Unified School District. **Pulled by Mayor Delgado, was agenda item 7g(2) – Continued to June 20, 2017**~~

12. 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).

13. 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.

14. ADJOURNMENT: The meeting adjourned at 10:20 PM

Anita Sharp, Deputy City Clerk

ATTEST:

Bruce C. Delgado, Mayor