



# 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: February 8, 2021 Meeting date: February 22, 2021

Subject: Approval of Minutes

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**RECOMMENDED ACTION:** Approve the minutes for the December 9, 2020 Malibu City Council Special meeting, the December 14, 2020 Malibu City Council Regular meeting, and the December 16, 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 Council meetings of December 9, 2020, December 14, 2020, and December 16, 2020.

**ATTACHMENTS:**

1. December 9, 2020 Malibu City Council Special meeting
2. December 14, 2020 Malibu City Council Regular meeting
3. December 16, 2020 Malibu City Council Special meeting

MINUTES  
MALIBU CITY COUNCIL  
SPECIAL MEETING  
DECEMBER 9, 2020  
TELECONFERENCED - VARIOUS LOCATIONS  
5:00 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.**

**MEETING CALL TO ORDER**

Mayor Pierson called the meeting to order at 5:01 p.m.

**PUBLIC COMMENT ON CLOSED SESSION**

None.

**RECESS TO CLOSED SESSION**

At 5:01 p.m., the Council recessed to Closed Session to discuss the following items listed on the Closed Session agenda:

**Personnel Matters pursuant to Government Code Section 54957:**

1. Public Employment  
Title: City Attorney

**REGULAR SESSION CALL TO ORDER**

Mayor Pierson called the meeting to order at 6:01 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, Rick Mullen, and Jefferson Wagner

ALSO PRESENT: Christi Hogin, City Attorney; Reva Feldman, City Manager; Lisa Soghor, Assistant City Manager; Trevor Rusin, Assistant City Attorney; Heather Glaser, City Clerk; Yolanda Bundy, Environmental Sustainability Manager; Richard Mollica, Acting Planning Director; Rob DuBoux, Public Works Director; and Kelsey Pettijohn, Deputy City Clerk

**PLEDGE OF ALLEGIANCE**

Mayor Pierson led the pledge of allegiance.

## **CLOSED SESSION REPORT**

Mayor Pierson stated the Council had unanimously appointed John Cotti, Partner at Best Best & Krieger (BBK) as Interim City Attorney. He stated Interim City Attorney Cotti would provide the City uninterrupted legal services until the new City Council could make a permanent decision.

## **APPROVAL OF AGENDA**

**MOTION** Councilmember Mullen moved, and Councilmember Wagner seconded a motion to approve the agenda. The question was called, and the motion carried unanimously.

## **REPORT ON POSTING OF AGENDA**

Deputy City Clerk Pettijohn reported that the agenda for the meeting was properly posted on December 4, 2020, with the amended agenda posted December 8, 2020.

## **ITEM 1 ORDINANCES AND PUBLIC HEARINGS**

- A. Consider Urgency Ordinance, and Introduction of Ordinance, Regulating the Permitting of Wireless Facilities in Public Rights-of-Way and Finding the Same Exempt from the California Environmental Quality Act; and Adoption of Resolution Establishing Design and Development Standards and Standard Permit Conditions for Wireless Facilities in Public Rights-of-Way

Recommended Action: 1) Waive full reading of ordinances and order that they be read by title only; 2) After the City Attorney reads the title, adopt Urgency Ordinance No. 477U regulating the permitting of wireless facilities in the public rights-of-way; declaring the urgency thereof; and finding the same exempt from California Environmental Quality Act; 3) Adopt Resolution No. 20-65 establishing design and development standards and standard permit conditions for wireless facilities in the public rights-of-way; 4) After the City Attorney reads the title, introduce on first reading Ordinance No. 477 to amend Malibu Municipal Code Title 12 (Streets, Sidewalks and Public Places) to add Chapter 12.02 “Wireless Facilities in Public Rights-of-Way”; amending Chapter 1.10 (Administrative Citations and Penalties); and finding the action exempt from the California Environmental Quality Act; and 5) Direct staff to schedule second reading and adoption of Ordinance No. 477 for the January 11, 2021 Regular City Council meeting.

City Attorney Hogin stated the City had an outdated wireless ordinance and community activists had produced a 50-page ordinance overhauling the City’s regulations. She stated the community had expressed concerns about the slow progress of Telecom Law Firm on producing a draft ordinance, the health effects of wireless facilities, and federal laws preempting local control. She stated there was also concern that December 2020 and January 2021 would go by without more robust design standards for wireless facilities in the City. She stated the full

ordinance had to go through the processes required for a Local Coastal Program Amendment and amendment of the Zoning ordinance and the City could not be inconsistent with what it already had in place but it could be more specific and restrictive about what was placed in the public right-of-way.

Gail Karish, BBK, presented the staff report. She stated a redline version of the ordinances and resolution had been provided in supplemental reports published after the agenda had been posted that included additional changes provided by Scott McCollough.

In response to Councilmember Mullen, Ms. Karish stated the redline version of the ordinances and resolution were what staff suggested the Council consider adopting. City Attorney Hogin stated nothing was set in stone and the workshop scheduled for December 16, 2020 would likely result in further changes. She stated the proposed redline version of the ordinances and resolution had been drafted to work and withstand challenge. She stated improvements would continue to be made over time.

Stephanie Sunwoo indicated opposition to small cell installations based on aesthetic reasons. She stated the installations were not in line with Malibu's rural character.

John McGinley stated facilities had been installed without much care for the quality of work or its impact on the community. He stated wires were coiled, dangling, and causing fire danger. He stated the ordinances needed strong, specific, and detailed engineering design requirements. He stated there must be proof the designs were vetted by properly credentialed experts. He stated the telecommunications industry must be required to show in the application how it intended to meet the requirements. He stated it must be a mandate that the approved design be implemented. He stated post-construction inspections and reports and ongoing monitoring must be required. He stated the City could not rely on the honor system.

Kirk Odian discussed previous encounters with T-Mobile and Sprint. He stated Ms. Karish had been instrumental in supporting the neighborhood. He recommended increasing the permit fees to recover City costs. He questioned whether submittals that came in over the next few of months would be held to the standards of a future ordinance. He stated the telecommunications industry appeared to be maximizing infrastructure for potential use rather than downsizing.

Kelly Meyer thanked the Council for listening to the community and thanked the community for its work.

Jeff Louks stated appeals of application approvals should be heard by the Council and not the Planning Director or an appointed hearing officer.

June Louks, on behalf of the Malibu Agricultural Society, requested the ordinances have protections to keep wireless facilities away from homes, schools, and parks. She stated a 1,500-foot setback should be imposed. She stated small cell placements

affected community image and property values and were a visual blight. She stated small cell installations should be as few and far between as possible. She stated strand mounting placed added strain on wires and created potential fire hazards. She stated appeals of application approvals should be heard by the Council and not the Planning Director or an appointed hearing officer.

Jenny Rusinko indicated opposition to more data collection capabilities in Malibu. She stated she did not want small cells on the poles near her home. She stated if small cells could not be kept out of Malibu, a 1,500-foot setback was necessary.

Jerri Churchill discussed fire safety. She requested every word of the ordinance proposed by Mr. McCollough and the community be included in the ordinances. She stated she lived in Malibu for the country vibe.

Nichole McGinley requested a 1,500-foot setback from homes, schools, and parks. She indicated opposition to allowing strand mounting. She stated applicants must carry pollution insurance. She stated application requirements proposed by Mr. McCollough needed to be added back into the ordinances.

W. Scott McCollough thanked the team at BBK. He indicated opposition to the proposed noticing requirements. He discussed the minimum application requirements he submitted that had not been included in the proposed ordinances. He suggested adding the electrical safety requirements to the ordinances.

Paula Murphy stated it was important to keep small cell installations as far away from schools, playgrounds, and residential areas as possible. She stated it was imperative that a 1,500-foot setback be included instead of the proposed 500-foot setback. She stated the strongest language possible should be used to improve fire safety and reduce the invasiveness of installations.

Daisy M Uy Kimpang, on behalf of Verizon Wireless, referred to a letter sent by Kevin Sullivan of Gatzke Dillon and Ballance LLP on behalf of Verizon Wireless. She stated certain parts of the proposed ordinances were inconsistent with federal and state law. She suggested a stakeholders meeting to allow the industry to collaborate on the ordinance. She stated Verizon Wireless looked forward to future partnership with the City.

Billie and Kate McGinley shared a video presentation.

Lonnie Gordon discussed the importance of insurance and reinsurance. She stated radiofrequency electromagnetic radiation (RF-EMR) was a scientifically established health hazard. She stated pollution insurance coverage for injury to the health of residents from a licensed third-party insurance company was crucial.

Tony Simmons discussed the history of fires caused by downed power lines. He discussed the importance of due diligence at the utility engineering stage of projects. He stated the City had to demonstrate it had not been negligent.

Susan Foster stated the application process requirements that included electric fire safety engineering rigor had not been included in the proposed ordinances. She stated the omission would fail to prevent fires in the City. She read parts of what had been omitted.

Bruce Silverstein stated residents should have the ability to defer time and be seen when they spoke at a virtual meeting. He stated the amended agenda had technically been posted in a legal manner but stated the Closed Session should not have been added to a Special meeting. He indicated support for adopting the community version of the ordinance until a permanent ordinance could be adopted. He questioned why the urgency ordinance would not be effective immediately.

Linda Gibbs requested the Council include all of Mr. McCollough's notes in the proposed ordinances. She stated it was important to stop what was starting fires. She shared a photo of a pole with a small cell installation within 500 feet of a residence.

Jessica Isles stated the urgency ordinance needed to be adopted with the strictest recommendations and become effective immediately. She indicated support for 1,500-foot setbacks.

City Attorney Hogin stated urgency ordinances took effect immediately.

Kraig Hill questioned how the proposed regulations compared to other municipalities in terms of strictness. He questioned whether there had been pushback at the federal level or from the California Public Utilities Commission (CPUC) on unreasonably short shot clocks. He questioned whether site plan review could be required for anything over 18 feet. He indicated support for fire safety language. He questioned when the recommendations of Mr. McCollough that had not yet been not included in the proposed ordinances would be integrated.

Mark Graham stated he lived in Elk Grove where a policy on cell antenna permitting had been adopted that prohibited approving installations immediately adjacent to or across the street from the front yard of any residential dwelling. He requested the Council require that an applicant send notices to every resident within 500 feet of a proposed cell antenna site, hold a public hearing, and provide written responses to questions. He requested the Council require payment with an application to fund third party expert review. He recommended doing whatever was possible to deter applications such as making the application process long, involved and costly, requiring facility undergrounding and requiring twice annual random testing of RF emissions paid for by the applicant and scheduled by the City without notice to the applicant.

Cori Encinitas Resident was not present at the time of the hearing.

Ryan Embree stated the proposed ordinances only dealt with the public right-of-way and did not update the existing wireless communications facility ordinance.

He stated the term wireless communications facility or transmitter was not adequately defined in the proposed ordinances. He recommended amending the definition of utility pole to replace “designed to support” with “carrying.” He stated the term base station was not defined. He stated facilities should be required to be undergrounded and a variance should only be granted by the Planning Commission or the City Council. He stated intensification of small cell installations was due to data streaming revenue competition.

Susie Duff expressed fear of fire danger in the City. She thanked the Council for listening to the speakers.

RECESS      At 7:45 p.m., Mayor Pierson called a recess. The meeting reconvened at 7:50 p.m., with all Councilmembers present.

In response to Councilmember Farrer, Ms. Karish stated public rights-of-way were narrow by nature. She stated separations were different from setbacks in that they kept facilities spread out from each other. She stated there were safety requirements that kept facilities from being too close to a bedroom window. She stated the separations required in the existing City zoning code were between 450 and 600 feet. She stated increasing separation to 1,500 feet was problematic for the coverage area of small wireless facilities. City Attorney Hogin stated requiring a 1,500-foot setback from any residence would probably eliminate almost all viable sites in the City and the City was limited to imposing lawful and reasonable requirements that were feasible.

In response to Mayor Pierson, Ms. Karish stated the City had to be careful it was creating requirements that were grounded in aesthetic reasons so the regulations would pass muster.

In response to Councilmember Peak, Ms. Karish stated there were provisions in the proposed resolution for a carrier to request a waiver for the required separation spacing, which could be useful in keeping facilities out of direct view of a home. She stated an evaluation of whether a 500-foot setback requirement from any existing structure would effectively eliminate any use of the public right-of-way had to be done. City Attorney Hogin stated a requirement for setback or separation had to be reasonable so it could be defended. Acting Planning Director Mollica stated an increase of the 500-foot separation requirement already in the code required some study. He stated coverage had been achieved on Point Dume by having small cell sites since macro towers were being avoided on hilltops. He stated a 1,500-foot separation would require waivers to achieve coverage.

Councilmember Peak stated the community wanted increased separation and setbacks to keep installations away from homes and schools.

In response to Mayor Pierson, City Attorney Hogin stated increasing the separation distance between facilities was fine as long as it accommodated placement. She stated creating a rule that required everyone to request a waiver may not be well

received if challenged and created an administrative burden. She stated increasing bureaucracy for approval may be a future direction to consider. She stated carriers would need to comply with the robust design standards proposed while the City and the community worked on a permanent ordinance.

In response to Councilmember Mullen, Ms. Karish stated larger setbacks over 1,000 feet were objected to by carriers. She stated increased setbacks or altogether bans on installations were usually unchallenged in areas where carriers were not deploying installations. City Attorney Hogin stated the rural residential aspect of Malibu and its topography would make it hard to find a site that was 1,500 feet away from a residence.

Councilmember Wagner stated the community wanted to see more financial responsibility from the carriers and more input from the Planning Commission or the City Council.

Ms. Karish stated the resolution contained minimum approval conditions to which adjustments could be made. She stated the City was trying to balance meeting short Federal Communications Commission shot clocks with having a robust process. She stated the proposed ordinances provided for a hearing officer and did not mean the final ordinance could not take a different approach.

Councilmember Wagner stated it was customary in the City that agendas were posted 10 days in advance of the meeting. He stated the community wanted more input from the Planning Commission and the City Council.

City Attorney Hogin stated the Public Works Commission might be a good alternative to an administrative hearing officer. She stated alternatives to an administrative hearing could be looked at during the process of developing a permanent ordinance.

Councilmember Mullen stated the City's vision statement supported having less convenience in the City.

In response to Councilmember Mullen, Ms. Karish confirmed the text referred to by Mr. McCollough had been provided the day before the meeting. She stated the next step would be to revise the existing application form, which could address additional requirements after staff had time to review them. City Attorney Hogin stated staff could require everything necessary to meet the requirements of the design standards to justify approval. Ms. Karish stated the redline version required notice to residents within five business days of application receipt and posting on the City's website.

In response to Councilmember Mullen, Ms. Karish stated strand mounting had initially be included because a dislike of pole top wireless installations had been expressed due to increased height. She stated carriers were required to meet wind loading requirements and the requirements of the CPUC. City Attorney Hogin



stated it was a policy issue that was coming from staff. Acting Planning Director Mollica stated strand mounting had been suggested to preserve views.

Councilmember Mullen stated staff should look into failures of strand mounting in wind events.

In response to Councilmember Mullen, Assistant City Attorney Rusin stated the City was looking into requiring pollution insurance. He stated additional insurance requirements and a bonding requirement had been added to the proposed ordinances.

Councilmember Farrer stated there was a lot more to work through and something needed to be adopted. She indicated support for a front yard rule similar to what had been established in Elk Grove.

In response to Councilmember Farrer, City Attorney Hogin stated a request for proposals had already been put out for third party review of applications. Ms. Karish stated the proposed ordinances provided for hiring consultants when needed at the applicant's expense.

In response to Mayor Pierson, City Attorney Hogin clarified additional insurance requirements would only apply to new installations, but insurance did not have any bearing on liability.

Mayor Pierson stated he saw the logistical issue of requiring the Council to review appeals instead of a hearing officer.

In response to Mayor Pierson, City Attorney Hogin stated the hearing officer would weigh evidence to make sure the factual findings had been made.

Mayor Pierson expressed concern that the hearing officer could be compromised.

Councilmember Wagner suggesting adding common waivers to the proposed language.

City Attorney Hogin stated the proposed language was drafted to not accommodate waivers but insist on standards. She stated waivers would only be entertained if the applicant could prove inability to meet a standard or benefit to the City for not meeting a standard.

Mayor Pierson stated the major concern he saw was someone not wanting an installation in front of their home.

Ms. Karish proposed language for the resolution that would discourage placement of facilities on poles that were in locations visible from entryways or windows of residences.

Mayor Pierson indicated support for that type of language and asked that it also apply to schools.

In response to Assistant City Attorney Rusin, Acting Planning Director Mollica stated he saw more pole mounted installations than strand mounted.

In response to Mayor Pierson, Councilmember Mullen stated the text referred to by Mr. McCollough was to be worked into the application itself.

Mayor Pierson stated there was more work to do but this was something that would assist the City in surviving the incoming deluge of applications. He thanked everyone involved.

Councilmember Mullen indicated support for the additional language discouraging placement of facilities on poles visible from homes. He indicated support for looking closely at pollution insurance, a 1,500-foot setback, additional application requirements, and the appeal process.

City Attorney Hogin stated the motion would include adoption of an urgency ordinance that would be immediately effective and introduction of an identical ordinance that would go through the normal process for adoption.

MOTION Councilmember Mullen moved to: 1) waive full reading of ordinances and ordered that they be read by title only; 2) adopt Urgency Ordinance No. 477U, amended to include the redlined changes attached to the second supplemental staff report, regulating the permitting of wireless facilities in the public rights-of-way; declaring the urgency thereof; and finding the same exempt from California Environmental Quality Act; 3) adopt Resolution No. 20-65, amended to include the redlined changes attached to the second supplemental staff report, and adding to Section 5(D) "Placements shall not be in front of dwelling units or schools," establishing design and development standards and standard permit conditions for wireless facilities in the public rights-of-way; 4) introduce on first reading Ordinance No. 477, amended to include changes to mirror the corresponding redlined changes in the redlined version of Urgency Ordinance No. 477U that was attached to the second supplemental staff report, to amend Malibu Municipal Code Title 12 (Streets, Sidewalks and Public Places) to add Chapter 12.02 "Wireless Facilities in Public Rights-of-Way"; amending Chapter 1.10 (Administrative Citations and Penalties); and finding the action exempt from the California Environmental Quality Act; 5) direct staff to schedule second reading and adoption of Ordinance No. 477 for the January 11, 2021 Regular City Council meeting; and 6) directed staff to work with Scott McCullough and his group on issues raised at the meeting related to the urgency ordinance and resolution.

City Attorney Hogin read the title of the ordinances.

Councilmember Wagner thanked the community for its input and seconded the motion. The question was called, and the motion carried unanimously.

**ITEM 2      NEW BUSINESS**

- A.    Amendment to Agreement for Special Legal Services with Leech, Tishman, Fuscado & Lampl, Inc. to Address Aviation Noise Generated from Changes to Los Angeles International Airport Flight Paths  
Recommended Action: Authorize the Mayor to execute an amendment to the Agreement for Legal Services with Leech, Tishman, Fuscado & Lampl, Inc. and Steven Taber of the firm.

Councilmember Mullen presented the staff report.

City Attorney Hogin discussed the increased noise over the City from low flying planes. She stated the firm retained by the City was pursuing rulemaking with the Federal Aviation Administration.

Councilmember Mullen stated COVID-19 had provided some temporary noise relief and the problem was not unique to Malibu.

- MOTION    Mayor Pierson moved, and Councilmember Mullen seconded a motion to authorize the Mayor to execute an amendment to the Agreement for Legal Services with Leech, Tishman, Fuscado & Lampl, Inc. and Steven Taber of the firm. The question was called, and the motion carried unanimously.

**ADJOURNMENT**

- MOTION    At 9:01 p.m., Councilmember Wagner moved, and Councilmember Mullen seconded a motion to adjourn the meeting. The question was called, and the motion carried unanimously.

Approved and adopted by the City Council of the  
City of Malibu on \_\_\_\_\_, 2020.

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

ATTEST:

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

MINUTES  
MALIBU CITY COUNCIL  
REGULAR MEETING  
DECEMBER 14, 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 6:31 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, Rick Mullen, and Jefferson Wagner; and Councilmembers Elect Paul Grisanti, Bruce Silverstein, and Steve Uhring

ALSO PRESENT: Christi Hogin, City Attorney; Reva Feldman, City Manager; Trevor Rusin, Assistant City Attorney; Lisa Soghor, Assistant City Manager; Heather Glaser, City Clerk; Jesse Bobbett, Community Services Director; Yolanda Bundy, Environmental Sustainability Director; Richard Mollica, Acting Planning Director; Mary Linden, Executive Assistant; Kelsey Pettijohn, Deputy City Clerk; Elizabeth Shavelson, Assistant to the City Manager; and Susan Dueñas, Public Safety Manager

**PLEDGE OF ALLEGIANCE**

Mayor Pierson led the pledge of allegiance.

**APPROVAL OF AGENDA**

MOTION Councilmember Farrer moved, and Councilmember Wagner seconded a motion to approve the agenda. The question was called, and the motion carried unanimously.

**REPORT ON POSTING OF AGENDA**

City Clerk Glaser reported that the agenda for the meeting was properly posted on December 4, 2020.

**ITEM 1 CEREMONIAL/PRESENTATIONS**

- A. Presentation of commendation to City Attorney Christi Hogin, upon her retirement, in recognition of her service to the City

Mayor Pierson introduced video messages to City Attorney Hogin from:

Los Angeles County Supervisor Sheila Kuehl

Los Angeles County Assessor Jeffrey Prang

Former and current City Councilmembers including: Michael Caggiano, Joan House, Jeff Jennings, Ken Kearsley, Sharon Barovsky, Andy Stern, Pamela Conley Ulich, John Sibert, Lou La Monte, Laura Rosenthal, Jefferson Wagner, Skylar Peak, Rick Mullen, Mikke Pierson, and Karen Farrer.

City Attorney Hogin discussed the incorporation of the City of Malibu on March 28, 1991. She stated the energy in the room when the election results were announced was electric. She stated there were three attempts to form a city to provide local control of land use. She stated she was gifted a handmade drawing of the new City from a first grader that she has kept in her office all these years. She discussed the General Plan Task Force that created a vision and mission for the City during 56 General Plan hearings. She discussed the Mission Statement that has remained the central value choice of the City. She discussed the early dynamics of the City populated largely by middle class families drawn to the rural area. She stated when the City first incorporated it did not own any property beyond the local streets. She stated she was proud of her role in property acquisitions including Charmlee Park, Bluffs Park, Las Flores Creek Park, Legacy Park, Trancas Canyon Park, City Hall, Trancas Field and the vacant properties purchased in 2018. She stated taking care of the land and exercising local control was part of the mission and vision of the City. She discussed the 25<sup>th</sup> Anniversary of the City that gathered together many former Councilmembers. She stated every Councilmember in the history of Malibu had done what they thought was best for the City. She stated her children had grown up in back of council chambers and learned how democracy depends on citizens being willing to be activists in and for their communities. She discussed the full-page ad in the Malibu Times thanking her for her service and wishing her well. She thanked the Councilmembers, City Clerks, City Managers, staff and community for working with her over the years.

Senator Henry Stern thanked City Attorney Hogin for her service. He stated she carried immense institutional knowledge and had supported the Council over many years as it pushed the envelope.

## **ITEM 2.A. PUBLIC COMMENTS**

Mark Baute stated the City had faced challenges since the 2018 election due to the Woolsey Fire and the COVID-19 pandemic. He discussed the importance of continuity in City Hall. He recommended moving the public comment for items not on the agenda to the end of the agenda to move through scheduled business more quickly. He recommended Councilmembers Elect Paul Grisanti or Steve Uhring be elected as the Mayor Pro Tem.

Lou La Monte thanked City Attorney Hogin for her years of dedicated service to the City. He thanked the outgoing Councilmembers for their service and friendship.

He congratulated the newly elected Councilmembers and discussed the importance of mutual respect. He stated the City had done an outstanding job weathering the storms since he left office in 2018.

Pamela Conley Ulich thanked City Attorney Hogin for her service and sacrifice. She stated it was important for the community and the country to come together. She stated it was important to have compassion and curiosity and to remain connected. She thanked the community, staff and City Manager Feldman. She stated City Attorney Hogin was loved and appreciated in the City.

Laura Rosenthal stated the City was lucky to have had City Attorney Hogin's guidance since incorporation. She stated City Attorney Hogin had been a steady and calm voice in the City. She thanked the outgoing Councilmembers for their service. She stated the Councilmembers were able to disagree respectfully. She stated staff had done an excellent job with challenges from the Woolsey Fire and the COVID-19 pandemic. She wished the newly elected Councilmembers good luck. She encouraged the Council to work together respectfully.

Scott Dittrich thanked Councilmember Wagner, Councilmember Mullen and Mayor Pro Tem Peak for their service. He thanked City Attorney Hogin for her service. He stated he had received five notifications for the City Council Special meeting on December 9, 2020 but stated a Closed Session had been added at the last minute. He stated the limited notice for the Closed Session personnel item that appointed John Cotti as Interim City Attorney gave the appearance of there being back door deals. He stated restaurants were being closed due to the COVID-19 pandemic without scientific evidence that it would reduce the spread of the disease.

Nichole McGinley expressed gratitude for the Council's approval of an urgency ordinance on December 9, 2020. She stated City Manager Feldman and Acting Planning Director Mollica had dedicated significant staff resources to the Wireless Communication Facilities (WCF) ordinances. She thanked City Attorney Hogin for her work on the urgency ordinance just before her retirement. She stated she was grateful to have been able to accomplish something with Councilmember Mullen, Councilmember Wagner, and Mayor Pro Tem Peak. She stated she looked forward to continuing to work with Mayor Pierson and Councilmember Farrer. She wished City Attorney Hogin luck. She thanked Councilmember Mullen, Councilmember Wagner and Mayor Pierson for their service.

Rudy Gonzales, Southern California Edison (SCE) Government Relations Manager, discussed the Public Safety Power Shutoffs (PSPS) on December 2, 2020 and December 8, 2020 that affected the Cuthbert Circuit. He stated SCE produced circuit level weather forecasts to determine fire risks. He stated it was important for SCE to provide appropriate notification to customers, first responders and infrastructure providers. He stated SCE was required to submit a report to the California Public Utilities Commission after each PSPS event. He congratulated the outgoing Councilmembers and stated he looked forward to working with the incoming Councilmembers.

Norman Haynie thanked City Attorney Hogin for her service. He stated he had attended all but one of the Malibu City Council meetings and had seen what a great job she did.

E. Barry Haldeman thanked City Attorney Hogin for her service. He stated being an attorney was more than knowing the law. He stated an attorney needed to do their best for their client, including saving the client from themselves. He stated City Attorney Hogin brought experience, knowledge, and empathy to the job.

Richard Sol thanked City Attorney Hogin for her years of service. He stated it had been challenging at times and he had seen the City grow with her guidance.

Ryan Embree thanked the outgoing Councilmembers for their service and welcomed the incoming Councilmembers. He stated the highest vote getter should be designated Mayor Pro Tem.

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

Scott Dittrich stated the Public Works Commission had been told by Public Works Director DuBoux that parking was not within the Commission's purview. He stated parking issues should be addressed by the Public Works and Public Safety Commissions.

City Manager Feldman thanked City Attorney Hogin for her years of service. She stated she had worked with City Attorney Hogin for 16 years. She stated City Attorney Hogin and she had worked on and celebrated each property acquisition. She thanked Councilmember Mullen, Councilmember Wagner and Mayor Pro Tem Peak for working with her over the years. She stated they provided invaluable leadership for the community after the Woolsey Fire. She discussed online comments that were critical of the City and her. She stated the comments centered on a perceived lack of clarity coming from City Hall. She stated the City had faced challenges over the last few years. She stated she was listening to what the community needed and she was dedicated to providing more information.

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

Councilmember Mullen thanked Ms. McGinley for her comments. He stated City Attorney Hogin helped the Council find a way forward on the WCF issue.

Councilmember Wagner stated he did not have any updates.

Councilmember Farrer stated she viewed Senator Henry Stern's swearing in and community address. She stated Senator Stern was tuned into the community and represented everyone well in the State. She stated she attended a League of California Cities Los Angeles County Division strategic planning session with the Institute for Local Government. She stated the Los Angeles County Division filtered local government priorities down to four needs: 1) secure State and Federal

funding for local COVID-19 public health response and economic recovery; 2) secure funding to increase the supply and affordability of housing and resources for people at risk of or already experiencing homelessness while preserving local decision making; 3) improve State and local coordination and planning to strengthen community disaster preparedness, resiliency and recovery; 4) protect and modernize critical infrastructure. She thanked everyone who participated in the December 9, 2020 City Council Special meeting. She thanked City Attorney Hogin for her work on the urgency ordinance approved on December 9, 2020. She suggested considering moving public comment for items not on the agenda to the end of the agenda. She stated the PSPS events had been a huge inconvenience. She stated she would like to discuss parking with Public Works Commissioner Dittrich.

Mayor Pro Tem Peak discussed the importance of hardening the power system. He thanked the public speakers. He stated City Attorney Hogin had provided him with her wisdom and guidance for the last eight years. He thanked City Attorney Hogin for her work on land acquisitions and protecting the City's interests.

Mayor Pierson thanked the speakers. He stated the Council had tried to save more recent issues for discussion by the new Council. He stated appointing a neutral interim City Attorney gave the new Council time to make its final decision. He stated he wanted the Council to discuss Woolsey Fire fee waivers in January 2021.

### **ITEM 3            PREVIOUSLY INTRODUCED ORDINANCES**

- A.    Massage Ordinance – Second Reading and Adoption  
Recommended Action: 1) Conduct the Public Hearing; 2) Waive full reading of ordinance and order that it be read by title only, and 3) Adopt Ordinance No. 474 adding Chapter 5.65 to Title 5 (Business Licenses and Regulations) of the Malibu Municipal Code (MMC) to adopt by reference the Los Angeles County Massage Ordinance and finding the same exempt from the California Environmental Quality Act.

City Attorney Hogin presented the staff report.

Richard Olson stated he was the owner of Malibu Bliss Massage and Spa. He stated he was not informed the County was changing regulations. He stated he was a 34-year resident and his business was his life. He stated he did not appreciate his business generally being associated with sex trafficking and money laundering. He recommended the City approve its own massage ordinance.

City Attorney Hogin stated there were a lot of legitimate massage businesses and massage had a therapeutic role in health. She stated these types of business had also been used in sex trafficking. She stated this ordinance was meant to protect people from illegitimate massage businesses.

**MOTION**            Councilmember Farrer moved and Mayor Pro Tem Peak seconded a motion to: 1) waive full reading of ordinance and order that it be read by title only, and 2) adopt



Ordinance No. 474 adding Chapter 5.65 to Title 5 (Business Licenses and Regulations) of the Malibu Municipal Code (MMC) to adopt by reference the Los Angeles County Massage Ordinance and finding the same exempt from the California Environmental Quality Act. The questions was called, and the motion carried unanimously.

B. Code Amendment to Extend Deadlines for Legal Nonconforming In-kind Disaster Rebuild Projects – Second Reading and Adoption

Recommended Action: 1) Conduct the Public Hearing; 2) Waive full reading of ordinance and order that it be read by title only; and 3) Adopt Ordinance No. 476 determining the proposed code amendment is categorically exempt from the California Environmental Quality Act and approving Zoning Text Amendment No. 20-002 to amend Malibu Municipal Code Section 17.060.020(C) to extend the deadlines by one year to initiate the planning application process, obtain building permits, and the total time allotted for an extension to rebuild a legal nonconforming structure that was damaged or destroyed in the Woolsey Fire.

Acting Planning Director Mollica stated he was available for questions.

MOTION Mayor Pro Tem Peak moved and Councilmember Farrer seconded a motion to: 1) waive full reading of ordinance and order that it be read by title only; and 2) adopt Ordinance No. 476 determining the proposed code amendment is categorically exempt from the California Environmental Quality Act and approving Zoning Text Amendment No. 20-002 to amend Malibu Municipal Code Section 17.060.020(C) to extend the deadlines by one year to initiate the planning application process, obtain building permits, and the total time allotted for an extension to rebuild a legal nonconforming structure that was damaged or destroyed in the Woolsey Fire. The question was called, and the motion carried unanimously.

**ITEM 4 CONSENT CALENDAR**

MOTION Mayor Pro Tem Peak moved, and Councilmember Farrer 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 61808-61964 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. 672 in the amount of the warrant appearing opposite their names, for the purposes stated on the respective demands in a total amount of \$2,085,325.56 City of Malibu payroll check number 5137-5138 and ACH deposits were issued in the amount of \$420,817.16.

3. Approval of Minutes

Recommended Action: Approve the minutes for the November 5, 2020 Malibu City Council Adjourned Regular meeting and the November 9, 2020 Malibu City Council Special meeting.

4. November 3, 2020 General Municipal Election Results

Recommended Action: Adopt Resolution No. 20-63 reciting the facts of the General Municipal Election held on November 3, 2020 and declaring the result and such other matters as provided by law.

5. Setting the Effective Date of Measure T

Recommended Action: Adopt Resolution No. 20-64 setting the effective date of Measure T as January 1, 2021.

## **PRESENTATIONS TO OUTGOING COUNCILMEMBERS**

Pamela Conley Ulich stated Councilmember Mullen, Councilmember Wagner, and Mayor Pro Tem Peak were community heroes, especially during the Woolsey Fire. She wished the incoming Councilmembers the best and stated they would guide the City through the ongoing COVID-19 crisis. She stated the City would always be grateful to the outgoing Councilmembers.

Kian Schulman thanked the outgoing Councilmembers for their support of the environment. She thanked Councilmember Wagner for his encyclopedic knowledge of environmental issues. She thanked Mayor Pro Tem Peak for initiating the pesticide Local Coastal Program Amendment (LCPA) in 2014 and for pioneering banning plastic products that regularly ended up in the ocean. She thanked Councilmember Mullen for his wise political counsel. She thanked the Council for its support on the Earth Friendly Management Plan, dumpster lid lock ordinance and pesticide LCPA. She stated she looked forward to the creation of an Environmental Commission.

Norman Haynie stated he had tremendous respect for the outgoing Councilmembers and their integrity and sacrifice. He stated the family of Councilmembers had to sacrifice time with their loved one while they worked on moving the City forward. He thanked the outgoing Councilmembers for their years of service.

Graeme Clifford thanked the outgoing Councilmembers for their service. He welcomed the incoming Councilmembers. He stated he had known Councilmembers Elect Steve Uhring and Paul Grisanti for many years and looked forward to working with Councilmember Elect Bruce Silverstein. He thanked City Attorney Hogin for her service. He stated City Attorney Hogin had been a fountain of wisdom for the City ever since incorporation.

Craig Foster thanked the outgoing Councilmembers for their service. He stated they had served above and beyond any expectation. He stated the Councilmembers had been very protective of the students in the City and understood the importance of local control. He thanked Councilmember Mullen for his service and leadership as a member of the School District Separation Ad Hoc Committee. He stated Mayor Pro Tem Peak was an alumni of Malibu schools and always stood up for Malibu schools. He thanked Councilmember Wagner for enthusiastically supporting the students of Malibu.

Don Schmitz stated he wished everyone could celebrate in person. He thanked the outgoing Councilmembers for their service. He stated Councilmember Mullen had always dedicated himself to public service. He stated he looked forward to continuing to work with Councilmember Wagner on coastal and environmental issues. He stated Mayor Pro Tem Peak brought a valuable youthful perspective to the Council and made the community proud. He welcomed the new Councilmembers. He stated Councilmember Elect Bruce Silverstein had energy and keen intellect. He stated Councilmember Elect Steve Uhring knew the town very well and brought a lot of expertise. He stated he was sad to see City Attorney Hogin go.

Scott Dittrich stated the outgoing Councilmembers had a lot be proud of from their work for the City. He stated the Council had made substantial land acquisitions and passed landmark ordinances. He stated there was still a lot to be done by the new Council. He stated California Highway Patrol (CHP) should be patrolling Pacific Coast Highway (PCH). He discussed the importance of fire preparedness.

Ryan Embree thanked the outgoing Councilmembers for their work. He thanked Councilmember Mullen for all the time he put into the job. He thanked Mayor Pro Tem Peak for being an environmental advocate on top of his other duties. He thanked Councilmember Wagner for being so available to the community. He discussed the community interest in increased transparency in government.

Councilmember Farrer thanked the outgoing Councilmembers for their service and dedication to the community. She stated the Councilmembers had not always agreed but worked through issues for the good of the community. She thanked Councilmember Wagner for providing his perspective as a business owner and for his dedication to the City even after losing his home in the Woolsey Fire. She thanked Mayor Pro Tem Peak for being a champion of the environment and for his ability to keep the meetings moving. She stated she would miss Councilmember Mullen on the School District Separation Ad Hoc Committee.

Mayor Pierson stated he and Councilmember Wagner were business partners for many years and thanked him for the work they had done together. He stated he enjoyed teaming up with Mayor Pro Tem Peak for multiple SurfAid Cups. He thanked Mayor Pro Tem Peak for his generous spirit. He stated he had been friends with Councilmember Mullen for many years and they had raised their kids together. He stated Councilmember Mullen had also helped his family with multiple fire and medical emergencies over the years. He thanked the outgoing Councilmembers for their service.

Senator Stern stated Councilmember Mullen had been a soldier for the City in addition to the country. He stated he remembered watching Councilmember Wagner play basketball and described his big role in the community while Senator Stern was growing up. He thanked Councilmember Wagner for his guidance. He stated Mayor Pro Tem Peak represented Malibu and emerged as a leader in the community very young. He stated Malibu was a unique community.

Mayor Pierson introduced video messages to the outgoing Councilmembers from:

Assemblymember Richard Bloom  
Los Angeles County Supervisor Sheila Kuehl  
Agoura Hills Mayor Illece Buckley Weber  
Calabasas Mayor James Bozajian

## **REMARKS BY OUTGOING COUNCILMEMBERS**

Councilmember Wagner left the meeting at 8:40 p.m.

Councilmember Mullen thanked the residents who spoke. He stated the residents also donated their time to the community. He stated Ms. Ulich originally encouraged him to run for City Council. He stated he came together with Mayor Pro Tem Peak and Councilmember Wagner to run for election together and direct the City to follow the Mission Statement. He stated he had a good time running for election in 2016 and had the opportunity to meet many new people in the City.

Councilmember Wagner returned to the meeting 8:44 p.m.

Councilmember Mullen discussed his decision to have Matti Waiya swear him in as a Councilmember. He stated Mayor Pro Tem Peak and Councilmember Wagner were well known in the community and choose him to run with them. He thanked Jay Flora Katz, Patt Healy, Leslie Goldstein and Cece Woods for their support during his first campaign. He stated he felt good about what the Council had accomplished. He stated his goal had been to lead the City in the direction intended by the founders of the City. He thanked all the Councilmembers he worked with and former Councilmembers who provided support and advice. He thanked City Attorney Hugin for her service. He thanked members of the public for giving their time, energy and expertise to the community. He thanked City staff for their work following through on the directives of the City Council and working in service of the residents. He thanked City Manager Feldman for her work in the face of challenging events like the Woolsey Fire and the COVID-19 pandemic. He stated the City had accomplished a lot during the COVID-19 pandemic. He stated he wished he could see the City through the school district separation. He thanked Mayor Pro Tem Peak and Councilmember Wagner for their service and support. He stated he appreciated the incoming Councilmembers for dedicating their time and effort to the City.

Councilmember Wagner thanked the City for the tile depicting Surfrider Beach and for replacing the plaques and certificates that he lost in the Woolsey Fire. He stated it had been a privilege to serve the City. He stated many of his goals had been accomplished on

Council and the creation of an ombudsman office would be addressed in the future. He stated he had brought forward many environmental issues with Mayor Pro Tem Peak. He stated Councilmember Mullen helped lead school district separation efforts and investigating excessive airplane noise in the City. He stated he was also frustrated when government moved slowly. He encouraged people to get involved in issues to understand the process. He stated property values in the City had remained stable through multiple emergencies. He discussed the importance of transparency. He indicated support for a directly elected Mayor. He thanked Candace Brown for her patience and support. He thanked Senior Media Technician Montano, Media Technician Davis, Human Resources Manager Woodrow, City Clerk Glaser, Deputy City Clerk Pettijohn and Office Assistant Rector for their support. He thanked City Attorney Hogin for being one of the nicest people with a law degree. He thanked the staff at his small business for their support. He stated he endorsed Bruce Silverstein, Steve Uhring, and Andy Lyon in the 2020 election. He stated it was clear the majority of voters wanted change instead of business as usual. He stated he could have been stronger in his role as a leader in the City. He encouraged the incoming Councilmembers to fulfill their campaign promises with diplomacy. He stated he had provided Councilmember Elect Bruce Silverstein with a signed and notarized affidavit attesting to irregularities he observed in City government including details regarding a raid on his home by the District Attorney's Office. He stated unused contributions to his legal defense fund would be returned. He wished the 16<sup>th</sup> City Council luck.

Mayor Pro Tem Peak stated the involvement of residents was what made Malibu special. He thanked the public speakers. He thanked his commissioners: Cultural Arts Commissioner Veronica Brady, Parks and Recreation Commissioner Joshua Spiegel, Planning Commissioner Steve Uhring, Public Safety Commissioner Fred Roberts, and Public Works Commissioner Brian Merrick. He stated it had been a pleasure to get to know more people from all parts of the City. He thanked Jim Thorsen and City Manager Feldman for their guidance. He thanked his fellow Councilmembers for investing their time in the community. He encouraged the Council to continue focusing on the environment and climate change. He stated he was proud of the progress on the permanent skate park and the land acquisitions made by the City. He stated the Council would listen to the needs of the community to determine what to do with the vacant land going forward. He thanked his mom, sisters and the rest of his family for their support.

#### **ADJOURNMENT OF 15<sup>th</sup> CITY COUNCIL**

At 9:13 p.m., Mayor Pierson adjourned the 15<sup>th</sup> City Council and recessed the meeting.

#### **RECONVENE 16<sup>th</sup> CITY COUNCIL**

At 9:32 p.m., Mayor Pierson convened the 16<sup>th</sup> City Council.

#### **REMARKS BY NEWLY ELECTED COUNCILMEMBERS**

Councilmember Silverstein stated his heart went out to everyone struggling with the impacts of the COVID-19 pandemic. He stated he remained grateful for the forces of the

universe. He thanked Jefferson Wagner, Rick Mullen and Skylar Peak for their service. He thanked the community for its support in his election. He thanked his family, Jefferson Wagner and Candace Brown for their support during the election. He stated the candidates endorsed by Jefferson Wagner did well in the election. He thanked his fellow candidates in the election and commended their campaign efforts. He stated he ran in tandem with Steve Uhring and Andy Lyon. He stated Andy Lyon represented the soul of Malibu. He thanked Alexis Aria for supporting his campaign while also working on Joe Biden's presidential campaign. He thanked the super supporters who helped organize his campaign including Patt Healy and Mari Stanley. He thanked Cece Woods and Janet Katz for organizing the Real Malibu Facebook group that provided a platform to engage with the residents of Malibu. He thanked Pamela Conley Ulich for organizing a forum on NextDoor. He thanked Sam Hall Kaplan for his support. He thanked Trevor Nielson and Evelyn Webber from the Malibu Foundation for their support. He stated he ran a low budget campaign that did not include print advertising or mailers. He thanked the residents who chose to send out mailers supporting him and Steve Uhring. He thanked all residents who supported his campaign on social media. He thanked John Mazza for his advice. He thanked City Clerk Glaser for providing prompt and helpful guidance throughout his campaign. He stated he was approached in June 2020 by Jefferson Wagner and others in the community to run for City Council on a platform of government reform. He stated he was persuaded that it was his civic duty to run for City Council. He stated he did not run to represent the City of Malibu government; he ran to represent the residents of Malibu. He stated his platform focused on public safety, environmental protection, fiscal responsibility and government reform. He stated government reform could be accomplished quickly if a quorum of the City Council agreed. He stated he had many initiatives to improve transparency and responsiveness to residents. He stated he had received an affidavit from Jefferson Wagner of activities he witnessed or heard about that evidenced criminal activity and potential corruption at the highest levels of the City. He stated the affidavit included an attempt to bribe Jefferson Wagner, background details of the District Attorney's Office raid on Jefferson Wagner's home in 2018, and allegations of the solicitation and acceptance of personal payments by members of the City staff. He stated some of the information in the affidavit had been previously provided to the City Attorney. He stated he was providing copies of the affidavit to members of the press and would provide it to any member of the public who requested a copy. He stated he was unable to display a copy during the Zoom meeting because he had been told by the City Manager that any materials to be displayed at the meeting must be provided by 5:00 p.m. He requested the Council schedule a Special meeting before the end of the year to form an investigatory committee. He stated if a Special meeting was not scheduled, he requested the item be scheduled as his Councilmember item at the first meeting in January 2021. He requested the City put a litigation hold on all material that may be related to the issues raised in Jefferson Wagner's affidavit or any other potential matter of wrongful conduct. He requested all emails and text messages from Rick Mullen, Jefferson Wagner and Skylar Peak be preserved. He stated routine destruction of City emails and text messages should be suspended. He expressed hope the local press would cover the matter in a fair and impartial way. He encouraged City staff and members of the public to come forward with information about corruption. He stated there were concerns there would be retribution for speaking out against City insiders. He stated there were laws that protected whistleblowers and it was safer to come forward with evidence of corruption rather than withhold it. He

stated withholding information about corruption could be a crime. He stated he ran on a platform of government reform and this was the first step in that effort. He stated he intended to treat his fellow Councilmembers with dignity and respect.

Councilmember Uhring thanked the outgoing Councilmembers and City Attorney Hogin for their service. He stated each of the candidates in the campaign had good ideas. He thanked everyone who supported his campaign and stated he would do his best to live up to his campaign promises. He thanked City Clerk Glaser for her guidance and keeping the candidates informed. He thanked his wife, Marsha Uhring. He stated people did not vote for him just to get along with everyone. He stated he would work to push the Council to take actions that would create real change. He stated the first couple of months may be a bumpy ride while the Councilmembers got to know each other.

Councilmember Grisanti stated he was overwhelmed with gratitude to have this opportunity. He stated City Attorney Hogin had provided excellent legal advice to the City. He stated he looked forward to interacting with everyone in a positive fashion in the future. He thanked City Clerk Glaser for her guidance. He thanked the residents for welcoming him to Malibu 42 years ago. He thanked his wife, Sarah Grisanti. He thanked Susan Wellsby for serving as his campaign manager. He thanked everyone who voted for him. He stated he was a faithful servant of Malibu. He stated he was confident most items would be unanimously approved or denied by the Council.

## **ELECTION OF MAYOR PRO TEM**

**MOTION** Councilmember Grisanti moved to nominate Councilmember Uhring as Mayor Pro Tem.

**MOTION** Councilmember Uhring moved to nominate Councilmember Silverstein as Mayor Pro Tem.

Councilmember Uhring stated there was a tradition of electing the highest vote getter as the Mayor Pro Tem. He encouraged the Council to follow that tradition.

The question was called, and Councilmembers Farrer and Grisanti and Mayor Pierson voted for Councilmember Uhring and Councilmembers Silverstein and Uhring voted for Councilmember Silverstein. Councilmember Uhring was elected to serve as Mayor Pro Tem.

Councilmember Uhring declined to serve as Mayor Pro Tem.

In response to Councilmember Silverstein, City Attorney Hogin stated the election went to Councilmember Uhring who had resigned the position of Mayor Pro Tem and now a new election for Mayor Pro Tem must be held.

**MOTION** Councilmember Uhring moved to nominate Councilmember Silverstein as Mayor Pro Tem.

MOTION Councilmember Farrer nominated Councilmember Grisanti as Mayor Pro Tem.

Councilmember Silverstein stated it was very awkward to have to speak for himself. He stated this was the result of a personal vendetta from certain Councilmembers and their actions would be remembered. He stated he did not appreciate the lack of dignity and respect being displayed toward him.

Mayor Pierson stated he was concerned by the personal attacks from Councilmember Silverstein. He stated he did not understand many of the allegations from Councilmember Silverstein. He stated he was uncomfortable voting for someone who attacked him personally. He stated he wanted to get to know Councilmember Silverstein and get past this difficult relationship. He stated he planned to bring forward an item in January 2021 to adjust the Mayoral rotation so a newly elected Councilmember would not need to be elected as the Mayor Pro Tem before serving as a Councilmember.

Councilmember Uhring stated the Councilmembers would learn how to work together over time. He stated Councilmember Silverstein got the most votes and by tradition he should be the next Mayor Pro Tem. He stated he hoped moving forward there would be more agreements than disagreements and it was important to treat everyone fairly at the beginning.

Councilmember Silverstein stated the residents would be able to assess what happened at this meeting. He stated he was elected based on his honesty and his objectives for the City. He stated those who expressed a wish to see less divisiveness were incapable acting less divisively themselves. He recommended people get over being upset from statements during the campaign.

Mayor Pierson stated the last time someone was not elected to Mayor Pro Tem in turn was because people were concerned about their fitness for the role. He stated he shared many values with Councilmember Silverstein and hoped they could get past this. He stated he believed Councilmember Uhring was the most qualified for the position.

Councilmember Uhring stated he had worked in combative situations before. He stated it was important to treat everyone as you would like to be treated. He stated there was enough conflict in the world. He stated Councilmember Silverstein's comments would not stop whether or not he was Mayor Pro Tem.

Mayor Pierson promised to be honest and direct about what he believed.

In response to Mayor Pro Tem Peak, Councilmember Uhring stated he could not accept the role of Mayor Pro Tem.

The question was called, and Councilmembers Farrer and Grisanti and Mayor Pierson voted for Councilmember Grisanti and Councilmembers Silverstein and



Uhring voted for Councilmember Silverstein. Councilmember Grisanti was elected to serve as Mayor Pro Tem.

**ADMINISTRATION OF OATH OF OFFICE TO NEWLY ELECTED MAYOR PRO TEM AND COUNCILMEMBERS**

Jefferson Wagner swore in Bruce Silverstein as Councilmember.

Marcia Uhring swore in Steve Uhring as Councilmember. Steve Uhring pledged to uphold the Mission and Vision Statements of the City.

Sara Grisanti swore in Paul Grisanti as Mayor Pro Tem.

Councilmember Uhring wished City Attorney Hogin the best.

**ADJOURNMENT**

Mayor Pierson adjourned the meeting at 10:19 p.m.

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

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MIKKE PIERSON, Mayor

ATTEST:

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HEATHER GLASER, City Clerk  
(seal)

MINUTES  
MALIBU CITY COUNCIL  
SPECIAL MEETING  
DECEMBER 16, 2020  
TELECONFERENCED - VARIOUS LOCATIONS  
6:00 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.**

**CALL TO ORDER**

The meeting was called to order at 6:00 p.m.

**ROLL CALL**

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

PRESENT: Mayor Pro Tem Paul Grisanti; and Councilmembers Karen Farrer, Bruce Silverstein and Steve Uhring

ALSO PRESENT: Trevor Rusin, Assistant City Attorney; Richard Mollica, Acting Planning Director; Kelsey Pettijohn, Deputy City Clerk; Gail Karish, Best Best & Krieger LLP; Andrew McCardle, Best Best & Krieger LLP; Kathleen Stecko, Administrative Assistant; Adrian Fernandez, Principal Planner; and Tyler Eaton, Assistant Planner

**WIRELESS COMMUNICATIONS FACILITES ORDINANCE WORKSHOP**

Assistant City Attorney Rusin stated this workshop was not required by law and had been initiated by staff to provide information on the process to update the Wireless Communication Facility (WCF) Ordinance. He stated after discussion at this meeting a draft ordinance would be prepared and presented to the Planning Commission in January 2021.

Acting Planning Director Mollica presented the report. He discussed the importance of getting written and verbal feedback from the public. He encouraged the public to file complaints with the California Public Utilities Commission (CPUC) when they found poorly installed utility and communication lines. He discussed the history of WCF item, including concerns raised after the Woolsey Fire. He discussed the timeline for the new ordinance.

Gail Karish discussed the limits on the local authority regulation of WCFs. She discussed Federal and State shot clocks for processing WCF applications. She discussed the requirements for Notices of Incompletion and remedies for failing to act by the shot clock

deadline. She discussed the current process for WCF applications. She discussed regulations regarding permitting changes to existing WCFs.

Andrew McCardle stated the Federal Communications Commission (FCC) set national standards for radiofrequency (RF) emissions. He stated under Federal law a local government could not regulate installations based on health or environmental concerns as long as the application complied with FCC requirements. He stated the CPUC set the rules for WCF installations in the public right-of-way. He discussed the CPUC safety and emergency resiliency requirements. He discussed potential safety application requirements the City could implement based on CPUC regulations. He stated the City was limited in its authority to regulate based on RF emissions, but stated it had opportunities to ensure compliance with FCC standards. He stated constant monitoring of RF emissions was challenging but there were options for regular assessments. He discussed limits on local authority to regulate WCFs and requirements for local regulations. He discussed the City's design standards.

Ms. Karish discussed the core authority of local governments to regulate aesthetics, safety, placement, and reject specific applications based on substantial evidence. She stated local government could not impose a moratorium, deny an application without a written decision, set RF standards, keep WCFs out of the public right-of-way, or create an effective prohibition on installation.

Assistant Planner Eaton discussed the components of a WCF. He discussed the most common types of WCFs in the City.

Acting Planning Director Mollica introduced Malibu for Safe Wireless representatives: W. Scott McCollough, Tony Simmons, and Susan Foster.

W. Scott McCollough stated his slideshow had additional details that could be not be included in the verbal presentation. He discussed code changes created by Ordinance No. 477U. He stated the City was still receiving applications for installations that were not regulated by Ordinance No. 477U. He stated Malibu for Safe Wireless was only asking the City to regulate in areas which it had the authority to do so. He stated Malibu treasured its rural environment and had unique risk factors that made safety requirements important. He expressed concern the current ordinance did not require sufficient design rigor, application content, or ongoing post-construction inspections. He stated projects received inadequate review and there were inadequate safety evaluations and protection considerations.

Tony Simmons stated he was a licensed engineer. He discussed electrical and fire safety and the rigor used to review applications. He stated the current regulations did not require sealed electrical design documents from the engineer. He stated the City was not currently meeting CPUC and Southern California Edison (SCE) expectations for rigor. He discussed

disasters caused by overburdened utility poles. He discussed the importance of thorough professional review of electrical designs.

Susan Foster stated she was a medical writer and an honorary fire fighter with the San Diego Fire Department. She stated she had worked on wireless zoning ordinances since 2001 when San Diego County created its first wireless ordinance. She stated she advised the City of Encinitas on the fire safety portion of its small cell ordinance. She discussed the importance of detailed instructions and requirements in each stage of the permitting process. She stated her goal was to develop robust and clearly defined fire safety language and an electric and fire safety review protocol. She discussed the importance of engineering rigor to design against failure and prevent fires. She stated minimum separations and setbacks would allow people to evacuate in the event of a fire caused by WCFs. She indicated opposition to strand mounted WCFs.

W. Scott McCollough discussed the setback and separation requirements of different cities. He stated the FCC had not approved a specific maximum separation. He stated he would like to see more separation but it was a balancing act. He stated each permittee should be required to get pollution insurance.

Assistant Planner Eaton discussed the types of WCFs including side-mounted, top-mounted, strand-mounted, streetlight poles, traffic sign poles, and various designs outside the public right-of-way. He stated SCE also had to approve the design of streetlight poles. He stated the City should also consider the aesthetics of the supporting equipment, which could be pole-mounted, on-grade, or underground. He stated the applicants often pushed back against undergrounding and claimed the equipment did not work as well underground.

Acting Planning Director Mollica stated the City Council would consider selection of an application review consultant for WCFs at its January 11, 2021 Regular meeting. He stated staff would also be sending out a survey for residents to express needs and desires for the WCF ordinance.

Mark Graham stated he lived in Elk Grove and discussed his city's development of its WCF regulations. He discussed the design standards in Resolution No. 20-65 and indicated support for Section 5(D). He encouraged staff to allow a more back and forth discussion during the workshop. He indicated support for post-construction RF monitoring and undergrounding despite carrier push back.

Stephanie Sunwoo stated many supporters of WCF regulation were listening to the meeting. She discussed the importance of preserving the natural beauty of Malibu. She stated the proliferation of WCFs conflicted with the Vision and Mission Statements of the City.

Jeff Louks recommended having appeals reviewed by the City Council. He indicated support for hiring Center for Municipal Solutions as the new application review consultant.

He stated Center for Municipal Solutions focused on representing counties and cities. He stated Center for Municipal Solutions had engineering expertise and high standards for safety review.

Councilmember Silverstein stated he was impressed with the quality of the comments from the public. He indicated support for allowing a more informal discussion at a workshop. He stated it was odd the meeting was noticed as a Special City Council meeting when the City Council was not meeting to make a decision. He stated resident's comments were limited and they were not able to donate minutes to each other. He stated many people wanted the opportunity to have a discussion with more give and take to drill down on the issues.

Ryan Embree indicated support for Councilmember Silverstein's comments. He stated he would like to focus the discussion on what could be done and recommended allowing each member of the public to speak for six minutes. He stated the City should encourage minimal deployment of WCFs. He stated there was no break in voice call coverage along Pacific Coast Highway (PCH). He stated allocation of utility poles should be fair. He stated one carrier was trying to deploy an inefficient radio system. He recommended discouraging new wooden poles due to the fire danger.

Kraig Hill discussed provisions of the California Coastal Act and Local Implementation Plan (LIP) Section 6.5 to minimize the impacts of new development. He discussed the Vision Statement and the City's commitment to sacrifice urban and suburban conveniences. He stated texting and data speeds could be considered urban and suburban conveniences. He recommended limiting new installations to areas that still had reception dead zones for basic services. He stated per the LIP installations should be located away from scenic roads to minimize visual impact. He stated all the equipment that could feasibly be placed underground should be required to be undergrounded. He stated there was conflict between the CPUC and the California Coastal Act. He stated the City could make it mandatory for new installations to have a site plan review (SPR) and be considered by the Planning Commission. He stated neighborhood character was a finding for an SPR and would give the public an opportunity to define their neighborhood character.

Jimmy Barge stated the scenic beauty of Malibu was important. He stated the aesthetic values of the City and the California Coastal Act gave the City some leverage in approvals. He stated existing communication facilities negatively impacted the aesthetic value of PCH. He stated street lights and roof mounted facilities were more desirable alternatives to side mounts on utility poles. He stated the City had unique safety concerns.

Linda Gibbs stated the staff presentation focused on what the City could not do. She indicated support for Mr. McCollough's comments. She indicated support for hiring Center for Municipal Solutions as the City's application review consultant. She stated she wanted the process to be a more open conversation and recommended staff listen to Mr. McCollough and Mr. Hill. She stated the City should stand up for the residents.

Kirk Odian discussed the importance of ensuring compliance with FCC regulations. He indicated support for undergrounding. He recommended more frequent inspections to ensure compliance. He indicated support for a more open dialogue.

Mayor Pro Tem Grisanti stated he was impressed by the public speakers. He questioned how expensive it was to monitor RF.

Acting Planning Director Mollica stated the City could discuss the cost of adding more RF monitoring to the consultants contract.

Ms. Karish stated there was case law restricting the amount of monitoring a local agency could require.

Assistant City Attorney Rusin stated staff could look into how much ongoing monitoring the City could require.

Assistant Fire Chief Drew Smith, Los Angeles County Fire Department, discussed communication technology available to the Fire Department. He stated a robust communication system supported fire and law enforcement response. He stated he could not speak to the environmental concerns. He stated he did not have data on fire risks from 5G equipment.

Fire Chief Nick Duvally, Los Angeles County Fire Department, stated he was not aware of problems with cellular industry technology that caused fires.

Acting Planning Director Mollica stated the City was seeking more input from the community in an online survey and welcomed more correspondence. He stated the WCF application review consultant would be selected at the January 11, 2021 Regular City Council meeting. He thanked everyone for participating.

Assistant City Attorney Rusin stated the City would continue its conversation with Mr. McCollough and his associates. He encouraged the public to reach out to the City with more feedback or information.

## **ADJOURNMENT**

The meeting adjourned at 7:54 p.m.

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

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MIKKE PIERSON, Mayor

ATTEST:

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HEATHER GLASER, City Clerk  
(seal)