



MINUTES

Wednesday, August 2, 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)

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: Council met at 5:30pm as indicated on the agenda with regard to the items listed under Conference with Legal Counsel 2 cases, council received information, provided direction, no reportable action was taken.

4. MOMENT OF SILENCE & PLEDGE OF ALLEGIANCE (Please stand)
5. SPECIAL PRESENTATIONS:
 - a. Proclamations
 - i. Jr Giants Day

b 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.*

- Mike Owen – Commented on Monterey celebrated as a Tree City and noted Marina is a Tree City too. Commented on way to qualify to be a Tree City you needed to have an Urban Forester or Arborist, which is a typically a city employee or to have a Tree Committee.
- Paula Pelot – Read statement by Management Guru Peter Drucker “Management is doing things right and leadership is doing the right things”. Spoke about moral principles which one should include all affected interest when calculating the rightness of an action and weighing those interests equally.
- Manuel Vieira – Commented about Lapis Road and the growing concerns related to the accumulative trash, waste and abandoned vehicles. Asked if the city could work with the County. Asked when does the Board of Supervisor’s meetings take place so that the public can make comments at their meeting on this problem. Lapis Road is a nuisance.
- David Burnett – Announced that the Planning Commission is holding a Study Session on August 24th at 6:30 PM to discuss Short-Term Rentals.

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 82458-82590, totaling \$378,673.83

b. MINUTES:

- (1) July 5, 2017, Regular City Council Meeting
- (2) July 18, 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. 2017-75**, accepting the offer of dedication of right-of-way on Imjin Road from the University of California Santa Cruz, and authorize the City Clerk to record the dedication with the Monterey County Recorder's Office.
- g. APPROVAL OF AGREEMENTS:
 - (1) City Council consider adopting **Resolution No. 2017-76**, approving an agreement between the City of Marina and CSG Consultants, of Foster City, California, for engineering and building permit services, 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. 2017-77**, rescinding the award of a landscape maintenance services contract to Leonard Anthony Valenti Incorporated dba Commercial Environmental Landscape of Gilroy, California; and awarding the landscape maintenance services contract to Mike Davis Landscape Services of Morgan Hill, California as the lowest responsible bidder; authorizing the Finance Director to make necessary accounting and budgetary entries; and authorizing the City Manager to execute contract documents on behalf of city subject to final review and approval by the City Attorney.
- 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):
 - (1) City Council consider Introduction of an Ordinance (read by title only, waive further reading) of the City of Marina Amending Title 15 of the Municipal Code by Adding Chapter 15.39 to Provide an Expedited Permit Process for Electric Vehicle Charging Stations.
- m. APPROVE APPOINTMENTS: None

Mike Owen, agenda item 8g(2) - why the new contract?

Council Member Morton had a question on agenda item 8f(1) related precluding the city from creating a community facilities district? Question for 8g(2) does Marina do prevailing wage on landscape maintenance contracts.

BROWN/AMADEO: TO APPROVE THE CONSENT AGENDA 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. 2017-78**, approving salary schedule for fiscal year 2017/18. *Continued from July 18, 2017.*

Council Member O’Connell pulled this item for the purpose of voting no on it. Pointed out that Exhibit A the grade type is set at hourly on every position when we know that salary is not hourly. Also, noted that under unrepresented there are dates of 1950 in four different locations with is inconsistent with the city incorporation, and the amounts are incorrect for City Council and Mayor. Suggested that under the word “grades” of each position you put the salary amount per year.

DELGADO/BROWN: TO ADOPT RESOLUTION NO. 2017-78, APPROVING SALARY SCHEDULE FOR FISCAL YEAR 2017/18 WITH CORRECTIONS AS NOTED IN THE SIX (6) PLACES. 5-0-0-0 Motion Passes

Public Comments:

- Paula Pelot – Some people are confused by the difference by the schedule they see at the State Controller’s Office vs. this one. This is framework of salary for positions. The one you see at the Controller’s office is what the person who occupies a specific position where they are on that salary schedule.

- b. City Council consider adopting **Resolution No. 2017-79**, receiving additional information regarding business license tax and providing staff with further direction.

Presentation by Finance Director Lai and Financial Consultant Mark Mandell

Business License Implementation – Summary = June 20, 2017 – Council update; July 18, 2017 – Follow-up Q&A; August 2, 2017 – Proposed Amendments

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-0.2% of gross receipts - \$100 minimum

Business License Measure U Draft Ordinance = Based upon June 20 & July 18 deliberations; Draft Ordinance for consideration; Timeliness is important *(Provide 60 more days before penalty applies (Move from Aug 1 to Oct 1), Issue refunds to exempt businesses)* - Discuss Apportionment of gross receipts.

Business License Draft Ordinance = residential rentals; real estate salespeople; branch establishment & separate business; participation in public proceedings; effective date of amendment; delay of penalties

Residential Rentals = 5.12.070 Residential Rentals. (A.) For the purposes of this Article, the following activities shall not be deemed to constitute “engaging in business”, and no business license shall be required for such activity: 1. The rental by an owner of one residential dwelling unit in the City that he or she does not occupy. This exemption does not apply if the owner rents (to the same tenant or to different tenants) more than one dwelling unit in the City that is not occupied by the owner; 2. The rental by an owner-occupant to tenant(s) of one or more rooms of the owner- occupant’s primary residence or of shared use with the owner-occupant of his or her primary residence – (B.) This Section shall not apply to any residential rental that is offered for tenancies that are shorter than thirty days.

Real Estate Salespeople = 5.12.080 Real Estate Salespeople - A real estate salesperson shall not be required to obtain a license under this Article or pay a tax under this Article with respect to his or her activity as a real estate salesperson, so long as he or she is employed (as that term is used in Business & Professions Code Section 10132) by a licensed real estate broker who (i) has obtained a license under this Article and (ii) treats the salesperson’s activities as the broker’s own activities for purposes calculating taxes owed by the Broker pursuant to this Article.

Branch Establishments & Separate Business = 5.08.020 Branch Establishment & Separate Business - A. General Rule: A separate license must be obtained for each branch establishment or location of the business transacted and carried on and for each separate type of business at the same location, and each license shall authorize the licensee to transact and carry on only the business licensed thereby at the location or in the manner designated in such license; B. Special Rule for Certain Lessors: A person in the business of leasing detached single-family residential dwelling units may include all such units in the City on a single license and pay a tax based on the combined gross receipts from all such leasing activities.

Participation in Public Proceedings = 5.12.090 Participation in Public Proceedings - For the purposes of this Article, a person shall not be deemed to be engaging in business in the City if the person, in the course of business, is present in the City solely to appear at, present testimony at, or attend a session or meeting of any court, administrative agency, or local government legislative body located in the City. This exemption shall not apply if the person is appearing, testifying, or attending on the City’s behalf or in fulfillment of a contract with the City

Effective Date of Amendment = Effect on 2017 Licenses - The provisions of this Ordinance shall govern all licenses issued for the licensing period beginning July 1, 2017 and all subsequent periods. In the event a business license tax for the licensing period beginning July 1, 2017 has been collected that would no longer be required as a result of this Ordinance, the Finance Director is authorized to refund such tax.

Delay of Penalties = With respect only to taxes due on July 1, 2017, the following shall apply instead of the provisions of Section 5.16.110 of the City of Marina Municipal Code: For failure to pay a license tax when due, the finance officer shall add a penalty of ten percent of said license tax to delinquent licenses on October 1, 2017, and an additional penalty of twenty-five percent shall be added thereto on the first day of each succeeding month thereafter; provided, that the total amount of penalties imposed pursuant to this sentence shall not exceed fifty percent of the license tax due.

Business License Implementation = Gross Receipt Apportionment (The most common method for apportioning gross receipts amongst jurisdictions is to apportion gross receipts based on the “point of sales.”) - Example: Restaurant or Retail from a physical store; Retail sales of merchandise shipped via mail or other carrier to customers; Manufacturing; Professional Services

Q1: What transactions are included in “Gross Receipts”? = MMC Sec. 5.04.040 provides that: “Gross receipts” means the total of amounts actually received or receivable from sales and the total amounts actually received for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit is allowed, including interest and carrying charges in connection with sales, whether or not such act or service is done as a part of or in connection with the sale of materials, goods, wares, or merchandise. Included in “gross receipts” shall be all receipts, cash, credits and property of any kind or nature without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable or losses or other expenses whatsoever. More detail in Attachment/Exhibit to staff report

Draft Ordinance = Timeliness is important; Possibly introduce on Aug. 15th; Adopt on Sept. 6th; Council and Public Participation; Council Direction.

Council Questions: Dormant Commerce Clause applied to interstate commerce as to in between cities so as to require Apportionment, is that because of the federal dormant commerce clause or something similar in the state constitution; Business and Professional Code for Realtors, is there a code for someone working under a contractor’s license; why does a person who receives a “commission” need as license; profit margins taxing addressed in an ordinance; when setting the percent rate, is the objective in setting a tax that it’s fair and equitable and it applies to all businesses; is the intent of excluding the residential rentals because the gross receipts, the gross revenues are less than a standard; 30-day or less rentals exemptions; criteria for real estate sales persons exemptions; apportionment payments; reporting requirement for exemptions; do we really need Section 5.12.090; do other cities have trouble verifying exemptions for owner-occupied rentals; thresholds on number of rental units being exempt; is our tax fairly consistent with other ordinances across the state; complication in being able to apply proposed change of owner renting one residential unit would be exempt; subletting exemption; how do we legally define a business so that we know who we’re impacting?

Public Comments:

- Christine McClain – Polled council on who owns 1 or more rentals in Marina. Feels 2% of gross receipts is extremely unfair, unjust to a small mom & pop landlord. Homeowner in Marina and San Jose, worried that having to pay for a business license for renting our Marina home would cause financial problems as home mortgage, HOA, insurance and property taxes fall into the negative. Opposes the new business license tax
- Dawn Alva – What is the process for apportionment for someone overpaying their tax; requested that there be more time allocated for businesses to close their Q-2 books in order to generate the reporting from all external resources in order to comply with the correct allocation of the 0.02% - 60-90 days would be better; apportionment, because HQ is based here in Marina and sales location is based elsewhere and had two business licenses would I apportion the revenue based on HQ location or Sales location outside of Marina?
- Tor Portman – prior tax on business before was 0015% and now it’s 02% which is 13 times higher than last year on gross receipts. Asked what is being charged in Castroville? Feels the new tax might create a depression in Marina of fleeing businesses. Asked if council could lower the rate. Didn’t think it was fair of the 83% vote that there was no anti-statement in that vote. You didn’t go to the business community as ask for someone to make a statement contrary to that.
- Paula Pelot – spoke about parliamentary procedures. Principle for equal treatment. Section in the new draft/redraft that exempts the one rental unit. This is not equal treatment, this is a business and people are standing here calling it themselves a business but they should be exempt from it. If you start exempting occupations and exempting one unit where does this end? It places an unfair burden on other people who are paying the tax. Special treatments need to be eliminated and that .02% is a fair amount of money that would break anyone’s bank.

- Victor Mendez – Recently move a business from Seaside to Marina and stated that the 2% is hard. Commented on one of his repair orders and what his costs were and by the time expenses are subtracted there was not much profit. Thinks ordinance should be modified because Marina is the only place left to grow on the peninsula. Feels he’s being penalized for bring his business to Marina
- Chico – Supports previous speaker, has client provide own parts so that he can afford the .02%.
- Linda Vieira – failed to here in the presentation/discussion regarding the application or revision for the license gross receipt tax for mobile home parks. Noted that mobile home parks are under a rent control ordinance and are limited on what can be charged back to residents and business license tax increase is not something that can be charged. Asked that consideration be made for mobile home parks that instead of gross receipts it should be based on net or spaces.
- Rebecca McCallon – we have problems with homeless, rents in Marina are very high and thinks it needs to be considered about our rentals. With gross receipts, would like to see our properties in Marina be maintained better.
- Manuel Vieira – commented on city wanting low rents for mobile home, affordable housing, for seniors in the mobile home parks, passed the rent control ordinance. We provide a report on a yearly basis, you know what our gross income is and now you’re raising our taxes. What type of example, how can you guys have a conscious by doing that. Spoke out having to pay high property taxes for our local services. This tax is not fair.
- David Burnett – There was a lot of discussion last year about the business license tax, many forums and received a lot of input and you drafted a wonderful ordinance. Does not see this amendment being courageous and looks like you’re second guessing your decision. You should stick to the original ordinance. If you start down the road of exemptions, you will have case after case.
- Michael Markovich – Stated that if he or his family knew that owning one rental home would have to pay taxes we wouldn’t have voted for the increase. We assumed that this would go toward the larger businesses. We got sold a bill of goods. Believes this is a great step towards making things right.

Brown/Amadeo: to adopt Resolution No. 2017-, receiving additional information regarding the business license tax and direct staff to bring back and actual proposed ordinance to include Exhibit A with change to Section 5.12.070(a)(2) by removing the word “owner” so it reads “occupant”; and grant 60-day extension to file to eliminate penalties. Withdrawn

Substitute Motion

O’Connell/Morton: to adopt resolution of the city council of the city of marina receiving additional information regarding the business license tax; and put a period after the word “tax” and delete every word thereafter in the heading; and go down to now, therefore, the number 1 and it should read adopt resolution no 2017-, receiving additional information regarding business license tax for the City of Marina with a period, deleting every word thereafter. 2-3(Amadeo, Brown, Delgado) Motion Fails

Council Member Morton asked the motion maker for a friendly amendment to extend the deadline for this year 2017 for the application.

Council Member O’Connell said no.

Second Substitute Motion

Morton/_____ : to adopt resolution of the city council of the city of marina receiving additional information regarding the business license tax; and put a period after the word “tax” and delete every word thereafter in the heading; and go down to now, therefore, the number 1 and it should read adopt

resolution no 2017-, receiving additional information regarding business license tax for the city of Marina with a period, deleting every word thereafter; and to allow 60-day extension for the processing and late fees would not apply. Motion dies for lack of Second

Mayor Pro-Tem Brown withdrew his motion

BROWN/DELGADO: BROWN/DELGADO: TO ADOPT RESOLUTION NO. 2017-, RECEIVING ADDITIONAL INFORMATION REGARDING THE BUSINESS LICENSE TAX FOR THE CITY OF MARINA AND TO PROVIDE STAFF WITH FURTHER DIRECTION AS FOLLOWS:

1. TO COME BACK AS SOON AS POSSIBLE WITH A PROPOSED ORDINANCE THAT IS THE EQUIVALENT OF ALL THE PROPOSED MUNICIPAL CODE SECTIONS IN EXHIBIT A WITH THE FOLLOWING EXCEPTIONS:

- o **THAT ON SECTION 5.12.070 (a)(1) BE DELETED**
- o **THAT SUBDIVISION (a)(2) REMAIN, THE ONLY CHANGE BEING “OWNER-OCCUPANT” BE CHANGED TO “OCCUPANT”**

2. 60 ADDITIONAL DAYS TO FILE WITHOUT PENALTIES

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

Substitute Motion

Amadeo/Brown: to receive the additional information regarding the business license tax and to support the recommendations of the draft ordinance known as Exhibit A, as it’s written, except the change to owner-occupant. 2-3(Morton, O’Connell, Delgado)-0 Substitute Motion Fails

10:00 pm

Delgado/Amadeo: to continue the meeting five (5) more minutes. 4-1(O’Connell)-0-0

DELGADO/AMADEO: TO HOLD A SPECIAL MEETING FOR ON AUGUST 3, 2017 AT 5:30 PM. 4-1(O’Connell)-0-0 Motion Passes

- c. City Council consider adopting an uncodified ordinance of the City of Marina, as an urgency measure, imposing a temporary moratorium on the issuance of all development permits in the Downtown Vitalization Area.

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 10:07 PM to Thursday, August 3, 2017 to complete agenda item 11c

Anita Sharp, Deputy City Clerk

ATTEST:

Bruce C. Delgado, Mayor