

MINUTES
MALIBU CITY COUNCIL
REGULAR MEETING
JANUARY 11, 2016
COUNCIL CHAMBERS
6:30 P.M.

CALL TO ORDER

Mayor Rosenthal called the meeting to order at 6:38 p.m.

ROLL CALL

The following persons were recorded in attendance by the Recording Secretary:

PRESENT: Mayor Laura Rosenthal; Mayor Pro Tem Lou La Monte (via teleconference); and Councilmembers Joan House, Skylar Peak and John Sibert

ALSO PRESENT: Christi Hogin, City Attorney; Jim Thorsen, City Manager; Matt Myerhoff, Media Information Officer; Craig George, Environmental Sustainability Manager; Amy Crittenden, Recreation Manager; Christopher Deleau, Planning Manager; Adrian Fernandez, Senior Planner; Bob Brager, Public Works Director; and Heather Glaser, Deputy City Clerk

PLEDGE OF ALLEGIANCE

Guy Blake led the Pledge of Allegiance.

APPROVAL OF AGENDA

MOTION Councilmember House moved and Councilmember Sibert seconded a motion to approve the agenda. The question was called and the motion carried unanimously.

REPORT ON POSTING OF AGENDA

Deputy City Clerk Glaser reported that the agenda for the meeting was properly posted on December 29, 2015.

ITEM 1 CEREMONIAL/PRESENTATIONS

- A. Presentation of City Tile to Adrian Fernandez, Senior Planner, for Seven Years of Service to the City of Malibu

Mayor Rosenthal presented the tile to Senior Planner Fernandez.

Senior Planner Fernandez thanked the Council.

B. Posthumous Recognition of California Highway Patrol Officer James P. Haynes for his Extraordinary Act of Heroism on April 3, 1951

Mayor Rosenthal presented the commendation to Pete and Linda Haynes.

California Highway Patrol (CHP) Officer Johnny Starling presented the Commissioner's Medal of Distinction to Pete and Linda Haynes.

Mr. Haynes thanked CHP Commissioner Farrow and the Council.

ITEM 2.C. CITY ATTORNEY REPORT ON MEASURE R

City Attorney Hogin stated the public's interest was normally protected by handling litigation matters in Closed Session, but in this case she believed that the Council could address the matter in Regular Session. She stated a final judgement had not yet been handed down in the case involving City Measure R, so no action was required. However, she wanted to explain the basis of the court's decision and apprise the Council of its various options.

In response to Mayor Rosenthal, City Attorney stated the Council could discuss the matter but would take no action.

City Attorney Hogin explained City Measure R. She stated a voter approved initiative could not be amended by the Council. She discussed the facial challenge that was filed in federal court and then later also filed in state court. She stated the state superior court was obligated to favor voter initiatives when they could be read as constitutional. She stated she had worked closely, at the direction of the Council, with Remcho, Johansen and Purcell, the law firm representing the proponents. She stated voters were allowed to decide the rules by which the City would make administrative decisions. She discussed Measure R's requirement for a specific plan to obtain a permit. She discussed the Measure R savings clause and a provision that allowed a specific plan to cover more than one project. She stated the court concluded that the plan language made the specific plan requirements an administrative action, which invalidated Measure R. She stated the court had taken issue with the word "project," the requirement of a report on every project before placing a specific plan before the voters, and the requirement of a specific plan for any project. She stated the court was bothered by the fact that the Measure required a developer to apply for a project before the rules were determined. She discussed chain stores as a distinct use. She stated the court had taken issue with the conditional use permit (CUP) being attached to the tenant. She discussed options for enacting legislation to achieve the main components of Measure R, which were regulating chain stores, specific plans to more faithfully implement the General Plan, voter participation in the approval process, and that the requirements be Citywide. She discussed the option of

appealing the final judgment. She discussed application of Measure R if it passed facial challenge and the subsequent federal action.

ITEM 2.A. PUBLIC COMMENTS

Margaret Cole discussed her plan for an arboretum and a Frisbee golf course. She discussed Legacy Park.

Peter Bielere deferred his time to Paul Elder.

Randee Bieler deferred her time to Paul Elder.

Paul Elder, St. Aidan's Episcopal Church, discussed Malibu's Community Assistance Resource Team (CART) and the homeless population in Malibu. He discussed Santa Barbara's Safe Parking Program and urged the Council to consider implementing a similar program.

Edith Morgan expressed concern regarding the security of her property.

Heather Anderson discussed bond funds for reconstruction of parts of Malibu High School. She stated construction needed to start by July 2016.

Colleen Baum discussed the proposed renovations to Malibu High School through use of the bond funds received 10 years ago.

Elaine Weissman expressed concern for disputes between Malibu Community Alliance (MCA) and Santa Monica-Malibu Unified School District (SMMUSD), which have prevented necessary renovations to Malibu High School.

John Mazza discussed Measure R.

Lloyd Ahern indicated opposition to the City appealing the court's final judgement regarding Measure R. He stated any appeal should be made and funded by the proponent.

Ted Vaill indicated support for the City appealing the court's final judgement regarding Measure R.

Mark Persson, Malibu Chamber of Commerce, discussed the legal vulnerabilities of Measure R. He indicated opposition to the City appealing the court's final judgement regarding Measure R. He stated any appeal should be made and funded by the proponent.

Lynne Daniels indicated opposition to the City appealing the court's final judgement regarding Measure R.

Michael Leahen stated it was a misuse of public funds to appeal the court's final judgement regarding Measure R.

Justine Petretti stated it was a waste of public funds to appeal the court's final judgement regarding Measure R.

Rob Daniels stated it was a waste of public funds to appeal the court's final judgement regarding Measure R.

Makan Delrahim stated it would be better to legislate rather than use public funds to appeal the court's final judgement regarding Measure R.

Les Steinmetz stated the community deserved another choice of grocery store. He indicated opposition to using public funds to appeal the court's final judgement regarding Measure R.

Michael Osterman indicated support for the City appealing the court's final judgement regarding Measure R.

Ozzie Silna discussed easement requirements.

Jeff Jennings stated appealing the court's final judgement regarding Measure R could result in overturning the facial challenge only to have as applied challenges in the future.

Ryan Embree discussed Measure R.

Paul Grisanti stated a long line of appeals of the court's final judgement regarding Measure R was not a good investment of the public's funds.

ITEM 2.B. COMMISSION / COMMITTEE / CITY MANAGER UPDATES

Carl Randall, Parks and Recreation Commission, discussed the timeline for park design for Bluffs Park. He discussed parking issues at Bluffs Park and overnight camping in Las Flores Creek Park. He announced a Las Flores Creek Park ribbon cutting on January 26, 2016.

City Manager Thorsen stated tree recycling would end on January 16, 2016. He encouraged the community to pick up free, filled sand bags at Zuma Beach and Will Rogers State Beach. He urged residents to take the online survey regarding design options for the Malibu Bluffs Parkland Project once it was on the City's website.

ITEM 2.D. SUBCOMMITTEE REPORTS / COUNCIL COMMENTS

Councilmember Sibert stated he attended the Southern California Association of Governments Economic Development Forum. He stated City Attorney Hogin had provided an unbiased set of options regarding Measure R.

Mayor Pro Tem La Monte congratulated Senior Planner Fernandez and Officer Haynes' family. He stated he was in Sacramento for meetings with legislators with the California Contract Cities annual tour. He stated he attended Assemblymember Richard Bloom's holiday food drive event and Senator Fran Pavley's holiday event. He stated he and Mayor Rosenthal attended a presentation from the Malibu Kiwanis Club to veteran Simon Jackson of an all-terrain wheelchair. He stated he judged the Malibu Boys and Girls Club Youth of the Year Award. He announced an Administration and Finance Subcommittee meeting on January 14, 2016.

Councilmember House congratulated Senior Planner Fernandez and Officer Haynes family. She expressed concern regarding delayed use of bond funds to repair Malibu High School.

In response to Councilmember House, City Manager Thorsen stated he would contact the California Coastal Commission regarding resolution to the bond issue. Councilmember House thanked City Attorney Hogin for her summary of the legal proceedings of Measure R.

Councilmember Peak congratulated Senior Planner Fernandez and thanked Officer Haynes for his service.

Mayor Rosenthal announced a Malibu Library Speaker Series event on January 12, 2016. She urged the community to register for emergency notifications through the City's website. She announced a Santa Monica College Board of Trustees meeting on January 13, 2016. She stated an agreement between MCA and SMMUSD was in the works, but urged the community to send letters to support a speedy resolution.

ITEM 2.C. CITY ATTORNEY REPORT ON MEASURE R (continued)

In response to Councilmember House, City Attorney Hogin stated a formula retail ordinance that included Measure R could be considered as long as the issue of requiring a CUP of each tenant was addressed. She stated the proponents were a party in the federal case but not the state case, but could apply to the judge as an intervener in the state case to appeal the final judgement themselves.

Councilmember Sibert stated City Attorney Hogin had answered his questions.

Councilmember Peak stated the desires of the constituents could be achieved through legislative means.

Mayor Pro Tem La Monte stated City Attorney Hogin's summary was very clear.

In response to Mayor Rosenthal, City Attorney Hogin stated an appeal would not be as costly as the initial litigation. She stated a court of appeal could find Measure R invalid for any number of reasons. She stated a successful appeal would mean facing subsequent federal action. She stated other formula retail ordinances that had not been challenged were not necessarily legal. Mayor Rosenthal discussed options for achieving the desires of the community.

In response to Councilmember Peak, City Attorney Hogin stated the only reason Measure W was put on the ballot was because Measure R required it, but if the final judgement on Measure R was not appealed by anyone, then Mr. Soboroff's project, as approved, would have no impediments.

In response to Mayor Rosenthal, City Attorney Hogin stated she was unclear as to whether Mr. Soboroff was satisfied with the permits as approved.

In response to Councilmember Peak, City Attorney Hogin stated any legislated chain store regulations would apply to Mr. Soboroff's project.

ITEM 3 CONSENT CALENDAR

MOTION Councilmember Peak moved and Councilmember House seconded a motion to approve the Consent Calendar. The question was called and the motion carried unanimously.

The Consent Calendar consisted of the following items:

A. Previously Discussed Items

None.

B. New Items

1. Waive Further Reading

Recommended Action: After the City Attorney has read the title, waive full reading of ordinances considered on this agenda for introduction on first reading and/or second reading and adoption.

2. Approve Warrants

Recommended Action: Allow and approve warrant demand numbers 46132-46296 listed on the register from the General Fund and direct the City Manager to pay out the funds to each of the claimants listed in Warrant Register No. 564 in the amount of the warrant appearing opposite their names, for the purposes stated on the respective demands in a total amount of \$786,179.08. City of Malibu payroll check numbers 4618-4620

and ACH deposits were issued in the amount of \$171,372.51.

3. Approval of Minutes

Recommended Action: Approve the minutes for the November 23, 2015 Regular City Council meeting.

4. Memorandum of Understanding for Integrated Regional Water Management Planning and Implementation

Recommended Action: 1) Adopt Resolution No. 16-01 authorizing the City's participation with other agencies in the Greater Los Angeles County (GLAC) Region Integrated Regional Water Management Plan Leadership Committee for the purpose of coordinating water resource planning activities related to grant funding including, but not limited to, California Proposition 1 and project implementation; and 2) appoint the City Manager, or his designee, as agent to conduct all negotiations and sign all documents which may be necessary to sign the Memorandum of Understanding.

5. Civic Center Wastewater Treatment Facility Water Quality Consultant

Recommended Action: Authorize the City Manager to execute a Professional Services Agreement with Earth Forensics, Inc. to be an "on-call/as-needed" consultant to review water quality data to provide reports and documents as needed by the City.

6. Amendment to Agreement with Newbury Park Tree Service, Inc.

Recommended Action: Authorize the City Manager to execute Amendment No. 1 to the Professional Services Agreement with Newbury Park Tree Service, Inc. to extend the term of the agreement for the City's Annual Tree Maintenance Program for an additional two years.

7. Amendment to Agreement with Ozone Water Systems, Inc.

Recommended Action: Authorize the City Manager to execute Amendment No. 5 to the Professional Services Agreement with Ozone Water Systems, Inc. for annual operations and maintenance of the City's Civic Center Stormwater Treatment Facility and the Paradise Cove Stormwater Treatment Facility.

8. Las Flores Canyon Creek Restoration and Park Improvements Project Phase 2 Completion and Acceptance of Work

Recommended Action: 1) Accept the work performed by GMZ Engineering Inc. for the Las Flores Canyon Creek Restoration and Park Improvements Project Phase 2 (Specification No. 2007.3) as complete; and 2) Authorize the Public Works Director to submit for recordation a Notice of Completion for the project.

9. Agreements for Emergency On-Call Street Maintenance Services

Recommended Action: Authorize the City Manager to execute agreements with J&H Engineering General Contractors Inc., Lee Construction Co., Sam Hill & Sons, Inc., and Excel Paving Company for Emergency On-Call Street Maintenance Services for Fiscal Year 2015-16.

ITEM 4 ORDINANCES AND PUBLIC HEARINGS

None.

ITEM 5 OLD BUSINESS

None.

ITEM 6 NEW BUSINESS

None.

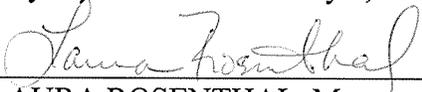
ITEM 7 COUNCIL ITEMS

None.

ADJOURNMENT

At 9:00 p.m., Mayor Rosenthal adjourned the meeting in memory of David Bowie.

Approved and adopted by the City Council of the
City of Malibu on February 8, 2016.



LAURA ROSENTHAL, Mayor

ATTEST:



LISA POPE, City Clerk
(seal)