



MINUTES

Tuesday, July 18, 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

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: 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 - Anticipated Litigation – significant exposure to litigation pursuant to paragraph (2) or (3) of subdivision (d) of Section 54956.9 – two potential cases.

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

Assistant City Attorney Robert Rathie reported out Closed Session: City Council met at 5:30 as indicated on the agenda and discussed one item, Council received information, no reportable action was taken.

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

5. SPECIAL PRESENTATIONS:

- a Proclamations
 - i. Parks & Recreation Month
 - ii. National Night Out
- b Cemex Update by City Staff
- c Recreation 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.*

- Debby Draper – made comments about the welcome signs coming into Marina need some updating, very outdated, asked about a beautification project along del Monte Blvd along the walking/bike path; commented on the vacant gas station a 3016 Del Monte asked if we could get a Tahoe Joes Restaurant in there; spoke about the three different speed limit signs along Imjin Parkway/Imjin Road.
- Paula Pelot – July 26th at 9:30 am FORA Workshop on Blight Removal; August 11th at 2:00 pm Groundwater Sustainability Agency Presentation by Tom Moore on behalf of MCWD; asked what was happening up at the C-Deck (old FORA compound) notice people working and some tree removal and road scraping.
- Rebecca McCallon – Asked Council if they could move agenda item 11a - Business License Tax Update up to the front. We've been waiting patiently.
- Manuel Vieira – Commented on all the motorhomes along Lapis Road and the fact that it continues to grow and asked if the city can do something about it, work with the County. There is trash building up along that area and it effects our city. It's now becoming a health issue as they are dumping their waste.
- Kevin McCallon – Commented about Lapis Road and the motorhomes and now a "tent city". There are now over 50 tents that have popped up. Something needs to be done. Asked if this area falls under the Coastal Commission jurisdiction. Nobody is enforcing the Lapis Road area at all. Indicated that if nothing is being done with the property at 3016 Del Monte (old gas station) make them tear it down.
- Kathy Biala – wanted to applaud the council for everything they have done to end the Cemex sand mining. Staff of the Coastal Commission state that our council was courageous in their definitive actions and have never worked with a collaborative city as ours. Commented on the Lapis Road issue and agrees that something needs to be done about the blight out there.
- Virginia Meachum – Also asked that the Business License matter discussed sooner on the agenda; spoke about Lapis Road is a terrible look for our city. The motorhomes parking there have grown. Thank you for Cemex.

- Council Member Morton – July 26, 2017 at 9:30 a.m at the Carpenters Hall. FORA Board Study Session on Blight Removal. Two cities mostly impacted by this are Marina and Seaside and encouraged the public to attend and voice your concerns about the board’s policy on removing all the blight not just the stockade area and change their policy.
- Mayor Delgado – Monterey Peninsula Water Supply Project (MPWSP) is planning to put 9 slant-wells to extract water from underneath Marina’s coastline where it may degrade our groundwater. MPWSP Desal project is designed to solve everyone else’s problem from Carmel Valley to Seaside and do it with the impacts being born by us in Marina. This might be a tougher problem than the Cemex issue. Announced on September 2, 2017 will be the Labor Day Parade and Festival. Received a complaint from a citizen in the Cypress Cove II about litter between Cardoza and Wal-Mart, we are organizing a little pick-up there.

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 72327-82457, totaling \$926,945.57
Wire transfers from Checking & Payroll for May 2017 totaling: \$565,428.40

b. MINUTES:

- (1) ~~April 25, 2017, Special Joint Council/Planning Commission 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. 2017-71**, confirming levy of the special tax for the City of Marina Community Facilities District No. 2015-1 (The Dunes) for Fiscal Year 2017-18 as authorized by Ordinance No. 2015-03, and; **Resolution No. 2017-72**, certifying City of Marina compliance with State law (Proposition 218) with respect to a special tax for the City of Marina Community Facilities District No. 2015-1 as authorized by Ordinance No. 2015-03 for Fiscal Year 2017-18.

- (2) ~~City Council consider adopting Resolution No. 2017, approving salary schedule for fiscal year 2017/18. **Pulled by Council Member O’Connell, becomes agenda item 11c**~~
- (3) City Council consider adopting **Resolution No. 2017-73**, authorizing the release of a Request for Proposals (RFP) to qualified firms for On-Call professional services in the disciplines of planning, architectural design, landscape architecture, civil engineering, traffic engineering, and geotechnical engineering.
- (4) ~~City Council consider adopting Resolution No. 2017, authorizing the Mayor to execute a Memorandum of Agreement between the County of Monterey and Monterey County cities regarding a credit guaranty for Monterey Bay Community Power. **Pulled by Council Member O’Connell, becomes agenda item 11b**~~

g. APPROVAL OF AGREEMENTS: None

h. ACCEPTANCE OF PUBLIC IMPROVEMENTS: None

i. MAPS: None

j. REPORTS: (RECEIVE AND FILE):

- (1) Consider receiving Investment Reports for the City of Marina and City of Marina as Successor Agency to the Former Marina Redevelopment Agency for months ended April 30, May 31, and June 30, 2017.

k. FUNDING & BUDGET MATTERS: None

l. APPROVE ORDINANCES (WAIVE SECOND READING): None

m. APPROVE APPOINTMENTS:

- (1) City Council consider appointment to Economic Development Commission: Dawn Alva – Seat expiring February 2019.
- (2) City Council consider appointment to Planning Commission: Lisa Berkley Seat expiring February 2019.

Staff pulled 8b(1) from the agenda

Council Member O’Connell requested to pull agenda item 8f(2) for a separate vote and 8f(4) for discussion.

DELGADO/BROWN: TO APPROVE THE CONSENT AGENDA MINUS 8b(1), 8f(2) AND 8f(4). 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. 2017-**, receiving additional information regarding business license tax and providing staff with further direction.

Presentation by Lauren Lai

Business License Implementation Summary: June 20, 2017-Council Update; July 18, 2017 -Follow-up Q&A

Business License Measure U & Recap of Council deliberation & decisions: New Option to fund City Services; Objective: To simplify the existing Ordinance which had sixteen (16) different categories and different rate structures; Direction to develop a new ordinance: Fair and equitable; Consistent; Easy to understand; Simple to Implement

Business License Measure U Voter Approval: Passed, Voters Approved by 83%; Enacting Ordinance No. 2016-06; Effective July 1, 2017; Four parts: Section 1. Tax Rate For All Businesses- - *“The tax rate shall be 0.2% of gross receipts for any person engaging in any business. The minimum annual tax for this category shall be \$100.”*

Business License Tax & Fees Summary: BL Tax 0.2% of Gross Receipts; BL Processing Fees: One-time – Application Processing Fee-Business Within Marina \$130; Business Outside Marina \$55; Home Occupation Permit \$100 - Recurring – Renewal Processing Fee: Annual Renewal Processing Fee \$39; Annual State SB1186 \$1 – Other - BL Name Change \$25

Business License Measure U Statistical Data & Fiscal Impact: 320 Active Property Accounts; Actual Paid & BL Issued: *159 residential rentals \$23,000; 8 commercial rentals \$3,000* - Renewal processing is on-going; HDL estimates 1,200 rental homes or dwelling units less than 10 units, estimated \$50,000 - \$120,000 per year to General Fund

Business License Implementation Summary: Tonight’s focus - *21 Questions & Answers*; Attachment/Exhibit; Published online; Copies in back of Council Chamber; Defer to Council if further clarification is necessary

Business License Measure U Amendments: Enacting Ordinance No. 2016-06 - Section 2 – Amendments – *“Any provision added to the Municipal code by this Ordinance may be repealed or amended by the City Council without a vote of the people. However, as required by Article XIII C of the California Constitution, voter approval is required in order to further increase the rate of any tax with respect to any taxpayer.”* - Council may approve exemptions and/or lower the rate without voter approval; Council approval of Ordinance introduction & second reading.

Council Questions: is the annual renewal processing fee simply a cost to renew your business license; single-family homes covered and all people who rent even just one single family home are required to get a business license, correct; is this a new tax for people renting out homes; council authority to change ordinance/put back old exemption if there are no increases; reporting gross receipts to the city is the responsibility of each individual, correct; revenue generated from the tax goes into the general fund, correct; real estate agents vs. real estate brokers; council has right to make exemptions; IRS & Tax Board consider property rentals as investments, why doesn’t our ordinance recognize renting a single home or room in the home as an investment; does a sub-leasor need to get license as well as the homeowner; enforcement of rental income; how neighboring cities tax rentals;

Public Comments:

- Dawn Alva – Note that her corporation drives no revenue from Marina, which means she pays the minimum fee. Believe taxes should be based off payroll for corporations. Council should consider salaries for businesses that don't generate revenue within the city but are based within the city.
- Michael Markovich – Voted on the tax but did not consider our renting on the one unit we have as a business. HdL has not do a good job at letting people know what going on or administering this process. Received two different letters from them, the first one indicating that they need a business license as a person who rents property; and the second one stating we owe \$140 to renew a business license that I have never gotten. Requested an exemption for 10 or less, if that's not acceptable 5 or less.
- Rebecca McCallon – If a landowner needs a license to rent and a tenant needs a license to sub-let then that is “double taxation”. This is the same this as a real estate agent. The Brokerage pays the tax through the company to the city and then you want the agent working for the brokerage to pay tax on top of that, that double taxation. Voters voting were not aware of what they were voting for. Commented on the voter information in the voter guide and the tax rate structure; there is nothing stating there would be a change in the structure.
- Sam Rashkin – Asked council how medical marijuana deliveries are taxed for people outside businesses that are currently delivering in Marina? How is that enforced?
- Kevin McCallon – Noted there was nothing in the literature about changing the tax structure; asked if independent people working on commission for a company, if they needed to get a business license? Do our City Attorney's pay? Do attorneys representing clients in our courthouse need licenses?
- Jo Worley – Notice on the social media site Nextdoor that they're asking for residents to in Marina to house students with a stipend or a payment of \$100 a month to help reduce expenses, does that require a business license?
- Manuel Vieira – Business owner of several mobile-home parks in Marina and a runs Vieira Enterprises and a licensed contractor, which I pay a flat fee. Our mobile-home parks are based upon per units and will go up. It was never done on gross receipts because our rental units, we have multiple units and you have vacancy factors. Gross receipts are misleading for what we invested into the property too. Flat rates for me and hotels worked out perfectly. Does PG&E pay the same type of rate as what's being proposed? Does GreenWaste pay the same or are they exempt? What about the mobile homes under rent control? Is everyone paying their fair share? Indicated he went to the Finance Department to get some answers and was not able to explain anything to me and said I should come talk to the Council.
- Virginia Meachum – Paid for business license, voted for the tax to be increased and went up 377% from the flat fee. Issues are this tax is based on “gross”. As a real estate agent, I have to carry a license in every city that we have a listing in, that we do business in. Now, for Marina I have a flat rate plus 2% on my gross. Marina's is the most expensive license I've paid this year.
- Glenda Kelley – Owns a home that is rented out as an investment. Why do I have to get a license to rent out a home. I don't own a business, I own a home as an investment. Confused why a license is needed for one house. Hopes this gets rescinded.
- Jack – commented on the fact that the tax is based on gross receipts. Seems like an unfair tax because his profit margins generate about 7% and now have to pay 2% to Marina. This is an unfair tax for some of the small business owners.

- Linda Vieira – With this proposed ordinance that passed, increased our business licenses for each one of our properties 1000% from our previous licenses. Believes this is unconstitutional since we are guarded with the rent control. The business license tax as it relates to 2% of your gross annual receipts are very limiting and discouraging for us. Requested council consider an exemption or reduction and perhaps base it on space fees as it was previously done.
- Paula Pelot – paying your state and federal taxes for income, there is a Schedule for that and rentals are considered to be a business. Cautioned council to not put themselves in a position of encouraging people to evade paying state and federal taxes on their rental income. There are exclusions to gross receipt as were in the staff report. The whole emphasis for this was to simplify this part of our code and our system. Pointed out there is a collateral issue of many properties in Marina who are renting our short-term rentals, they are clearly businesses. Have already identified 40 properties, 23 of those and does not appear that they are paying TOT or that they have a business license.

Brown/Amadeo: that we approve the resolution as set forth in the agenda packet as follows:

Whereas, on November 8, 2016, the voters approved business license tax measure u by 83%; and

Whereas, the effective date of the new business license is July 1, 2017; and

Whereas, the city council has requested information and clarification regarding the new adopted business license tax.

Now, therefore be it resolved, that the city council of the city of marina does hereby:

1. adopt Resolution No. 2017-, receiving additional information regarding business license tax for the City of Marina and to provide staff with further direction as follows:
 - a. to draft a proposed amendment the ordinance exempting income from both a single-family dwelling or apartment numbering four (4) or less in the City of Marina; and
 - b. exempting income from owner or tenant occupied rentals for the rental or sublet of rooms but NOT exempting short-term rentals of less than 30-days; and
 - c. that the City also provide an alternative of basically bringing back the exemption as to rental properties, which the ordinance changed.

Amadeo Seconded with amendments:

1. To strike the last part, the less than 10 unit (9 or less); and
2. To address agents/contractor that work on behalf of another organization where the incomes does not come to them directly from what they do, it comes through another party; and
3. Ordinance state “Gross Income/Revenue” and should state “Gross Income/Revenue generated in the City of Marina”. (add appropriate language to the existing ordinance to clarify where appropriate)

Substitute Motion

O’Connell – in looking at page 119 on the staff report, the resolution titled Resolution No. 2017-, in the heading, third line where is says City of Marina

O’Connell/Morton: put a period after the word Marina and delete the rest of the sentence, which is “and providing further direction to the city staff”; and then on #1 under Now, Therefore I would leave # 1 exactly the same except “put a period after the word Marina and delete every word thereafter for the rest of that sentence”.

Council Member Morton asked second motion maker to include “apportionment”, which might clarify some of the issue and concerns about being taxed

Council Member O’Connell – No, I will stay with the motion I had and if I don’t have a second to it so be it.

Mayor Delgado – ok, all in favor of the Substitute Motion say: Ayes: 2 (Morton, O’Connell), All opposed: 3(Amadeo, Brown, Delgado) Substitute Motion Fails

Substitute Motion #2

Morton/_____ : would be the same as Council Member O’Connell’s motion: “put a period after the word Marina and delete the rest of the sentence, which is “and providing further direction to the city staff”; and then on #1 under Now, Therefore I would leave # 1 exactly the same except “put a period after the word Marina and delete every word thereafter for the rest of that sentence” with the addition of having greater clarification about apportionment.

Substitute Motion dies for a lack of a second.

Mayor Delgado – Ok, we’re left with the original motion and have a question about the suggested exemption for apartments number 4 or less. If I have 4 units and running it as a business are you saying that I wouldn’t have to pay business tax, I would be exempt?

There was lengthy discussion on what is considered a business and an investment for rental properties and whether to exempt 2 homes or less or exempt owner occupied rentals (rooms for rent).

Council Member O’Connell Called for the Question. 2-3(Amadeo, Brown, Delgado) Call for the Question fails

Council Member Amadeo requested to amend her motion to two (2) units or less.

9:58 PM

DELGADO/BROWN: TO CONTINUE THE MEETING TO 10:10 PM. 3-2(Morton, O’Connell)-0 Motion Passes

Mayor Delgado asked for the vote on the first motion. 2-3(Morton, O’Connell, Delgado)-0 Motion Fails

Main Motion with Amendment

Brown/Amadeo: that we approve the resolution as set forth in the agenda packet as follows: Whereas, on November 8, 2016, the voters approved business license tax measure u by 83%; and

Whereas, the effective date of the new business license is July 1, 2017; and

Whereas, the city council has requested information and clarification regarding the new adopted business license tax.

Now, therefore be it resolved, that the city council of the city of marina does hereby:

1. adopt Resolution No. 2017-, receiving additional information regarding business license tax for the City of Marina and to provide staff with further direction as follows:
 - a. to draft a proposed amendment the ordinance exempting income from both a single-family dwelling or apartment numbering two (2) or less in the City of Marina; and
 - b. exempting income from owner or tenant occupied rentals for the rental or sublet of rooms but NOT exempting short-term rentals of less than 30-days; and

- c. that the City also provide an alternative of basically bringing back the exemption as to rental properties, which the ordinance changed.

Amadeo Seconded with amendments:

1. To strike the last part, the less than 10 unit (9 or less); and
2. To address agents/contractor that work on behalf of another organization where the incomes does not come to them directly from what they do, it comes through another party; and
3. Ordinance state “Gross Income/Revenue” and should state “Gross Income/Revenue generated in the City of Marina”. (add appropriate language to the existing ordinance to clarify where appropriate)

VOTE: 2-3(Morton, O’Connell, Delgado)-0 Motion Fails

10:09 PM

Delgado/: to continue the meeting until 10:20 PM. Motion dies for lack of a Second.

10:10 PM - the Council Meeting adjourned

10:01 PM

BROWN/AMADEO: TO REOPEN THE COUNCIL MEETING FOR THE PURPOSE OF HEARING AGENDA ITEM 11b ONLY. 5-0-0-0 Motion Passes

- b. City Council consider adopting **Resolution No. 2017-74**, authorizing the Mayor to execute a Memorandum of Agreement between the County of Monterey and Monterey County cities regarding a credit guaranty for Monterey Bay Community Power. ***Pulled by Council Member O’Connell, was agenda item 8f(4)***

Council Member O’Connell, looking at page 72 of the staff report, 5.3.4, next to the last line the sentence starts “guarantee requirements shall be released after program launch and as soon as possible under the terms of the third-party credit agreements”. Does not see actual Memorandum of Agreements or in the agreement itself starting on page 82. That is my concern, sees it makes reference to Section 5.3.4. I would simply make a motion:

O’Connell/Morton: that this Sub-paragraph (f) set forth exactly the wording of Section 5.3.4, the exact wording so that we have that sentence that actually makes reference to a limitation on the guarantee period.

Discussion on first guarantee of \$70,000 for 1/4th of 1/11th; not being able to withdraw until guarantee is replaced, and seat voting power.

Substitute Motion

Amadeo/Brown: to adopt Resolution No. 2017-, authorizing the mayor to execute a Memorandum of Agreement between the County of Monterey and Monterey County Cities regarding a Credit Guaranty for Monterey Bay Community Power. 2-3(Morton, Brown, O’Connell)-0-0 Motion Fails

DELGADO/BROWN: THAT WE RECONSIDER THE MOTION THAT JUST FAILED. 3-2(Morton, O’Connell)-0-0 Motion Passes

Substitute Motion (2)

AMADEO/BROWN: TO ADOPT RESOLUTION NO. 2017-74, AUTHORIZING THE MAYOR TO EXECUTE A MEMORANDUM OF AGREEMENT BETWEEN THE COUNTY OF MONTEREY AND MONTEREY COUNTY CITIES REGARDING A CREDIT GUARANTY FOR MONTEREY BAY COMMUNITY POWER. 3-2(Morton, O'Connell)-0-0 Motion Passes

c. ~~City Council consider adopting Resolution No. 2017 , approving salary schedule for fiscal year 2017/18. *Pulled by Council Member O'Connell, was agenda item 8f(2). Item continued to August 2, 2017*~~

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: The meeting adjourned at 10:25 PM

Anita Sharp, Deputy City Clerk

ATTEST:

Bruce C. Delgado, Mayor