



MINUTES

Tuesday, July 17, 2018

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: initiation of litigation pursuant to paragraph (4) of subdivision (d) of CA Govt. Code Section 54956.9 – Two potential cases

- b. Labor Negotiations

- i. Public Safety Officer Association Contract

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

6:50 PM - RECONVENE OPEN SESSION AND REPORT ON ANY ACTIONS TAKEN IN CLOSED SESSION

City Attorney Robert Rathie reported out Closed Session: Council met in Closed Session at 5:30 p.m. with regard to the three matters listed having to do with 2 cases of anticipated litigation and Labor Negotiations. 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. Junior Giants Day
- ii. National Night Out

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.*

- Darren Dillan – Concerns about CEMEX stockpiling Sand before the 2020 deadline, wondered if they found a loophole that would allow them to stockpile sand
- Tom Jennings, MPUSD Trustee – announced that on Saturday, July 21, 2018 at 12:00 pm is the groundbreaking for Marina High's new gym and construction of the gym is expected to begin July 30, 2018.
- Council Member Amadeo – Marina Youth Arts Summer Camp Performing Arts on Friday, July 20, 2018 at 11:00am at the Marina Library. The group will be performing The Greatest Showman; announced a new restaurant opened called I'm Thai Cuisine and located in the shopping center behind Wells Fargo.
- Mayor Delgado – thanked Terry Siegrist and his staff for their help on the Latino Conservation Week and one product of that was a free kayak trip into Monterey Bay; on July 28th from 10:00-12:00 will be another Lapis Road Cleanup and then on the same day from 5:00-8:30 will be the Marina High School Chip Spreading; on September 1st is the 43rd Annual Labor Day Parade and Celebration.

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 90012-90124, totaling \$483,428.58
Accounts Payable Successor Agency Check Numbers 12-13, totaling \$1,940.88

b. MINUTES: None

c. CLAIMS AGAINST THE CITY: None

d. AWARD OF BID: None

e. CALL FOR BIDS:

- (1) City Council consider adopting **Resolution No. 2018-79**, approving advertising and call for bids for the Marina Municipal Airport Drainage Control Graded Facilities Project.

f. ADOPTION OF RESOLUTIONS:

- (1) City Council consider adopting **Resolution No. 2018-80**, confirming levy of a special tax for the City of Marina Community Facilities District No. 2007-2 for Fiscal Year 2018-2019 as authorized by Ordinance No. 2007-09, and; consider adopting **Resolution No. 2018-81**, certifying City of Marina compliance with State law (Proposition 218) with respect to levying of special taxes for the City of Marina Community Facilities District No. 2007-2 for Fiscal Year 2018-2019 as authorized by Ordinance No. 2007-09.
- (2) City Council consider adopting **Resolution No. 2018-82**, approving a Caltrans Active Transportation Program Grant Application for funding of the Reservation Road Cycle Track Project.
- (3) City Council consider adopting **Resolution No. 2018-83**, confirming levy of the special tax for the City of Marina Community Facilities District No. 2015-1 (The Dunes) for Fiscal Year 2018-19 as authorized by Ordinance No. 2015-03, and; adopting **Resolution No. 2018-84**, 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 2018-19.
- (4) ~~City Council consider adopting Resolution No. 2018 , approving response to Monterey County Civil Grand Jury Final Report — Who’s In Charge — Homelessness — Need for Strategic Leadership. *Pulled from agenda by staff.*~~

g. APPROVAL OF AGREEMENTS: None

h. ACCEPTANCE OF PUBLIC IMPROVEMENTS: None

i. MAPS: None

j. REPORTS: (RECEIVE AND FILE):

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

k. FUNDING & BUDGET MATTERS: None

1. APPROVE ORDINANCES (WAIVE SECOND READING):

- (1) City Council consider reading by title only and adopting **Ordinance No. 2018-06**, Increasing and Extending the Transactions and Use (“Sales”) Tax Requesting County Elections Officials to Conduct the Election, and Requesting Consolidation of the Election.

m. APPROVE APPOINTMENTS: None

Council Member Morton had questions for 8f(2): assuming that this is within the Downtown Revitalization Specific Plan, how is the does this get incorporated into making sure whatever TAMC does get the new fresh look and conformity with that new fresh look? To the extent that the city might have some ability to influence, if we get the grant but if \$1.66 million is to be invested it would be nice to do it once.

Council Member Amadeo requested to move 8f(4) to a later date so the council could read the entire Grand Jury Report because we never received the report.

Mayor Pro-Tem Brown inquired about having a roll call vote for agenda item 8l(1) as it is an ordinance.

Council Member O’Connell has a question on 8f(1): staff report says it recovered for FY 17-18 was \$6,652 out of a possible \$7,125, why is the difference off by \$2?

MORTON/AMADEO: TO APPROVE 8l(1), ADOPTING ORDINANCE NO. 2018-06, INCREASING AND EXTENDING THE TRANSACTIONS AND USE (“SALES”) TAX REQUESTING COUNTY ELECTIONS OFFICIALS TO CONDUCT THE ELECTION, AND REQUESTING CONSOLIDATION OF THE ELECTION. 4-1(O’Connell)-0-0 Motion Passes by Roll Call Vote

DELGADO/BROWN: TO APPROVE THE CONSENT AGENDA MINUS 8f(4). 5-0-0-0 Motion Passes

9. PUBLIC HEARINGS:

- a. City Council open public hearing and consider adopt Resolution No. 2018-, to adopt the Negative Declaration prepared for the project; adopt Resolution No. 2018-, to approve a General Plan Amendment (GP 2016-03) to reclassify the property land use designation from “Multiple Use” to “Multi-Family Residential”; adopt Ordinance No. 2018-, amending the City of Marina Zoning Map (ZM 2016-04) rezoning the property from “C-1/Retail Business District” to “SP-Shores at Marina”; adopt Resolution No. 2018-, to approve a General Plan Code Text Amendment to delete Policy 2.63.5 to eliminate the requirement for the provision of childcare; and adopt Resolution No. 2018-, to approve a Specific Plan prepared for the project; adopt Resolution No. 2018-, to amend the Official Plan Line (OPL) to eliminate the cul-de-sac at the end of the De Forest Road extension; and adopt Resolution No. 2018-, to approve a Combined Development Permit consisting of a Condition Use Permit for a multiple-family residential development exceeding 25 units per acre and Site and Architectural Design Review (DR 2016-11) for a new five-story, fifty-eight (58) unit apartment complex, as currently sited and designed, including the two requested project incentives allowing for an increase in maximum height/stories and a reduction in required parking. *Continued to August 8, 2018*

Mayor Delgado announced that this item will be continued to the August 8, 2018 Council meeting due to improper noticing on the agenda, which did not include the property location/APN. Noted that the public hearing will be opened for public comments for those in the audience tonight but stated that if members of the audience spoke tonight they would not get to speak at the August 8th meeting.

Chris Owhadi, Real Estate Developer – will not be able to make the August 8th council meeting. We are excited about building this project. We've been working with the City for 3-years on this project with a lot of ups and downs specifically with the staffing. We are very happy with where we're at and urged council to really take a look at what we're doing and know that we have tried our best to work with the city and planning department to develop something that is going to be a great project for Marina. Our goal is to be involved with the city in the future and moving forward not with just this project. We would love to be involved on any feedback with regard to the redevelopment and what's going on with the moratorium. We see this city as a wonderful place that is somewhat undervalued in my opinion. And I think that's because there hasn't been development, smart development put in place. I'm seeing it to begin and I see what you're doing in creating a green community and we want to be consistent with that plan.

This is a multi-family housing apartment project, higher density. It's a 5-story project with 58-units. We're going for of an urban feel, so we have 4-rooftop decking areas to give you the green space. We have community amenities such as a gym and have created walking paths that will go Seacrest Shopping Center as well as inter-connections for biking. The emphasis is to give you more of an urban style living. All of the 2-bedrooms are 2-bed/2-baths with walk in closets, islands and contemporary features. Our architectural design was played off the design that was done by the MST and so we really wanted to work in conjunction with what we're doing there. We had a close relationship with CHISPA and what's going on with them and I have agreed to work from a landscape perspective in conjunction with Junsay Oaks project as well, to make sure we can develop something that's going to be cohesive and fit in with everything that is planned for this city.

Mayor opened the Public Hearing for Comment:

- John Wizard – candidate for Seaside City Council. Seaside is working on two projects, Campus Town and Main Gate and together there will be more than 2,000 units, 20% affordable, 20% work-force. We're looking at adding more than 500 affordable units. Asked council to review the contract that you're currently negotiating and require that the developer commit in perpetuity to some affordable housing much like all of our neighbors on the Peninsula are doing. You cannot have smart development in California today without a mandate for affordable housing in that project.
- Mark Stevenson – this project seems to be exceeding the allowable height requirement of 5-stories and considering all this land that we here in this beautiful city, is there a reason the council allowed that specific development?

Mayor Delgado continued the public hearing to August 8, 2018

- b. City Council of the City of Marina approve the first reading of an Ordinance No. 2018-, approving the Second Amendment to the Development Agreement between the City and Cypress Marina Heights, LLC related to the Sea Haven Project; and the City Council acting on behalf of the City and as the Governing Board of the Successor Agency to the Marina Redevelopment Agency adopt **Resolution No. 2018-85 and Resolution No. 2018-08 (SA-MRA)**, approving the fourth amendment to the Option Agreement by and among the City, the Successor Agency and Cypress Marina Heights, LLC; and the City Council acting on behalf of the City and as the Governing Board of the Successor Agency to the Marina Redevelopment Agency adopt **Resolution No. 2018-86 and Resolution No. 2018-09 (SA-MRA)**, approving the Termination of Memorandum of Agreement by and among the City, the Successor Agency and Cypress Marina Heights, LLC related to the funding of Phase I of the Strategic Development Center.

Karen Tiedemann, Goldfarb & Lipmann: what you have before you tonight are three action items, three for the City Council and three for the Successor Agency Board. This item relates to items you approved earlier this month regarding the Sea Haven project, formerly Marina Heights.

Last month we came before you with amendments to the Development Agreement and the Option Agreement for the Sea Haven Project related to Wathens Castanos Peterson Homes which assumed substantially all of the obligations regarding the development of the Sea Haven Project but Cypress Marina Heights retained 63 lots within the development and they are responsible for developing those 63 lots. It is my understanding that almost 40 of them have received their building permits, so that leaves 21-22 that still need building permits.

So, in order to ensure that the development of those remaining lots are consistent with the development constraints that you agreed to with Wathens Castanos we have brought back to you, amendments to each of the agreements but these amendments relate only to Cypress Marina Heights, LLC. These amendments essentially cover only those portions of the property that were retained by Cypress Marina Heights, LLC. They are for the most part identical to the amendments that you approved with regard to Wathen Castanos to the extent there are changes, they are primarily in the Second Amendment to the Development Agreement, you approved the First Amendment last month with regard to Wathen Castanos.

The changes from what you approved with Wathen Castanos are primarily two: one is with regard to the development and timing of the affordable housing, which is Section 5 of the Second Amendment. The language has been changed to make it explicit with regard to the affordable units that Cypress Marina Heights, LLC is still responsible for; and the Second change is if you recall Wathen Castanos agreed to some particular funding with regard to the 18-acre park adjacent to Sea Haven development including increasing the \$1.5 million fee and constructing the park and paying for maintenance of that park for having HOA paying for the maintenance of the park, that has been removed because that is not an obligation that Cypress Marina Heights has taken on that is Wathen Castanos's obligation. So, those are the significant changes in the development agreement from what you approved last time with regard to Wathen Castanos.

The Option Agreement virtuously remains unchanged from the one you approved with Wathen Castanos except the change of names. To make sure we've dotted all our i's and crossed all our t's we are asking to approve another Termination of the Memorandum of Agreement regarding the funding of the Strategic Development Center. Cypress Marina Heights assigned the rights to fee credits under that agreement to Wathen Castanos and so at the end of June you approved a termination of that agreement so the fee credits go away with regard to Wathen Castanos but in order to make sure we've cut off everyone's rights regards to any fee credits we are also proposing a Termination the Memorandum of Agreement as it might apply to Cypress Marina Heights, LLC.

Council Questions: is this consistent with the FORA CFD goal and endeavors; how many of the 63 lots are BMR; is Workforce Housing included in 110; FORA impact fees consistency; what are the correct number of bridge-homes to be built by Cypress Marina Heights?

Mayor opened Public Hearing for Comments:

- Emily Murry, Cypress Marina Heights Legal Counsel – indicated she was here to answer any questions from Council or public.

Mayor closed public hearing.

DELGADO/MORTON: TO APPROVE THE FIRST READING OF AN ORDINANCE NO. 2018-, APPROVING THE SECOND AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY AND CYPRESS MARINA HEIGHTS, LLC RELATED TO THE SEA HAVEN PROJECT. 5-0-0-0 Motion Passes by Roll Call Vote

DELGADO/AMADEO: ADOPT RESOLUTION NO. 2018-85 AND RESOLUTION NO. 2018-08 (SA-MRA), APPROVING THE FOURTH AMENDMENT TO THE OPTION AGREEMENT BY AND AMONG THE CITY, THE SUCCESSOR AGENCY AND CYPRESS MARINA HEIGHTS, LLC. 5-0-0-0 Motion Passes

DELGADO/BROWN: ADOPT RESOLUTION NO. 2018-86 AND RESOLUTION NO. 2018-09 (SA-MRA), APPROVING THE TERMINATION OF MEMORANDUM OF AGREEMENT BY AND AMONG THE CITY, THE SUCCESSOR AGENCY AND CYPRESS MARINA HEIGHTS, LLC RELATED TO THE FUNDING OF PHASE I OF THE STRATEGIC DEVELOPMENT CENTER. 5-0-0-0 Motion Passes

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 request from the owner of the Marriot Springhill Suites Hotel for reconsideration of the Amendments to the Operating Covenant, Requirement to Repay Impact Fee Incentive and to pay Extension Fee. ***Continued from July 3, 2018***

Council Member O’Connell asked if we could have disclosure by the elected officials as the too contacts that have been made with the developer or each other since the last time this was on the agenda, so that the public has a full disclosure.

Mayor Delgado – Over the last 6-months I met with Harvey 2-3 times and over the last month since the last time we discussed this matter I believe I have spoken to him (Harvey) once at the hotel, no twice. Once at his hotel where he showed me some documents that he also showed the City Manager, I understand some other council member and also once on the telephone. We discussed things such as the potential that he might be... he might have to foreclose. We discussed the potential of him building a second hotel. We discussed some financials that were no different than having discussed in public or with the City Manager. And then I had a conversation with Council Member Brown, and in

that conversation my recollection David and I discussed the potential... the risk of saying yes and the risk of saying no to this request. It was my recollection that my input to David was that there are financial considerations, there are political considerations and there is sort of moral or what's the right thing to do type of considerations and that I was weighing those three types of considerations. Spoke to about 30-35 of the public about the hotel, sharing their opinions and mine.

Council Member O'Connell – I did receive numerous emails including one from the applicant/developer, which I did not respond to. I have not spoken to any council member other than Council Member Morton discussing the matter coming to the council in a future date and the previous decisions made by the council in this matter. I have, as I say have not spoken to other council members, I have spoken to the City Manager inquiring to the continuance and as to any documents that were to be provided but have not been provided.

Council Member Amadeo – I have spoken to a couple of members of the public. Am I required to name them? They are just members of the public asking me about what the issues were that we were looking at and my opinion on them. I have also spoken to Council Member Brown specifically wanting to know what my thought process is in looking at this and told him it was a risk benefit issue for me, risk to the city, benefit to the city. I did get an email from Mr. Dadwal at some point, I don't remember if that's been since the last meeting... I don't think so, I think it was before that and he wanted to meet, and I let him know I would not meet with him. I spoke frequently with the City Manager.

Mayor Pro-Tem Brown – I spoke to Mr. Dadwal on two occasions, in person at his hotel within the past 6-months. We discussed the possibility of foreclosure, the possibility of proceeding in the absence of a foreclosure. I spoke several times I think on the phone with the Mayor about the merits. I don't recall speaking with Council Member Amadeo although I'm not saying that conversation didn't happen I just don't remember it and if she said anything to me I don't think I responded in a substantive way. I spoke to the City Manager about it in person yesterday and I spoke to various members of the public and I spoke to me wife.

Council Member Morton – I received an email from the developer asking to meet and did not respond to the email nor have I met with the applicant Mr. Dadwal or any of the other limited partnership members. I have spoken with Council Member O'Connell about this and I have spoken extensively with our City Manager about this, particularly wanting to know what documents had been provided pursuant to the opportunity to provide documents in support of any requests by Mr. Dadwal and partnership. And the public has reached out and talked tremendously both by email and in person with me or asking questions.

Assistant City Attorney Robert Rathie Based on these disclosures this evening we may have a Brown Act issue here with Council Member Brown haven spoken to two other members of the council. Requested a 10-15-minute break to research his findings.

8:05 PM = BREAK

8:20 PM = Reconvene

Assistant City Attorney Robert Rathie – Our recommendation in this matter is that we do have a violation of the Brown Act in that: *“there has been a potential for a collective concurrence among a majority of the Council Members in a setting that is set outside of a publicly noticed meeting”*, which is essentially the essence of the Brown Act. We believe that there needs to be some consequence of this. Mr. Brown/Council Member Brown was the “hub” in what is commonly described as a “hub and spoke violation” where one person communicates between a majority of the council. So, our advice would be that Council Member Brown step down, do not participate as a member of the council in this

decision. He need not leave the room, this is not a conflict of interest for him and he may speak to the matter as a member of the public.

Mayor Pro-Tem Brown – I will abide by the recommendation, what I would like to add however, is I suspect what happened was I spoke to Council Member Amadeo and then after a while forgot about it and then spoke to Bruce Delgado. I can't think of any other explanation. Certainly, Council Member Amadeo must be telling the truth, I have no doubt about that, but I just cannot remember that. I will however follow the recommendation and stepdown, but I may stay in the room and if I leave I'd like to be advised when it's done so that I can come back.

Layne Long, City Manager – back of December 2013 the Council considered an initial incentive package from Mr. Dadwal. The incentive basically was that the hotel would open no later than the Summer of 2016, that the City would apply 50% of the TOT that it would generate that would be remitted by the hotel during the hotels first 48-months of operation up to a maximum of \$1,000,000 that would go toward the impact fees that were estimated at the time to be \$737,000. Part of that report was a financial study of the project by Keyser Marston that showed the impact of the hotel and the revenue it would generate for the city.

The hotel did not open in Summer 2016 through a lot of unfortunate events and various problems, so the City Council then subsequently entered into an agreement that would allow the impact fees, which they were actually paid then that came out to \$634,000 and they agreed at that point of time that they would extend that incentive but part of that was that Mr. Dadwal had agreed to pay \$100,000 for that 6-month extension and that would expire in March 2017. That was the date he believed that the hotel would be opened. It did not open at that point in time and didn't open until June 2017. According to the agreement then the incentive went away, and he has to repay the \$634,000 plus the \$100,000 that he agreed to pay the city for the extension.

Back in April of this year Mr. Dadwal approached and requested that the City Council reconsider this issue and talked about some of the financial difficulties that he was having at that point in time. In May he had a \$5.5 million interim bridge loan that was going to be due and there was concern that if he didn't get that converted to a permanent financing that he would be in default at that point in time and that's why the issue of foreclosure was brought up. Just because there is concern he might go into default and he was able to get a 6-month extension for that bridge loan through November 2018.

Then in May when he had this issue before the Council the Council requested that I look at financial documents to identify and try to make a determination on the financial status of the hotel and part of the concern was whether or not it would go into foreclosure. The documents that I did look at, I provided to Keyser Marston our financial advisor and they looked at those documents and we both agreed that there's not enough information on there that we could make any real determination on the financial status of the hotel nor Mr. Dadwal's assets. The only data we can confirm is the TOT revenue that we've generated from the hotel and technically that's confidential information, individual businesses TOT revenue that they generate and their sales tax revenue that they generate has been part of the public record and I believe he stated and so the hotel in the original agreement we're anticipating \$500,000/year in TOT revenue and he'll say that's between \$500,000-\$600,000 with what the hotel has generated and so it has met and exceeded the revenue expectations.

Council Questions: What TOT has come to the city; what was the time period for the TOT income; why was second item dropped between April 17th and May 11th; who are the partners of the Monterey Peninsula Hotel Group; did the lender communicate with you or did you as the City representative initiate any communication with the lender; did the email or any other communication from the lender indicate how much the debt needed to be reduced; did proponent submit certified profit and loss sheets for the business; did Mr. Dadwal submit tax returns for the business or his personally or the other partners; has he submitted a copy of the contract with Marriott, which would have provisions about

what would happen if the hotel went into default; what is the impact to the city if Mr. Dadwal cannot pay the amount due on the scheduled timeline; can council rescind original incentive of the \$634,000 in impact fees but require the Promissory Note of \$100,000; what is the total debt in concern to the SBA; did Mr. Dadwal ask to modify his payment structure; did any of the partners of the Monterey Peninsula Hotel Group offer an alternative security for our impact fees; what is the appraised valuation; when was the appraisal done; has any other property been put up as collateral for the loans; have the partners of Monterey Peninsula Hotel Group put up collateral; do you foresee this item coming back before us in 6-months when his extension is up; does Marina Community Partners build hotel or do they look for developers to build them?

O’Connell/Morton: denying the request of the owner of the Marriott-Springhill Suites Hotel to reconsider the existing amendments to the Operating and Covenant requirements to repay impact fees incentive and to pay the extension fee. 2-2(Amadeo/Delgado) Motion fails/stalls

Alternate Motion

Amadeo/Delgado: that we rescind the \$634,608 impact fee and we continue with the \$100,000 Promissory Note. Withdrawn by motion maker.

9:58 PM

O’Connell/Amadeo: to extend this meeting until 10:20 PM. 4-0-0 Motion Passes

Public Comments:

- Augha Bilal – Believes some council members would like more information so they can change their opinion, so why not make a request that City Council create a committee including the City Manager, City Finance Officer and maybe one council member and we can bring some documents and sit down and show some proof, which we have so people can reconsider their opinion and come up with some common ground.
- Summit Singh – Support Mr. Dadwal and as a young man having a business in Marina, if somebody want to open another business in Marina it just shows me how the city would support me in the future. The way Mr. Dadwal has shown up and brought the hotel to the city and the promise he has lived up to and has brought lots of revenue to the City in other locations, we have to look at the bigger picture and that is bringing revenue into the city.
- Mark Stevenson, Hotel Contractor – Brought to the Council’s attention a Proforma that he drafted knowing the actual cost of the hotel and how those costs were used. This Proforma shows Harvey making about \$1.4 million/year. With the money he’s making he can pay back the \$750,000. What Harvey is not saying is that he has no money in this deal. He has his LP Partners that are putting gup money to get Green Cards. The cost of the land was \$650,000. The construction loan was \$20.5 million. Plans and Permit were \$250,00 and city fees were \$644,000 which were deferred. Making a total of \$22,044,000. With his partners he has nothing in his own money invested in his project. He has his partners money, his partners from India that bought the land. With the total gross incomes and adjusted Gross Income Less Vacancy minus his mortgage costs he’s making \$1.4 million a year.
- Suk – Support Mr. Dadwal hotel because he has put work opportunities out there for myself and school members. He also lets us use the gym and pool after school since we didn’t really have one and it was too expensive to go elsewhere. Hopes Council will work with him.
- Daren Dillan – Here in support of the hotel project and Harvey for having his fees reduced. The city as a whole need to move forward with a vision and part of the vision is wanting new businesses to come into the city. If you punish businesses no one new will come. Do we have any

new sit-down restaurants yet? will they show up after this? Are there any new hotel on the docket here? Marina has always been a bedroom community, has a very old population. They don't pay any taxes, so the city has very limited funds, so to make this person pay his debt back and have to where you lose the hotel, you lose the future income... you're just shooting yourself in the foot. You have to have a vision for where Marina is going and stop punishing people for things that happened in the past.

- Razniph – Here in support of Harvey because he knows how tough it is to set up a business. Harvey has already invested so much into this city and is willing to do more. Requesting the Council to help him, support him so the city gets more. This is just the beginning and hopes this vision will move along and help the city.
- Bob Nolan – Have had business dealings with Harvey in the past and has been very gracious and helped make my daughter's wedding night in his hotel memorable. But a deal is a deal and a promise is a promise, and thinks it's time to stop having this conversation and come to a decision on it. Agrees with Council Member Morton in that we do not have enough information and we need some documentation. Not sure you could even vote on this without more documentations or more information. Asked that Harvey come forth and provide that information to the Council, to the City Manager and to the public so we can come to an educated decision on this matter.
- Pete Scudder – Monterey County Business Council is in favor of Harvey's motion to be able to get reconsideration amendments on the Operating & Covenant and reconsideration of the extension fee and impact fee incentive. Can see that there is going to a split vote here tonight and thinks the opportunity for Harvey right now is to come back with documentation and if you can agree to reconsider how he approaches the council, to be able to come back to you and bring the documents so that he can ratify that and kind of change the direction so you'll look at that to amend that so it can actually be approached and not be in violation of the Brown Act. This would be a great project for the future.
- Rende Randa – Speaking on behalf of the local Indian community I have already expressed myself on this subject. Highlighted some points. Mr. Dadwal has met all conditions from the city council resolution 2013-193 adopted on December 17, 2013 except his ability to start the hotel as specified on the resolution. As intended as the inception of the project, this hotel project aimed to enhance economic development, the future wellbeing and quality of life of Marina citizens by narrowing the city's perpetual revenue expense cap. Through his resolute, hard work and dedication to this project Mr. Harvey has delivered on his promise to the city. He now see's and has tourists traffic and a substantial increase in the business activity. With all of the above I believe the city should redeem the promise of tax incentive given to Mr. Dadwal since such incentive is also linked to his future plans for further development of his hospitality business and ultimate development of this city.
- Nagiba Kaha – Represents the local Alcan community and has lived in Marina since 2015 and loves this city and wants to see it grow. Here to support Mr. Dadwal request for reconsideration of City Council decision on the tax incentive promise to him in 2013.
- Suva Shama – Here to support Mr. Dadwal and his big business center/Marriott Hotel that generates growth revenue for the city. Supports Harvey's request for reconsideration of City Council decision on incentive given to him in 2013.
- Maryann Leffel – EB5 Program is an immigration program that provides green cards for the investors. There can be up to a certain dollar amount and it has to provide jobs, "jobs" is the key piece of it. It has to be attached to infrastructure. An EB5 investor cannot in anyway be managing the property. So, these are all things that factor into this of whether or not an EB5 investor could put more money in. The jobs that were promised to have been provided on this particular location but there cannot be any other money coming because there cannot be more jobs provided based on

how many rooms there are, what so deserved that sort of thing. As for the SBA, you go to them and say were going to have a loan amount, X amount at the end but the thing runs over budget and you take it back to SBA and they say sorry your loan-to-value is now over what our guidelines are and there's no more money to be loaned out. And in this case, that's what happened. Although it's unfortunate it did happen and happened for a lot of reasons, but I do think it can get worked out. He's going to get trapped with rising interest rates the longer this drags on. If this could be put to bed within the next 30-days, he's going to have to get his paperwork ready and he's going to have to get it submitted.

- Mr. Singh – Here to support Harvey and his hotel. It brings a lot of business to us and created jobs in the community, bringing tourists to the area and giving the city lots of revenue. Does not think it's fair to slap him on the wrist for being 3-months late on a huge project. I wouldn't want to do business in Marina the way you're going to dog him now. It makes me not want to do business in Marina again.
- Doug Yount – Marina Community Partners is a Land Development Corporation of Shea Homes and Syntex Homes and Shea Properties/Commercial Development Entity. We as a land developer put together the land, pay all the expenses of entitlements, take all of that risk, put in infrastructure and prepare the land for subsequent development. You have to ask yourselves "what kind of community do you want to be?" Do you want to be the one that is progressing or investing resources? You've already received a return of \$500,000 or more not to mention the jobs and impacts. Significant returns for very little of any risk. So, penalty aside then the impact fee portion think about the return you've already received, the returns that you will receive, the risk that you actually bare and the risk that you bare to the community and development community by the message you would send. Hope you can work things out.

10:20 PM = O'Connell/Delgado: to continue to 10:30 PM. 4-0-0-0 Motion Passes

- Paula Pelot – There is obviously a lot of passion and a lot of good reasoning on all sides of this and I think that if this does come back there should be a higher bar for the documentation because we're doing this on a lot on feelings, supposition and assumptions. Thinks the city should form its own internal committee. I still believe the extension fess should be there and any other costs that are associated with it. You have to do your due diligence on this. You need facts and when Mr. Dadwal comes back I suggest you contract with a banking institution and let them look at it the same way they would if someone was coming to them to apply for a loan and give you a conclusionary statement as to whether or not they believe there is a need for the city to waive all or part of this or whether he has some other reasonable way to do it. Then you really have some facts to base your decision on.
- Kathy Biala – Thinks we're going to leave today with a stalemate and I agree with the first speaker that people are asking for more information but even beyond that I think as Mr. Dadwal said he's not willing to share in the public some of the information. If there is any way that Mr. Dadwal and the four council members can be in the same room together and conduct negotiations and if you can come out with some kind of solution that everybody agrees to. Thinks that without a full panel a stalemate vote will continue.
- Adam Urrutia – I think we need to consider two optics of what we're considering in that we are going to be asking the public to raise taxes on themselves to the tune of \$2 million/year. People who would be opposed to taxes could certainly bring this issue up during the campaign and possibly sink the tax measures. I think that the idea of seeking more information from Mr. Dadwal to get to a place where we have a final conclusion of whether or not you should do this is the right move. I think pushing this out further is the right move and certainly not approving this what appears to be a gift of public funds at this time.

Mayor closed public hearing.

Substitute Motion

Delgado/Amadeo: that we have staff work with Harvey, bring the documents to the city staff that would answer the questions that city staff has heard, such as personal tax returns etc.... 2-2(Morton, O’Connell)-0 Motion fails/stalls

Council Member O’Connell Called for the Question

Morton/Delgado: That the city considers upon proof of security elsewhere, other than the hotel property, that we remove our lien against the hotel and put the lien against some other security owned by Mr. Dadwal’s Marriott Springhill Suites, his partners or himself.

10:30 PM – Delgado/Amadeo: that we continue the meeting five (5) more minute. 3-1(O’Connell)-0 Motion Passes

After discussion of assets, collateral and security interest for the \$735,000 the Mayor withdrew his Second on Council Member Morton’s motion because not that he disagrees, great idea but staff could do that anyway and bring this back maybe with more modification so that we can have a full council and not be stalemated.

10:35 PM – Delgado/Amadeo: to go until 10:45 to complete next item. 4-0-0-0 Motion Passes

- b. City Council consider adopting **Resolution No. 2018-87**, approving the purchase of a Rosenbauer Type One Fire Engine; and, authorize the Finance Director to make necessary accounting and budgetary entries, and; authorize the City Manager to execute the purchase in an amount not to exceed \$607,000 on behalf of the City subject to final review and approval by the City Attorney.

DELGADO/AMADEO: TO APPROVE RESOLUTION NO. 2018-87, APPROVING THE PURCHASE OF A ROSENBAUER TYPE ONE FIRE ENGINE; AND, AUTHORIZE THE FINANCE DIRECTOR TO MAKE NECESSARY ACCOUNTING AND BUDGETARY ENTRIES, AND; AUTHORIZE THE CITY MANAGER TO EXECUTE THE PURCHASE IN AN AMOUNT NOT TO EXCEED \$607,000 ON BEHALF OF THE CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY. 4-0-0-0 Motion Passes

- 12. COUNCIL & STAFF INFORMATIONAL REPORTS:
 - a. Monterey County Mayor’s Association [Mayor Bruce Delgado]
 - b. Council and staff opportunity to ask a question for clarification or make a brief report on his or her own activities as permitted by Government Code Section 54954.2.
- 13. ADJOURNMENT: The meeting adjourned at 10:45 PM

Anita Sharp, Deputy City Clerk

ATTEST:

Bruce C. Delgado, Mayor