



# Council Agenda Report

To: Mayor Pierson and the Honorable Members of the City Council

Prepared by: Heather Glaser, City Clerk

Approved by: Reva Feldman, City Manager

Date prepared: September 14, 2020 Meeting date: September 29, 2020

Subject: Approval of Minutes

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**RECOMMENDED ACTION:** Approve the minutes for the August 24, 2020 Malibu City Council Regular meeting.

**FISCAL IMPACT:** There is no fiscal impact associated with the recommended action.

**WORK PLAN:** This item was not included in the Adopted Work Plan for Fiscal Year 2020-2021. This is part of normal staff operations.

**DISCUSSION:** Staff has prepared draft minutes for the meeting of August 24, 2020.

**ATTACHMENTS:** August 24, 2020 Malibu City Council Regular meeting minutes

MINUTES  
MALIBU CITY COUNCIL  
REGULAR MEETING  
AUGUST 24, 2020  
TELECONFERENCED - VARIOUS LOCATIONS  
6:30 P.M.

**The following meeting was held pursuant to the Governor's Executive Orders N-25-20 and N-29-20 and fully teleconferenced from various locations during the coronavirus disease (COVID-19) pandemic.**

**REGULAR SESSION CALL TO ORDER**

Mayor Pierson called the meeting to order at 6:30 p.m.

**ROLL CALL**

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

PRESENT: Mayor Mikke Pierson; Mayor Pro Tem Skylar Peak; and Councilmembers Karen Farrer and Jefferson Wagner

ABSENT: Councilmember Rick Mullen

ALSO PRESENT: Christi Hogin, City Attorney; Reva Feldman, City Manager; Lisa Soghor, Assistant City Manager; Heather Glaser, City Clerk; Jesse Bobbett, Community Services Director; Yolanda Bundy, Environmental Sustainability Director; Bonnie Blue, Planning Director; Rob DuBoux, Public Works Director; Kelsey Pettijohn, Deputy City Clerk; Adrian Fernandez, Principal Planner; and Richard Mollica, Assistant Planning Director

**APPROVAL OF AGENDA**

Mayor Pierson suggested moving Item No. 6.A. up in the agenda.

In response to Mayor Pierson, City Manager Feldman stated staff members with items on the Consent Calendar would stay in the meeting until those items were heard.

**MOTION** Mayor Pierson moved and Mayor Pro Tem Peak seconded a motion to approve the agenda, hearing Item No. 6.A. after the Consent Calendar. The question was called and the motion carried 4-0, Councilmember Mullen absent.

**REPORT ON POSTING OF AGENDA**

City Clerk Glaser reported that the agenda for the meeting was properly posted on August 13, 2020.

**ITEM 1 CEREMONIAL/PRESENTATIONS**

None.

**ITEM 2.A. PUBLIC COMMENTS**

Bruce Silverstein discussed the Council items on the August 10, 2020 agenda where the Council directed staff to bring back two urgency ordinances. He questioned why the urgency ordinances were not on this agenda. He discussed a person who filed nomination papers for the November 3, 2020 election and did not qualify for the election. He stated this person should have had enough signatures to qualify and requested the City Council send a letter to the Los Angeles County Registrar-Recorder/County Clerk's office to reassess the signatures on the nomination paper and acknowledge they were valid.

Lori Kantor questioned when speed humps would be installed on Dume Drive and Fernhill Drive. She stated the project was approved on July 13, 2020. She stated the work had been delayed due to scheduling issues with the 2020 Annual Street Maintenance Project. She questioned if the work had been rescheduled. She stated data showed there was excessive speeding on those roads and speed humps were necessary.

Norman Haynie discussed his hotel project. He requested his project be heard by the Planning Commission in September or October 2020 so it could come back to the Council before new Councilmembers were sworn into office in December 2020. He stated the sooner the project was approved the sooner the hotel could begin collecting Transient Occupancy Tax (TOT).

Judith Israel stated Malibu Lagoon had been breached into the ocean at Surfrider Beach. She stated hazardous condition signs had been posted at the beach. She stated many people were still visiting the beach and swimming in the ocean.

Lynn Norton stated it was important to reach out to the California Coastal Commission (CCC) before hearing a short-term rental item on September 14, 2020. She recommended the Council be involved in conversations with CCC. She indicated support for scheduling hearings for Mr. Haynie's hotel project.

Hamish Patterson indicated support for quickly scheduling hearings for Mr. Haynie's hotel project. He discussed recent riots in Portland, Oregon. He stated people had lost faith in civic organizations. He stated actions in response to the COVID-19 pandemic had shut down the economy. He stated the Councilmembers had sworn to uphold the Constitution of the State of California and the Constitution of the United States of America.

Andy Lyon discussed Mr. Haynie's hotel project. He stated the money from that development agreement should be used to repay the County of Los Angeles for Measure M and Measure R park and ride funds used to purchase vacant land in

2018. He stated Mayor Pierson sent a letter to Congress without the approval of the Council. He stated a strong mayor would be authorized to send letters on behalf of the City without the approval of the Council.

John Mazza indicated support for Mr. Patterson's comments. He stated people in Point Dume were very frustrated. He stated there was a home invasion robbery while the occupants were home on August 23, 2020. He discussed speeding and illegal parking on Point Dume during the summer. He stated the Santa Monica-Malibu Unified School District (SMMUSD) supported speed humps on Dume Drive and Fernhill Drive. He questioned when the project could be completed.

Wendi Dunn was not present at the time of the hearing.

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

City Manager Feldman stated the County of Los Angeles reported 232,000 positive cases of COVID-19, including 91 and three deaths in Malibu. She stated the City had issued 137 building permits for Woolsey Fire rebuilds, and seven homes had been completed. She encouraged everyone to prepare for fire season. She stated the City had developed evacuation zones that were numbered 11-14 to avoid confusion with the Topanga evacuation zones numbered 1-10. She stated the Los Angeles County small business grant program application period opened today. She stated she had requested extra staffing from the Los Angeles County Sheriff's Department for the coming two weekends and Labor Day weekend. She stated funding for the extra staffing would come from Los Angeles County Supervisor Sheila Kuehl's office. She stated City Public Works crews were performing trash pickup on the weekends. She stated she requested extra parking enforcement in the Point Dume area. She stated the temporary skate park would reopen August 31, 2020, by reservation only and the hours would be 11:00 a.m. to 7:00 p.m. Monday through Friday. She stated the skate park hours may be adjusted later in the year when the sun set earlier. She stated the permanent skate park design project was moving forward and announced the first public design meeting would be on September 2, 2020. She stated the Civic Center Way Improvements Project would be starting soon. She announced a Red Cross virtual briefing on sheltering during COVID-19 on September 1, 2020 and a Los Angeles County Metro NextGen meeting to discuss the Route 534 schedule, route, and discontinuing service through Point Dume on August 26, 2020. She stated staff originally believed installation of speed humps on Dume Drive and Fernhill Drive could be incorporated into the annual road maintenance project but it was not possible. She stated the speed hump project would go out to bid separately but there was funding for the project in the budget. She announced the Planning Commission would hold a hearing on the Trancas Creek Bridge Replacement Project on September 8, 2020. She stated SMMUSD would hold a scoping meeting for the middle and high school master plan project on September 9, 2020.

In response to Mayor Pierson, City Manager Feldman stated the bid documents would need to be prepared for the speed hump project and staff would move forward as quickly as possible.

**ITEM 2.C. SUBCOMMITTEE REPORTS / COUNCIL COMMENTS**

Councilmember Farrer stated this was the first day of school for SMMUSD and acknowledged the work the SMMUSD staff had done to make remote learning possible. She encouraged everyone to complete the 2020 Census. She stated she attended an Institute for Local Government virtual conference. She stated she attended a virtual meeting with Senator Henry Stern, Mayor Pierson and City Manager Feldman on housing, environmental issues, disaster preparedness, power backup and insurance reform. She stated she has had ongoing conversations with the Chair and Vice Chair of the Public Safety Commission, Mayor Pierson, City Manager Feldman and the Los Angeles County Sheriff's Department Malibu/Lost Hills Sheriff's Station regarding parking enforcement near the beaches during COVID-19.

Councilmember Wagner thanked City Manager Feldman for responding to questions about speed humps.

In response to Councilmember Wagner, City Manager Feldman stated Planning Department staff would be in touch with Mr. Haynie the next day. She stated Planning Department staff had been looking into the environmental reviews required for his project and the timeline for those reviews before the project could go to the Planning Commission.

In response to Mayor Pro Tem Peak, City Attorney Hogin stated she had conferred with City Clerk Glaser regarding the potential candidate who did not qualify for the November 3, 2020 election. She stated City Clerk Glaser had spoken to the Los Angeles County Registrar-Recorder/County Clerk staff who completed the review of the signatures on the nomination paper to see if there was another level of review available. She stated the Registrar-Recorder/County Clerk staff was firm in its conclusions. She stated she had informed the nomination paper filer that the appropriate way to challenge the findings was by pursuing the matter with the Superior court.

In response to Mayor Pro Tem Peak, City Manager Feldman stated Planning Department staff would be in touch with Mr. Haynie to discuss the timeline for hearings for his project. She stated she would follow up with California State Parks the next day to discuss the breach at the Malibu Lagoon.

Mayor Pro Tem Peak discussed some surfer's desire for the Malibu Lagoon breach to improve sediment distribution.

Councilmember Wagner stated the fish population of the Malibu Lagoon had swam to the ocean through the breach. He stated if the Lagoon had not been breached

there would have been a fish die off due to lack of oxygenation.

Mayor Pierson stated he was working on City issues every day. He recommended anyone with a public health concern contact a Councilmember. He stated it was a shame Alia Ollikainen did not qualify for the election. He stated the speed hump project was important. He discussed overwhelming crowds visiting the City. He stated he spoke with Supervisor Kuehl about the crowds in Malibu and requested more resources. He thanked people for sending him photos of graffiti, trash, and other problems in the City. He stated fire season had begun. He encouraged everyone to have an emergency plan. He stated climate change was having a big impact. He discussed deadlines to file for rebuilding permits.

In response to Mayor Pierson, Planning Director Blue stated the rebuild extension provisions in the Malibu Municipal Code (MMC) could be changed by ordinance. She stated allowing extensions to be approved by staff would keep the Planning Commission agenda more open.

#### CONSENSUS

By consensus, the Council directed staff to bring back a resolution initiating an amendment to Malibu Municipal Code Section 17.60.020 to eliminate the requirement for Planning Commission approval and instead allow administrative approval of extension requests by the Planning Director.

Mayor Pierson encouraged everyone to complete the 2020 Census. He stated the census response rate in the City was very low. He stated he looked forward to the temporary skate park reopening. He stated the Emergency Survival Guide was available on the City's website or copies could be picked up at City Hall.

City Attorney Hogin stated the Councilmembers shook their heads in the affirmative or gave a thumbs up to indicate support for bringing back a resolution to initiate a zone text amendment.

Mayor Pro Tem Peak stated he had heard from someone who got a staph infection after visiting Surfrider Beach. He encouraged everyone to practice personal cleanliness.

#### ITEM 3 CONSENT CALENDAR

Item Nos. 3.B.4. and 3.B.6. were pulled by the public.

**MOTION** Mayor Pro Tem Peak moved and Councilmember Wagner seconded a motion to approve the Consent Calendar, except Item Nos. 3.B.4., and 3.B.6. The question was called and the motion carried 4-0, Councilmember Mullen absent.

The Consent Calendar consisted of the following items:

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 61135-61217 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. 665 in the amount of the warrant appearing opposite their names, for the purposes stated on the respective demands in a total amount of \$354,728.61. City of Malibu payroll check number 5115-5118 and ACH deposits were issued in the amount of \$219,134.16.
3. Approval of Minutes  
Recommended Action: Approve the minutes for the July 13, 2020 Malibu City Council Regular meeting.
5. Vacation and Sick Leave Cash-Out Provision  
Recommended Action: Adopt Resolution No. 20-45 amending the Personnel System Rules and adopting a revised Vacation and Sick Leave Cash-Out Provision.
7. Las Virgenes-Malibu Council of Governments Amended Joint Exercise of Powers Agreement  
Recommended Action: Adopt Resolution No. 20-44, approving the Las Virgenes-Malibu Council of Governments (COG) Amended and Restated Joint Exercise of Powers Agreement as recommended by the COG's Governing Board.

The following items were pulled from the Consent Calendar for individual consideration:

4. Professional Services Agreement for On-Call Traffic Engineering Services  
Recommended Action: Authorize the City Manager to execute a Professional Services Agreement with Kimley-Horn and Associates, Inc. to provide On-Call Traffic Engineering Services.

Public Works Director DuBoux presented the report.

Ryan Embree questioned who was on the review committee to select the consultant. He requested the ranking of the four bidders be provided.

In response to Mayor Pierson, Public Works Director DuBoux stated he formed a committee of City staff to review consultant proposals. He stated he believed the selection committee was composed of four Public Works Department staff members and one Planning Department staff member. He stated he did not have the rankings available. He stated the selection committee selected Kimley-Horn and Associates, Inc. as the most qualified.

MOTION Mayor Pro Tem Peak moved and Councilmember Farrer seconded a motion to authorize the City Manager to execute a Professional Services Agreement with Kimley-Horn and Associates, Inc. to provide On-Call Traffic Engineering Services. The question was called and the motion carried 4-0, Councilmember Mullen absent.

6. Community Development Block Grant Subrecipient Agreement Between the City of Malibu and the Boys and Girls Club Malibu  
Recommended Action: Authorize the City Manager to execute Community Development Block Grant Subrecipient Agreement with Boys and Girls Club Malibu.

Assistant City Manager Soghor presented the staff report.

Daniel Morales was not present at the time of the hearing.

MOTION Mayor Pro Tem Peak moved to authorize the City Manager to execute Community Development Block Grant Subrecipient Agreement with Boys and Girls Club Malibu.

In response to Councilmember Wagner, City Attorney Hogin stated the Community Development Block Grant that had specific rules. She stated it did not preclude the City from earmarking funds from a development agreement for the Boys and Girls Club in the future.

Councilmember Wagner seconded the motion. The question was called and the motion carried 4-0, Councilmember Mullen absent.

## ITEM 6 NEW BUSINESS

- A. 5G Wireless Technology and Small Cells  
Recommended Action: Receive and file report.

Johnathan Kramer presented the report. He stated on August 12, 2020, the Ninth Circuit Court of Appeals issued a decision regarding the legality of the Federal Communications Commission (FCC) small cell rules. He stated small cells were an integral part of 5G. He stated the decision stated the FCC rules were not justified as to aesthetics. He stated local agencies had some aesthetic control over small cells being installed in the public right of way. He stated many more 5G small cells were likely to be installed in Malibu. He stated his firm had sued the FCC over certain regulations that allowed cell sites to be modified by right.

In response to Mayor Pierson, Dr. Kramer stated all authority to create the radio frequency safety rules had been designated to the FCC. He stated Malibu did thorough compliance review on applications to ensure they complied with FCC rules. He stated the City was not allowed to consider applications based on health effects. He stated the Council, Planning Commission and City staff were legally

bound to follow the FCC rules. He stated the appropriate body to address health concerns was the FCC or Congress, which had designated the FCC its authority on these matters. He stated the City could establish generally applicable safety standards and the recent Ninth Circuit Court of Appeals ruling allowed local jurisdictions to create objective aesthetic standards. He stated each neighborhood in the City was unique and it could be challenging to create uniform aesthetic standards. He stated the City could not establish aesthetic requirements that effectively prohibited small cells.

Billie Grace McGinley discussed bees in her garden and expressed concern small cells would kill bees.

Kate McGinley stated she had seen more dead bees recently. She expressed concern small cells were killing pollinators.

Nichole McGinley stated she hosted an expert Q&A on 5G. She stated 5G enhanced data transfer, not cell phone reception. She stated the FCC was self-regulating. She stated fire departments won a lawsuit to prevent 5G small cells from being placed on properties with a fire station. She stated the City's ordinance needed updating. She requested the Council approve a cease and desist resolution. She discussed protective regulations against pesticides and smoking. She stated people did not have the choice to avoid small cells.

John McGinley stated small cells needed to be very close together and would have to be placed close to homes and businesses. He questioned why small cells could be placed in neighborhoods when they could not be placed near fire stations. He stated new small cells were being placed close together on Point Dume and close to homes on the east end of Pacific Coast Highway (PCH).

Lonnie Gordon discussed her use of technology in her daily life. She stated she developed an undiagnosed illness. She stated avoiding wireless technology relieved her symptoms. She requested the City issue a temporary moratorium and update the wireless telecommunications ordinance. She stated her organization would like to meet with the Council and Planning Department staff. She stated many people reported symptoms related to electromagnetic systems (EMS).

Jerri Churchill thanked the Councilmembers for their work. She stated small cells were an eye sore and a fire hazard. She stated small cells were heavy and could make old telephone poles top-heavy and more prone to falling.

June "Shanti" Louks discussed the natural wave patterns of human cells. She stated 5G was not a natural wave pattern. She stated EMS waves compromised the body's systems.

Jeffery Louks was not present at the time of hearing.

Hailey Louks was not present at the time of the hearing.

Jenny Rusinko stated functioning phone service was important but it was also important to control where and how towers could be installed. She stated 5G improved data transfer, not cell reception. She stated the Telecommunications Act of 1996 did not preempt the Americans with Disabilities Act (ADA). She stated she had received a notice of an application to install a replacement wireless facility directly across the street from her house. She stated her neighbor had an epileptic daughter who was EMS sensitive and would be negatively impacted by a small cell tower. She stated small cells presented a fire danger.

Jessica Isles expressed concern the FCC was self-regulating and the negative health impacts of 5G. She stated small cells could only be installed if there was a need. She encouraged delaying installation of small cells while 5G lawsuits were ongoing. She stated her son had developed ringing in his ears. She stated utilities were being undergrounded for aesthetic reasons and small cells were aesthetically unappealing.

W. Scott McCollough stated he was a telecommunications lawyer. He stated the City was the zoning authority but could not deny a small cell application based on health effects. He stated the City could still talk about the health effects of small cells. He stated the Council could approve a resolution disagreeing with federal regulations and exhorting legislators to change the law. He discussed US Telecommunication Code section 332(c)(7)(a). He stated the City had regulatory authority over placement, construction, modification, ongoing operation and aesthetics of small cells. He stated the City need a strong and clear ordinance. He stated the City could establish preferred and prohibited areas for small cells, unless the applicant could prove the location limits would effectively prohibit service in that area. He stated telecommunication companies had to demonstrate they had a significant gap in their covered services to be entitled to build a new small cell.

Dafna Tachover stated she worked for the Children's Health Defense. She stated she had a background in telecom law. She stated she had given lectures in Malibu on the effects of 5G. She stated the Children's Health Defense had sued the FCC over its failure to update its regulations. She stated many families were experiencing health problems related to 5G. She stated the City had options to regulate small cells. She stated the City could protect the rights of those who had been injured by EMS and the ADA was not preempted by the Telecommunications Act.

Michael Baum stated he worked as a lawyer on roundup cases. He discussed independent studies proving small cells were a carcinogen. He stated lawsuits were coming based on the negative health effects of small cells. He stated the City should protect itself from potential litigation and require the industry to indemnify and insure the City.

Julie Levine stated she represented 5G Free California. She stated she had worked with multiple cities in the County of Los Angeles. She stated the City should not work with Dr. Kramer. She stated other cities had better regulations. She stated

the FCC could sue the City but could not recover legal fees from the City. She stated small cells could be regulated based on nuisance complaints related to noise and fire hazards.

Romy Rapoport indicated support for the comments of Ms. Tachover and Mr. Baum.

Kerry Clasby thanked the Council for its service. She recommended forming a study group to educate the community and City staff on scientific studies of the effects of small cells.

Paula Murphy indicated opposition to 5G. She stated the technology needed more study.

Andy Lyon stated small cells could decrease property values. He questioned why so many small cells were being installed during the COVID-19 pandemic. He stated the City had name recognition that could be used to promote the issue. He stated he used to live near a repeater station and he could feel the effects.

Susan Foster stated she was a medical writer and an honorary fire fighter with the San Diego Fire Department. She discussed a small cell installed in front of a fire station that caused headaches, sleep disorders, mood swings, and infertility. She stated brain damage had been found in six of the firefighters.

Ryan Embree stated he previously served on the City's Telecommunications Commission. He stated the Commission had been working on an update of the telecommunication ordinance before it was disbanded. He stated the City's telecommunication ordinance was very old and needed updates. He stated all small cells should be required to be undergrounded. He stated small cells should not be allowed on wooden poles. He stated cells should be required to have a backup power source for emergencies. He stated the applicants should be required to substantiate the gap of coverage that justified the new small cell.

Liz Barris suggested people be allowed to raise their hand to comment in the Zoom meeting. She stated small cells must be disclosed in real estate transactions and negatively impacted property values. She stated she previously lived near a stealth cell antennae farm and had developed pre-cancer cells. She stated she was involved with a lawsuit against the FCC. She stated when a law exists that kills people that law needed to change. She stated the telecom industry was uninsurable.

Charlotte Louks was not present at the time of the hearing.

Linda Gibbs was not present at the time of the hearing.

Monique Guild was not present at the time of the hearing.

City Attorney Hogin stated she heard two categories of actions the public wanted

the Council to consider. She stated the first category was direct action and the second category was action the Council could take for the greater good. She stated one direct action option that could be taken was to add standard conditions to the City ordinance for projects that passed the deadline for approval and were deemed approved. She stated the City had statutory immunity from liability when issuing a permit. She stated adding an indemnification requirement could be a powerful political point and communicate the City's concern for the health effects of small cells. She stated the Council could consider amending the building code to include new standards for poles. She stated undergrounding small cell equipment to the extent possible could be required. She stated the City could make a political move such as approving a resolution directed to telecom providers expressing concern regarding health issues related to small cells and requesting they not expand in Malibu if it would create health risks. She stated a taskforce or subcommittee could gather information and create an action plan for lobbying on the issue. She stated the City had a voice and name recognition that could be used to amplify issues. She stated the Council could also consider filing an amicus brief for one of the existing lawsuits, working with Senator Henry Stern on his incremental State solutions, and adding other regulations around the issue such as new pole standards. She stated the Council could direct staff to bring back more items on this topic at future meetings.

Darlene Dubray stated she was electro-sensitive. She stated she was impacted by the many homes that had signal boosters, airplanes flying over the City, and naval technology in the ocean that all contributed to electromagnetic waves. She stated it was important to protect electromagnetic field-free zones.

Mayor Pierson thanked the speakers for the information they provided.

In response to Councilmember Farrer, Dr. Kramer stated Assemblymember Bill Quirk proposed Assembly Bill 57, which put deemed approve remedies on certain types of projects and specifically excluded from its provisions projects that were near or on properties with fire stations. He stated installation of small cells was not banned on properties with fire stations. He stated his law firm represented the City of Encinitas. He stated his firm followed the direction of their clients. He stated the City could not put a moratorium on small cells. He stated discussion of legal opinion on the actions of other jurisdictions should not be held in open session. He stated many jurisdictions required indemnification from the telecom provider when issuing a permit. He stated indemnification could be added to the City's regulations on top of the inherent statutory liability. He disclosed he spoke with Mr. Embree before the meeting tonight. He stated undergrounding may not be an option in all areas. He stated aesthetic requirements such as burying cables were allowed as long as they did not effectively prohibit small cells. He stated lawsuits related to roundup were not analogous to small cells.

Councilmember Farrer indicated support for approving a resolution as described by City Attorney Hogin. She indicated support for forming a subcommittee.

In response to Councilmember Farrer, City Attorney Hogin stated she believed the City had once hired a lobbyist to lobby for funds from the federal government. She stated there were options for lobbyists with connections in Washington D.C.

Councilmember Farrer indicated support for filing an amicus brief.

Councilmember Wagner stated he had done some research on the effects of 5G on pollinators. He stated the Council had received good information and it may be worthwhile exploring the issue further.

Mayor Pro Tem Peak stated he had spoken with people about their concerns but he did not learn any information that was not also sent to the Council.

In response to Mayor Pro Tem Peak, Dr. Kramer stated the City was able to condition projects to comply with the FCC rules. He stated the City was studying applications for safety and conformance more closely than many other agencies. He stated Planning Department staff worked on many applications that needed to be modified to comply with the existing rules.

City Attorney Hogin stated many people were requesting the City get involved in lobbying to reduce constraints on what the City can regulate.

Mayor Pro Tem Peak indicated support for the City to get involved with lobbying actions to reduce constraints on local regulation of small cells. He indicated support for updating the City's wireless telecommunication ordinance. He thanked Mr. McCollough for his comments. He stated he wished the City could approve more restrictive regulations but doing so would likely result in litigation.

In response to Mayor Pro Tem Peak, Dr. Kramer stated the FCC could not collect attorney fees but most of the lawsuits could have fees up to \$250,000. He stated the City would have to pay its own attorney fees. He stated the City may want to devote resources to advocacy instead of litigation.

Planning Director Blue stated updating the wireless telecommunications ordinance was included in the Fiscal Year 2020-2021 Work Plan and could be prioritized above other items at Council's direction.

Mayor Pierson discussed his service on the Planning Commission and the many applications he saw for installations on Point Dume. He thanked the speakers for their thoughtful comments. He stated most emails received on this topic were repetitive and mostly addressed health concerns the City could not regulate on.

In response to Mayor Pierson, City Attorney Hogin stated the Council could provide direction to the Planning Department on how the item should be prioritized in the Work Plan. She stated staff could include a standard condition on indemnification of the City for health impacts, review and update the building code regulations for pole standards, require undergrounding of small cell equipment to

the extent possible, and incorporate any other updates from Dr. Kramer.

Mayor Pro Tem Peak expressed concern new technology was being installed very quickly and regulations might be too late.

City Manager Feldman stated staff would discuss the Planning Department workload and make plans to prioritize the matter.

Mayor Pierson stated there were successful models to follow from other cities.

City Attorney Hogin stated the Council direction so far was to receive and file the report and refer back to staff review of the wireless telecommunications ordinance based on the information received tonight. She stated the Council should provide direction to staff on how it would like to proceed with political or lobbying actions.

Mayor Pro Tem Peak requested City Attorney Hogin also discuss options moving forward with Mr. McCollough.

Mayor Pierson requested Mr. McCollough send him a written version of his comments. He stated he would discuss small cells during his weekly phone call with the City's lobbyist, California Strategies.

#### CONSENSUS

By consensus, the Council: 1) received and filed a report on 5G wireless technology and small cells; 2) referred back to staff updating the City's wireless telecommunication ordinance and requested a proposed timeline; and 3) directed the City Attorney to bring an item back to Council on options for next steps.

**RECESS** At 9:27 p.m., Mayor Pierson recessed the meeting. The meeting reconvened at 9:34 p.m. with all Councilmembers present.

#### **ITEM 4 ORDINANCES AND PUBLIC HEARINGS**

A. Appeal No. 20-009 - Appeal of Planning Commission Resolution No. 20-46 (29623 Cuthbert Road; Owner/Appellant, Colby Family Trust)

Recommended Action: Adopt Resolution No. 20-48, determining the project is categorically exempt from the California Environmental Quality Act; granting Appeal No. 20-009 and approving Coastal Development Permit No. 19-005 to allow for a new single-family residence, second unit, swimming pool/spa, and onsite wastewater treatment system, including Site Plan Review Nos. 19-072 and 20-013 for construction of the residence and second unit above 18 feet in height, and Minor Modification No. 19-010 for a 13 percent reduction of the rear yard setback to replace a home destroyed in the 2018 Woolsey Fire, located in the Rural Residential-Two Acre zoning district at 29623 Cuthbert Road (Colby Family Trust).

Assistant Planning Director Mollica presented the staff report.

Councilmember Farrer disclosed she visited the site with the appellant. She stated she did not learn anything that was not included in the staff report.

Councilmember Wagner stated he visited the site and received a phone call from a neighbor. He stated he did not learn anything that was not included in the staff report.

Mayor Pro Tem Peak stated he visited the site with the appellant. He stated it was clear the project was at least 100 feet away from the environmentally sensitive habitat area (ESHA) based on the views from the property. He stated the placement of the project protected the neighbor's view.

Mayor Pierson stated he watched the Planning Commission meeting when the matter was discussed and he visited the property with the applicant. He stated he spoke to the neighbors who said moving the property would negatively impact their views. He stated based on the views from the property of the ESHA it was clear the project was at least 100 feet away.

Trevor Colby thanked the Council for its time and for visiting the property. He stated the Planning Commission voted against the project and the Planning Department staff recommendation twice. He stated the project clearly complied with the two-thirds rule. He stated the City Biologist confirmed the property was not within 100 feet of ESHA. He stated the National Park Service sent a letter confirming the property was over 100 feet from the ESHA. He stated the original house pre-dated the National Parks Service purchase of the neighboring parkland. He stated his neighbor, John Goodwin, had a documented view corridor and moving the project would impact his view. He stated the neighborhood was being rebuilt from the Woolsey Fire and the character may change. He stated no neighbors or campers had complained about the placement of the story poles. He stated the Planning Commission should be required to provide documentation explaining why a project was denied.

Daniela Rechtszajd stated she was the architect for the project. She stated the project complied with the two-thirds rule. She stated the rear property line was more than 100 feet from the ESHA parkland. She stated David Szymanski from the National Parks Service confirmed the development would have zero impact on park resources. She stated 19 of the 20 properties within a 500-foot radius of the property had been destroyed in the Woolsey Fire. She stated the Planning Commission had approved another fire rebuild with a variance for height and a similar square footage. She stated the rear yard setback would be larger than it was with the previous house. She stated increasing the rear yard setback would require additional grading. She stated the property owner wanted to reuse the existing driveway and required fire turn around. She stated moving the project would impact the neighbor's views.

Mark Baute stated three members of the Planning Commission ignored math and evidence they did not like.

Stuart Smith indicated support for the project. He stated his family members were longtime residents of the City and had lost their home in the Woolsey Fire. He stated rebuilding in the City was very challenging and Commissioners and City staff need to be sympathetic to the trauma experienced by people who lost their homes in the Woolsey Fire. He stated he received his permit three weeks ago and it had been an emotional journey. He stated it was important to help people rebuild and heal.

Brendan McBreen indicated support for the project. He stated the Colby's were building a beautiful home appropriate to the neighborhood. He stated the property had mature cacti that screened some of the development. He stated the project maintained the rural character of the property.

Tony Dorn read a portion of his letter. He indicated support for the project. He stated the Colby's had lost two houses in the Woolsey Fire. He stated a delay in approval would cause hardships for the family. He stated he just completed work on a rebuild and the rebuild process was very complicated.

Melanie J. Maguire stated she had known the Colby family for 20 years. She stated the project was eco-friendly and complemented Malibu's natural beauty.

Michael James Maguire stated the Colby's were valued members of the community. He stated the project met the ESHA setback, two-thirds rule, and maintained neighbors' view corridors. He stated the story poles had not received any complaints. He stated the neighbors seemed to be in favor of the project. He stated it was time to help Malibu heal.

Tammy Malmoux was not present at the time of the hearing.

Annamarie Griffin indicated support for the project. She stated the home would be a beautiful addition to the neighborhood. She stated rebuilding was a longer process than she imagined. She stated many rebuilds were stuck in the permitting process. She stated she was rebuilding an identical home and she did not have a permit yet. She stated delays in approving permits had financial impacts for the victims of the Woolsey Fire.

Marybeth Massett stated she lost her house on Harvester Road in the Woolsey Fire. She indicated support for the project. She stated the design complimented the natural landscape and topography of the property. She stated it was important to rebuild and revive the community.

Dana Graulich indicated support for the project. She stated she had connected with the Colbys and other Malibu Park neighbors while rebuilding from the Woolsey Fire. She stated the design was fire resilient and beautiful. She requested the Council provide clarification on the neighborhood character standard.

Mark Baute thanked the Council for its work and thanked the speakers for their comments. He stated the project complied with every rule and did not need special treatment. He stated three of the Planning Commissioners were not respecting the rules.

Councilmember Farrer stated many of the speakers were also people who had lost their homes in the Woolsey Fire. She expressed concern and sympathy for Mr. Smith. She stated preserving the old cactus plants preserved the rural characteristics of the neighborhood. She stated many speakers discussed how the project was safe and fire-resistant. She stated moving the project closer to the street would encroach a neighbor's view corridor. She stated the Council had taken actions to support rebuilding, and it was painful to see rebuild projects being delayed. She stated delays in project approvals had significant financial impacts for the property owners.

Councilmember Wagner stated many of the rebuild projects may be on the larger size. He stated the neighborhood character would change with rebuilding. He stated the character of the City changed over time and it could change when tastefully done. He stated he did not have any problem with the project. He stated the Planning Commissioners did the job they were appointed to do.

MOTION Mayor Pro Tem Peak moved and Councilmember Farrer seconded the motion to adopt Resolution No. 20-48, determining the project is categorically exempt from the California Environmental Quality Act; granting Appeal No. 20-009 and approving Coastal Development Permit No. 19-005 to allow for a new single-family residence, second unit, swimming pool/spa, and onsite wastewater treatment system, including Site Plan Review Nos. 19-072 and 20-013 for construction of the residence and second unit above 18 feet in height, and Minor Modification No. 19-010 for a 13 percent reduction of the rear yard setback to replace a home destroyed in the 2018 Woolsey Fire, located in the Rural Residential-Two Acre zoning district at 29623 Cuthbert Road (Colby Family Trust).

Mayor Pierson stated he reviewed each item for an appeal and he was able to make every finding needed for this project. He stated if covered patios were not included in total development square footage (TDSF) people could build large houses with massive patios.

The question was called and the motion carried 4-0, Councilmember Mullen absent.

B. Amend Malibu Municipal Code to Authorize the Implementation of a Parking Management Plan Along Two Segments of Pacific Coast Highway (Corral Beach and Zuma Beach)

Recommended Action: 1) After the City Attorney reads the title, introduce on first reading Ordinance No. 469 determining the project is categorically exempt from the California Environmental Quality Act and amending Section 10.19.020 of Chapter 10.19 (Overnight Parking), Title 10 (Vehicles and Traffic) of the Malibu Municipal Code to create staggered overnight parking restrictions between 12:00

a.m. and 2:00 a.m. and between 2:00 a.m. and 4:00 a.m. daily in the Corral Beach and Zuma Beach areas of Pacific Coast Highway; and 2) Direct staff to schedule second reading and adoption of Ordinance No. 469 for the September 14, 2020 Regular City Council meeting.

Planning Director Blue presented the staff report.

Jerri Churchill discussed campers along Corral Beach. She stated some days she counted 30-40 campers. She stated parking should be available for beach visitors. She expressed concern all the oversized campers may use Corral Canyon to turn around during the no parking hours and the Canyon may be too narrow.

Bruce Silverstein indicated support for the regulations. He stated enforcement would be important. He questioned why existing regulations, such as regulating disposal of hazardous waste, were not being enforced. He questioned if there were plans for a safe parking program in connection with this project.

Doug Stewart discussed a Public Safety Commission item on overnight parking of oversized vehicles. He stated long-term parkers limited parking for visitors during the day. He stated driving day visitors away from parking near the beaches increased the dangers related to crossing PCH. He expressed concern hazardous waste was being dumped on the roads and beaches.

Joel Schulman stated the victims of these parking practices were not locals but the day visitors. He questioned why the CCC was not leading the efforts to limit the extended parking of recreational vehicles (RVs).

Andy Lyon expressed concern people would come back each day after the 2-hour no parking period. He stated the no parking zones just moved the problem up the coast. He indicated support for limiting the size of vehicles that could be parked on PCH. He suggested considering installing parking meters. He stated it was unfair that some people lived in RVs and limited parking for visitors.

Paul Grisanti indicated support for the ordinance. He suggested increasing the fines for parking violations.

Mayor Pierson stated long-term parking of oversized vehicles was a disaster. He stated this was an important step.

Councilmember Farrer stated the ordinance was important and should be implemented as soon as possible. She stated the Council may like to have more restrictive parking regulations but it was trying to work with what the CCC would approve. She stated she had not received a single complaint from Las Tunas since parking restrictions were implemented. She stated she had seen videos of people dumping human waste onto the beaches. She indicated support for restricting parking more if it was possible. She stated a safe parking program was a related issue but not connected to the ordinance.

Councilmember Wagner stated the CCC had clearly documented its desire for access for all. He stated the ordinance was similar to regulations already approved by the CCC. He stated RVs were choosing to park on PCH even when there were other options.

Mayor Pro Tem Peak indicated support for approving the project. He expressed concern parking restrictions in one area just moved the problem to a new area. He stated prohibiting long-term parking would allow more people to visit the beaches.

Mayor Pierson stated parking conditions along PCH were a disaster. He stated Las Tunas already had an overnight parking ordinance and still experienced problems with day parking. He stated the ordinance was not contingent on the creation of a safe parking program. He stated the City would need to address problems involving people experiencing homelessness. He stated *Martin v. City of Boise* had changed many of the enforcement options. He stated people choosing to live out of RVs along the beach were gaming the system. He indicated support for considering increasing parking fines.

In response to Mayor Pierson, City Attorney Hogin stated the *Martin v. City of Boise* case did not have any relation to the size of the vehicles allowed to park on public streets. She stated the ordinance dealt more broadly with the issue of overnight parking rather than just the size of vehicles.

MOTION Mayor Pierson moved and Mayor Pro Tem Peak seconded a motion to: 1) introduce on first reading Ordinance No. 469 determining the project is categorically exempt from the California Environmental Quality Act and amending Section 10.19.020 of Chapter 10.19 (Overnight Parking), Title 10 (Vehicles and Traffic) of the Malibu Municipal Code to create staggered overnight parking restrictions between 12:00 a.m. and 2:00 a.m. and between 2:00 a.m. and 4:00 a.m. daily in the Corral Beach and Zuma Beach areas of Pacific Coast Highway; and 2) direct staff to schedule second reading and adoption of Ordinance No. 469 for the September 14, 2020 Regular City Council meeting.

Councilmember Wagner discussed the section of the *Martin v. City of Boise* decision that addressed the limits on personal property that could be brought to public properties. He recommended people read the whole decision.

City Attorney Hogin read the title of the ordinance.

The question was called and the motion carried 4-0, Councilmember Mullen absent.

C. Amend Assessment District 2015-1 Civic Center Wastewater Treatment Facility – Phase One

Recommended Action: 1) Conduct a public hearing regarding the Report of Amended Assessments (Report) and Amended Assessment Diagram for Assessment District 2015-1; and 2) If Council overrules and denies any and all protest, objections and appeals from the public hearing, adopt Resolution No 20-43

approving the Report and the Amended Assessment Diagram for the Assessment District 2015-1 Civic Center Wastewater Treatment Facility – Phase One.

Public Works Director DuBoux presented the staff report.

Councilmember Wagner stated he had a property in the Civic Center Wastewater Treatment Facility – Phase Two but this item only affected Phase One.

**MOTION** Mayor Pro Tem Peak moved and Councilmember Farrer seconded a motion to adopt Resolution No 20-43 approving the Report and the Amended Assessment Diagram for the Assessment District 2015-1 Civic Center Wastewater Treatment Facility – Phase One. The question was called and the motion carried 4-0, Councilmember Mullen absent.

- D. Appeal No. 19-006 - Appeal of Planning Commission Resolution No. 19-42 (19750 Pacific Coast Highway; Appellant: Benjamin Leeds; Applicant: Vitus Matare; Property Owner: Santa Barbara Land Company, LLC)  
Recommended Action: Continue to a date uncertain.

This item was continued upon approval of the agenda.

**ITEM 5 OLD BUSINESS**

None.

**ITEM 6 NEW BUSINESS**

- B. Review of Fiscal Year 2020-2021 Budget  
Recommended Action: 1) Receive an update on status of Fiscal Year 2020-2021 Budget; 2) Adopt Resolution No. 20-46 amending the annual budget for Fiscal Year 2020-2021; and 3) Adopt Resolution No. 20-47 rescinding Section 2 of Resolution No. 20-36 and approving the Authorized Positions and Salary Ranges for Fiscal Year 2020-2021 and approving the Associate Civil Engineer – Building and Safety Division Job Specification.

Assistant City Manager Soghor presented that staff report.

Andy Lyon was not present at the time of the hearing.

Mayor Pro Tem Peak discussed the Administration and Finance Subcommittee meeting where the item had been conserved and stated the subcommittee recommended the revisions presented.

Councilmember Farrer thanked staff for its work. She stated difficult decisions had to be made in an economic downturn. She stated it was important to avoid a financial cliff in the next fiscal year.

City Manager Feldman corrected a typo in the PowerPoint, she stated the starting General Fund balance was printed as \$30,551,000 when it is \$30,251,000. She stated the written report was correct.

Mayor Pierson stated it was important to be fiscally conservative. He stated the Council had a responsibility to the City to keep it fiscally healthy.

City Manager Feldman stated the reduction in CalPERS contributions was a big gain and the City had aggressively pursued responsible fiscal planning for that liability. She stated many cities struggled with those contributions.

MOTION Councilmember Wagner moved and Councilmember Farrer seconded a motion to: 1) adopt Resolution No. 20-46 amending the annual budget for Fiscal Year 2020-2021; and 2) adopt Resolution No. 20-47 rescinding Section 2 of Resolution No. 20-36 and approving the Authorized Positions and Salary Ranges for Fiscal Year 2020-2021 and approving the Associate Civil Engineer – Building and Safety Division Job Specification. The question was called and the motion carried 4-0, Councilmember Mullen absent.

## ITEM 7 COUNCIL ITEMS

A. Funding for Property Acquisition in the Santa Monica Mountains National Recreation Area (Councilmember Farrer)

Recommended Action: At the request of Councilmember Farrer, authorize the Mayor to send a letter requesting that funds from the National Parks and Public Land Legacy Restoration Fund established by the Great American Outdoors Act be allocated for acquisition of high-priority properties in the Santa Monica Mountains National Recreation Area.

Councilmember Farrer thanked Patt Healy for bringing the item to her attention. She presented the report.

Bruce Silverstein thanked Patt Healy. He indicated support for sending a letter. He recommended all the Councilmembers review the letter before it was sent. He recommended being cautious hiring lobbyists or other professionals to work on 5G issues.

MOTION Councilmember Farrer moved and Councilmember Wagner seconded a motion to authorize the Mayor to send a letter requesting that funds from the National Parks and Public Land Legacy Restoration Fund established by the Great American Outdoors Act be allocated for acquisition of high-priority properties in the Santa Monica Mountains National Recreation Area.

Councilmember Wagner stated the Council had sent a similar letter a few months ago for funds to purchase property located at the US-101 and Kanan Dume Road corridor. He stated it was important to pursue funding opportunities.

The question was called and the motion carried 4-0, Councilmember Mullen absent.

B. State Housing Bills – Opposition (Mayor Pierson)

Recommended Action: At the request of Mayor Pierson, authorize the Mayor to send a letter of opposition regarding Assembly Bill (AB) 1279, AB 725, AB 2345, AB 3040, AB 3107, Senate Bill (SB) 902, SB 995, SB 1085, and SB 1120, a range of housing bills being considered by the State legislature that would usurp the authority of local jurisdictions to determine land use policies that best fit the needs of their jurisdictions.

Mayor Pierson presented the report.

City Manager Feldman stated the COG discussed all of the bills listed in the staff report and decided to let individual cities take a position first.

Mayor Pierson stated the Council tried to be judicious in the issues it got involved on.

Bruce Silverstein declined to speak.

MOTION Mayor Pierson moved and Councilmember Farrer seconded a motion to authorize the Mayor to send a letter of opposition regarding Assembly Bill (AB) 725, AB 2345, Senate Bill (SB) 995, SB 1085, and SB 1120, a range of housing bills being considered by the State legislature that would usurp the authority of local jurisdictions to determine land use policies that best fit the needs of their jurisdictions. The question was called and the motion carried 4-0, Councilmember Mullen absent.

Councilmember Wagner discussed SB 902's impacts on septic systems.

The question was called and the motion carried 4-0, Councilmember Mullen absent.

**ADJOURNMENT**

At 11:39 p.m., Mayor Pierson adjourned the meeting.

Approved and adopted by the City Council of the  
City of Malibu on \_\_\_\_\_.

\_\_\_\_\_  
MIKKE PIERSON, Mayor

ATTEST:

\_\_\_\_\_  
HEATHER GLASER, City Clerk  
(seal)