



# Supplemental 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: March 18, 2021 Meeting date: March 22, 2021

Subject: Approval of Minutes

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**RECOMMENDED ACTION:** Approve the minutes for the January 11, 2021 Malibu City Council Regular meeting, January 22, 2021 Malibu City Council Special meeting, January 25, 2021 Malibu City Council Regular meeting, January 28, 2021 Malibu City Council Adjourned Regular meeting, and January 29, 2021 Malibu City Council Special 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:** Attached to this report are draft minutes for the meetings of January 11, 2021, January 22, 2021, January 25, 2021, January 28, 2021, and January 29, 2021.

**ATTACHMENTS:**

1. January 11, 2021 Malibu City Council Regular meeting
2. January 22, 2021 Malibu City Council Special meeting
3. January 25, 2021 Malibu City Council Regular meeting
4. January 28, 2021 Malibu City Council Adjourned Regular meeting
5. January 29, 2021 Malibu City Council Special meeting

MINUTES  
MALIBU CITY COUNCIL  
REGULAR MEETING  
JANUARY 11, 2021  
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 Paul Grisanti; and Councilmembers Karen Farrer, Bruce Silverstein, and Steve Uhring

ALSO PRESENT: John Cotti, Interim City Attorney; Reva Feldman, City Manager; Lisa Soghor, Assistant City Manager; Heather Glaser, City Clerk; Jesse Bobbett, Community Services Director; Yolanda Bundy, Environmental Sustainability Department; Richard Mollica, Acting Planning Director; Rob DuBoux, Public Works Director; Kelsey Pettijohn, Deputy City Clerk; Melinda Talent, Environmental Health Administrator; and Susan Dueñas, Public Safety Manager

**PLEDGE OF ALLEGIANCE**

Mayor Pierson led the pledge of allegiance.

**APPROVAL OF AGENDA**

MOTION Councilmember Farrer moved to approve the agenda.

**POINT OF ORDER**

Councilmember Silverstein stated the way City Council meetings were run violated applicable law, City Council resolutions, and City Council policies. He discussed the way the public would participate during Council meetings held in-person. He stated during virtual meetings public speaker video was not shown, time deferral had not been allowed, and the video of City Attorney and City Manager turned on and off during the meeting. He stated there was no technological reason for the changes and Council had not approved or determined the changes. He stated public speaker video should be required during a meeting, speakers should be able to obtain contributed minutes, and the City Manager and City Attorney video should always be live.

Mayor Pierson questioned whether the Council should hear public comments first and whether it would be more appropriate for Councilmember Silverstein to address the matters during his Councilmember comments.

Councilmember Silverstein stated his comments affected the way the meeting was conducted. He stated City Manager Feldman had not provided a reason for why the virtual meeting process had been altered from the in-person meeting process or explained who made the decision. He questioned who had decided on the change to the meeting process.

Mayor Pierson suggested an item be brought back for consideration. He stated some cities had chosen to disallow video from public speakers because of Zoom-bombing.

City Manager Feldman suggested the Council get consensus on whether it wanted to add an item to a future agenda to discuss the matter further.

Mayor Pierson stated it would be appropriate to bring back as an agenda item.

At 6:46 p.m., Councilmember Silverstein left the meeting.

Mayor Pro Tem Grisanti stated the matter had not been placed on the agenda but it sounded like something that should come back to the Council.

At 6:47 p.m., Councilmember Silverstein returned to the meeting.

Interim City Attorney Cotti stated the matter had not been placed on the agenda but staff would be happy to bring it back to the Council. He stated he would be on camera during the meeting.

**CONSENSUS** By consensus, the Council directed staff to bring back an item to establish protocols for holding virtual City Council meetings.

#### **FRIENDLY AMENDMENT**

Councilmember Uhring suggested combining Item Nos. 7.D. and 7.F. He stated it would be the most effective way to consider the matters therein.

Councilmember Silverstein stated the agenda violated Resolution No. 98-083. He read from article 5, section B of Resolution No. 98-083. He stated the City Manager was arbitrary and capricious in her responsibility to place items on City Council agendas. He stated the City Manager had prepared the agenda in violation of Resolution Nos. 98-083 and 99-007. He stated he could not find the source of the restrictions outlined in City Council Items under the Guide to the City Council Proceedings listed on City Council agendas. He read from article 6, section A of Resolution No. 99-007. He stated Item No. 7.E. should have been listed as Item No. 4.B. according to the Resolution No. 99-007. He referenced Item No. 4.B. on the October 14, 2019 City Council agenda, Item No. 4.B. on the September 14, 2020

City Council agenda, Item No. 4.C. on the October 12, 2020 City Council agenda, Item No. 4.C. on the September 14, 2020 City Council agenda, Item No. 4.A. on the April 13, 2020 City Council agenda, and Item No. 4.B. on the March 9, 2020 City Council agenda. He stated there was no notice of public hearing for Item No. 7.E. He stated there had not been a notice of public hearing for Item No. 4.B. on the October 14, 2019 City Council agenda, Item No. 4.C. on the October 12, 2020 City Council agenda, or Item No. 4.A. on the April 13, 2020 City Council agenda. He stated the responsibility to publish a notice of public hearing for Item No. 7.E. fell to the City Manager if it were required. He stated Item No. 7.E. should be Item No. 4.B. pursuant to article 6, section A of Resolution No. 99-007. He read from article 6, section B of Resolution No. 98-083. He stated Item Nos. 3.B.3., 3.B.9., and 6.A. violated Resolution No. 98-083. He stated he could not ascertain whether Item No. 3.B.2. was timely submitted. He stated there was nothing in Resolution No. 98-083 that authorized the City Manager to place an item on a City Council agenda. He stated if Item No. 6.A. remained on the agenda it must be combined with Item Nos. 7.D. and 7.F. He stated he would need to go through his entire report for Item No. 7.F. to explain his position on Item No. 6.A. He stated neither Item No. 7.B. nor Item No. 7.C. were submitted in compliance with Resolution No. 98-083. He stated the agenda had been ordered improperly. He stated Item Nos. 7.C. and 7.E. should be combined and Item Nos. 7.D. and 7.F. should be combined. He stated if the items were combined, he would withdraw his objection to Item Nos. 7.C. and 7.D. being on the agenda. He stated he wanted to make sure hearing Item Nos. 7.C. and 7.D. did not cut off discussion of Item Nos. 7.E. and 7.F. He requested consensus on combining Item Nos. 7.C. and 7.E. and combining Item Nos. 7.D., 7.F., and, if was to stay on the agenda, 6.A.

Mayor Pierson stated Item No. 7.C. was in the works over a month ago. He agreed there was crossover with a lot of items. He stated it would have been nice to have known about Councilmember Silverstein's objections ahead of time.

Councilmember Silverstein stated the Brown Act prohibited him from bringing the matter to the attention of the Council ahead of the meeting.

Mayor Pierson stated he could have discussed it with the Interim City Attorney.

Interim City Attorney Cotti stated it would be difficult to go through the entirety of the Resolution during the meeting. He stated it was up to the City Council to approve the agenda as presented or amend it as it saw fit.

Councilmember Silverstein stated he would waive his objections to Item Nos. 7.C. and 7.D. being on the agenda if Item Nos. 7.C. and 7.E. were combined and Item Nos. 7.D. and 7.F. were combined. He stated Item No. 6.A. was improper.

Mayor Pro Tem Grisanti stated Item No. 7.D. had been mischaracterized on social media, which he had refrained from commenting on pursuant to Assembly Bill 992.

Councilmember Silverstein stated he objected to the process, not the substance. He stated he was happy to go through his objections laboriously but would rather see the items combined.

Councilmember Uhring stated combining items may result in a better outcome.

Mayor Pierson stated Item Nos. 7.C. and 7.E. touched on similar issues and he did not have a problem discussing them at the same time. He stated Item No. 7.D. and part of Item No. 7.F. were similar. He stated there was four and a half hours of public comment for the meeting and the meeting needed to end at midnight. He stated Item No. 7.F. included over 20 items that needed individual discussion. He stated Item Nos. 7.C. and 7.E. should be discussed at a Special meeting.

Councilmember Silverstein stated the Council had received over 100 letters of support for Item No. 7.E. and it needed to be discussed. He stated it was the first item submitted for the meeting.

Councilmember Farrer indicated support for combining Item Nos. 7.D. and 7.F.

#### SUBSTITUTE MOTION

Councilmember Uhring moved to approve the agenda, hearing Item Nos. 7.C. and 7.E. concurrently and Item Nos. 7.D. and 7.F. concurrently.

Councilmember Silverstein stated Item No. 6.A. needed to be removed from the agenda or heard after Item No. 7.E. He stated Item No. 7.E. should be moved to section 4 of the agenda.

City Manager Feldman stated Item No. 7.E. had not been vetted through the City Attorney's Office. She stated the item had not gone to a Commission to have public discussion and was placed on the agenda as a Councilmember Item for the Council to determine whether it wanted to move it forward for further review.

Councilmember Silverstein questioned where that was written in the code.

City Manager Feldman stated not everything was written down.

Councilmember Silverstein questioned whether City Manager Feldman made things up as she went along. He stated there were different rules for different people.

Councilmember Farrer objected to the tone the meeting was taking.

Mayor Pierson stated ordinances went through a process.

Councilmember Silverstein stated the process he requested was what had been followed for the items he previously mentioned.

Mayor Pro Tem Grisanti indicated disagreement.

Councilmember Silverstein stated he researched the matter before the meeting and questioned whether Mayor Pro Tem Grisanti had also.

Mayor Pierson stated he wished Councilmember Silverstein had consulted with the City Attorney before bringing his items forward. He indicated support for moving forward with the substitute motion.

In response to Interim City Attorney Cotti, Mayor Pierson indicated support for hearing Item Nos. 7.C. and 7.E. before Item Nos. 7.D. and 7.F. He stated Item No. 7.F. would take multiple meetings.

Councilmember Silverstein stated Councilmember Farrer stated the process to approve the agenda was taking too long. He questioned whether he should give up on procedural objections. He questioned whether it was the responsibility of the City Manager to follow City Council resolutions in the creation of the agenda.

Councilmember Farrer stated she had not stated the process was taking too long.

Councilmember Silverstein stated he misunderstood and apologized.

Mayor Pro Tem Grisanti stated Item No. 7.F. was not in a form that could be adopted as a law.

Mayor Pierson indicated agreement with Mayor Pro Tem Grisanti.

Councilmember Silverstein stated Item No. 6.A. had been placed on the agenda improperly.

#### POINT OF ORDER

Mayor Pro Tem Grisanti stated there was a substitute motion on the floor.

Mayor Pierson restated the motion and clarified that Item Nos. 7.C. and 7.E. would be heard before Item Nos. 7.D. and 7.F.

Councilmember Farrer seconded the motion. The question was called, and the substitute motion carried 5-0.

**MOTION** Councilmember Silverstein moved to remove Item No. 6.A. from the agenda.

Councilmember Uhring stated Item No. 6.A. needed to be discussed.

#### AMENDED MOTION

Councilmember Silverstein amended his motion to hear Item No. 6.A. after Item Nos. 7.C. and 7.E.

Councilmember Uhring seconded the motion.

The question was called, and the amended motion failed 2-3, Councilmember Farrer, Mayor Pro Tem Grisanti, and Mayor Pierson dissenting.

## **REPORT ON POSTING OF AGENDA**

Deputy City Clerk Pettijohn reported that the agenda for the meeting was properly posted on December 31, 2020, with the amended agenda posted January 8, 2021.

### **ITEM 1 CEREMONIAL/PRESENTATIONS**

None.

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

Pamela Conley Ulich stated her mother had been with her the night she was elected as a Malibu City Councilmember. She stated her mother taught her what it meant to be a role model. She stated her mother died from COVID-19 on May 5, 2020. She questioned when or how the vaccine would be administered. She indicated disappointment in the bickering she heard at City Council meeting. She discussed her first term on City Council. She stated she hoped the tradition of treating one another with dignity and respect would continue. She stated she had faith that the judicial system was capable of investigating, prosecuting and protecting Malibu. She stated serving on the City Council was an honor and she hoped the seated Councilmembers act honorably.

Mayor Pierson expressed his condolences to Ms. Ulich.

Bill Sampson stated he voted for Councilmembers Silverstein and Uhring. He stated it was unfortunate the Council had not made Councilmember Silverstein Mayor Pro Tem. He stated Mayor Pro Tem Grisanti perjured himself in the past.

Joey Goodman read the letter he submitted to the public record for the meeting.

Lonnie Gordon stated the Council was divided. She stated the best interests of the City should be put first. She requested the Council work together.

Mark Baute stated the community wanted the Council to work together as a team, conduct themselves as adults, exchange ideas, and reach consensus. He requested Councilmember Uhring act as an individual Councilmember. He questioned how City Manager Feldman could work with Councilmember Silverstein as a teammate given what he posted about her on social media. He stated there needed to be an outside investigation of the Wagner Affidavit. He stated Councilmember Silverstein could not be involved in the investigation because of the content of the Wagner Affidavit. He stated the Human Resources (HR) complaint Councilmember Silverstein filed against City Manager Feldman also needed to be

investigated independently. He stated Item No. 7.E. was illegal.

Dana Graulich discussed the mandated harassment prevention training she takes as an employer. She discussed Item No. 6.A. and stated the voluminous and lengthy attacks on City Manager Feldman's character, motivations, and behavior by Councilmember Silverstein on social media could lead to an HR complaint. She suggested Councilmember Silverstein educate himself on what constitutes a hostile work environment. She discussed her dealings with City Manager Feldman. She questioned whether Councilmember Silverstein would make similar accusations to a man. She stated time and resources were being wasted by the Council not working together toward common goals.

Dean Graulich was not present at the time of the hearing.

Deborah Frankel stated Councilmember Silverstein should have been Mayor Pro Tem. She expressed her condolences to Ms. Ulich. She stated the community wanted Malibu to be an exemplary City with people of high moral character. She stated good leaders had presence, communication, and position. She reminded the Council of the importance of having a full, open, clear, and strong heart.

Lynn Norton stated public comment on Item No. 7.C. should be limited to support for or against scheduling a special meeting.

Scott Dittrich discussed the need for better rollout of the COVID-19 vaccine. He stated Councilmembers Silverstein and Uhring were addressing accusations of things being done in secret in the City. He stated City Manager Feldman should consent to a recorded meeting with Councilmember Silverstein. He discussed letters from the City's Environmental Health Department that were sent out to property owners in error. He requested the City Manager clarify why letters were sent out.

E Barry Haldeman discussed his history in the City and discussed the reasons why Malibu incorporated. He stated the 2020 election introduced a vendetta against everyone in Malibu City government. He stated the Wagner Affidavit was full of hearsay and unfounded accusations. He stated confrontational politics in Malibu encouraged distrust of the City Council, the City Manager, the City Attorney, the Los Angeles County District Attorney's Office, and other City staff through innuendo, false accusation, and little facts. He stated the behavior was creating a hostile work environment for which the City could be liable. He indicated support for transparency in government.

Lloyd Ahern discussed his history in the City. He stated Councilmember Silverstein had been conned by former Councilmember Wagner. He stated the Wagner Affidavit was lies and rumors. He stated Councilmember Uhring needed to get Councilmember Silverstein under control.

John Sibert discussed his history in the City. He stated he never saw hint of any of



the things Councilmember Silverstein had accused the City and City Manager Feldman of doing. He stated he served on Council with former Councilmember Wagner. He stated City Manager Feldman was honorable and very good at her job. He stated Malibu was better than the recent insults, personal attacks, innuendo, half-truths and lies. He stated the Council represented everyone in the City, not just those that voted for them.

Alexis Aria expressed hope the Council could work synergistically. She stated a high number of women reported having been harmed by homeless men in Malibu. She discussed numerous reports. She stated four women had been murdered in Malibu and Montecito in the past 11 years and their murders remained unsolved. She recommended the Council listen to the voice of the people.

Josh Spiegel thanked the Council and staff. He welcomed new members of the City Council. He stated online forums had been hijacked to slam City staff, Councilmembers, and other residents. He discussed numerous priorities in the City that took the time of City staff and stated many City Departments were short-staffed. He stated there was a global pandemic and homes that still needed to be rebuilt from the Woolsey Fire. He requested the Council work together to make a difference.

Marissa Coughlan congratulated the incoming Councilmembers and previous Councilmembers. She discussed her history in the City. She stated the City needed to generate income and retain its citizens. She thanked City staff for going above and beyond during the COVID-19 pandemic. She expressed her condolences to Ms. Ulich. She stated the tone of the Council would lead the community.

Kraig Hill stated egos needed to be put aside. He discussed a shortage of people qualified to administer the COVID-19 vaccine. He requested the Council lobby the County to create a group of volunteer vaccinators. He stated short-term rental permits should be viewable in OnBase. He discussed the effect of Proposition 19 on onsite wastewater treatment systems. He requested Council direct staff to bring back an agenda item that exempted interfamily transfers or changed the standards to be performance-based rather than technology-based.

Jonathan Friedman was not present at the time of the hearing.

Howard Rudzki welcomed the new Councilmembers. He stated his experience with City staff had been that they were professional, knowledgeable, and willing to help. He stated the community needed a lot from City Hall. He stated the actions of some were setting the City back. He stated any investigation should be handled by a third party or government agency responsible for these types of allegations. He stated people needed to show respect to one another.

Hamish Patterson welcomed new Councilmembers. He discussed the oath of office taken by the Council. He stated each Councilmember had been besmirched by the public. He indicated opposition to the way the December 14, 2020 selection of the

Mayor Pro Tem was handled. He indicated support for transparency. He recommended the Council host a public forum to find common ground.

Graeme Clifford discussed recent fires started by homeless encampments on private property in Tuna Canyon. He stated the Council needed to address encampments on private property. He welcomed the incoming Councilmembers.

Georgia Goldfarb welcomed the new Councilmembers. She stated Southern California Edison (SCE) was trimming trees in excess of code requirements. She stated SCE did not have the right to enter private property without prior permission.

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

Ryan Embree discussed an email he sent to the Council regarding cyber-attacks on government database software and requested the City explore potential vulnerabilities. He stated issuance of speeding tickets in the City had fallen off in the past two years. He discussed fires in the hills and stated law enforcement should confiscate barbecues as evidence for trial. He stated the City should prominently post searchable Warrant Registers for the last three years on the City's website.

Colleen Baum questioned when accusations about City Manager Feldman began. She discussed disasters on the west coast in 2020. She stated all she heard were accolades about how City staff was handling Woolsey Fire rebuilds. She questioned what evidence Councilmember Silverstein had to back up the Wagner Affidavit. She stated Item Nos. 7.E. and 7.F. should not be taken up. She stated the Council as a whole should control the agenda with input from the community.

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

Public Safety Commissioner Frost stated traffic enforcement had improved over the past six months through use of a lidar speed gun. He stated lidar guns were highly effective. He stated decibel level monitoring needed to be revisited. He thanked Public Works Department staff for working on placement of speed humps on Point Dume.

Public Safety Commissioner Stewart discussed facilitation of vaccine distribution in the City. He stated Malibu medical providers met to prepare for receipt of COVID-19 vaccines. He stated the Commission was looking into securing an indoor facility for vaccinations to be done in any weather.

City Manager Feldman stated Malibu had 253 positive cases of COVID-19 and six deaths. She stated COVID-19 testing positivity was over 20% in the County of Los Angeles. She stated there was a stay at home order and a travel ban in effect in California. She thanked Public Safety Commissioner Stewart for his work on coordinating possible vaccinations in Malibu. She stated the County of Los Angeles was in vaccination Phase 1a. She stated 284 Woolsey Fire rebuilds had been approved by the Planning Department, 166 building permits had been issued, and

20 homes had been completed. She stated the letters from the City's Environmental Health Department sent out to property owners in error was the result of human error. She stated corrected letters had been sent out. She stated short-term rental (STR) permits were required beginning January 15, 2021. She stated 110 STR permit applications had been received and the City had approved 30 permits. She discussed cars congregating in the Cross Creek area on the weekend and thanked the Malibu/Lost Hills Sheriff's Station for assigning extra Deputies to assist with the issue. She thanked the Volunteers on Patrol, City Code Enforcement staff, and the Los Angeles County Department of Public health for assisting with the issue. She stated the wireless ordinance schedule was available on the City's website. She stated mid-year budget amendments would be discussed at the January 25, 2021 Council meeting. She announced a Civic Center Water Treatment Facility Phase 2 stakeholder meeting on January 26, 2021. She thanked the community for its comments. She thanked City staff for its work in difficult circumstances over the past two years.

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

Councilmember Uhring thanked the community for its input. He welcomed Interim City Attorney Cotti. He stated he wanted to bring an item to Council to discuss generator use during evacuations and Public Safety Power Shutoff (PSPS) events. He discussed Proposition 19. He indicated STR permits should be available online.

City Manager Feldman stated the cost to roll out generators for a PSPS event would be included in the mid-year budget discussion.

Councilmember Silverstein expressed his condolences to Ms. Ulich. He stated Malibu had lower percentage of COVID-19 cases per population and deaths per population than the County of Los Angeles and City of Los Angeles. He stated he had no vendetta or desire to find City Manager Feldman guilty of any misconduct. He stated City Manager Feldman was deceitful, duplicitous, and unethical and needed to be replaced for reasons unrelated to the Wagner Affidavit. He stated he had extensive experience drafting statutes. He stated his feelings toward the City Manager had nothing to do with gender. He stated he did not believe he was creating a hostile work environment. He stated he was nothing but complementary about other City staff. He stated during his campaign he encouraged the community to file letters of agency with the Sheriff's Department. He stated the City should solicit the community to provide letters of agency to the Sheriff's Department and perhaps penalize property owners that did not comply. He stated since December 14, 2020, he had been working more than 10 hours a day on City business. He stated City Manager Feldman had put up roadblocks to him accomplishing his duty as a Councilmember. He stated he wasted in excess 20 hours a week dealing with the City Manager's recalcitrance and insubordination. He discussed his campaign promises. He stated the City Manager was duplicitous and deceitful. He stated the City Manager was a contemptable person that had something to hide. He stated an internal investigation was required to clear the air. He stated he had been accused of being divisive. He stated Malibu was impacted by polarizing political views. He

stated he did not view the world in black and white. He stated he had witnessed some good accomplishments by the City Manager for which he complimented her. He stated he had also witnessed many acts by the City Manager that were unethical and perhaps unlawful. He stated the City Manager had created an email destruction policy that violated the Council-adopted records retention schedule. He stated the City Manager had ceased auto-deletion of emails and removed his ability to forward emails. He expressed gratitude for the community members that voted for him.

Councilmember Farrer thanked the public speakers. She stated what transpired at the United States Capitol on January 6, 2021, was the result of conspiracy theory. She thanked Councilmember Silverstein for acknowledging the job City staff was doing. She stated Councilmember Silverstein should think about who hired and retained those staff members, which was City Manager Feldman. She stated the City was not headed in a good place. She stated the things that needed attention in the City were Woolsey Fire rebuilds, Pacific Coast Highway problems, school district separation, upgrading water infrastructure, and protecting the environment. She stated things had come to a standstill because of Councilmember Silverstein's unilateral demands of the City. She stated no single Councilmember could tell the City Manager what to do. She stated an independent internal investigation was a contradiction.

Mayor Pro Tem Grisanti welcomed Interim City Attorney Cotti. He thanked the community for its input. He thanked the Public Safety Commission for its work.

Mayor Pierson indicated support for adjourning the meeting in memory of Bill Koeneker. He stated the City had been in communication with the Los Angeles County Sheriff's Department regarding letters from Amnesty International. He vowed to work toward finding common ground in the City. He questioned whether there was consensus to discuss extending the Woolsey Fire fee waiver program.

Councilmember Farrer stated it would be best to consider at the mid-year budget review.

**CONSENSUS** By consensus, the Council directed staff to bring back at the mid-year budget review the fiscal impact of extending fee waivers for certain fees related to the rebuilding of structures that were damaged or destroyed by the Woolsey Fire.

### **ITEM 3      CONSENT CALENDAR**

Item Nos. 3.A.1., 3.B.2, 3.B.8., and 3.B.9. were pulled by the public. Item Nos. 3.B.3., 3.B.4., 3.B.6., and 3.B.7. were pulled by the Council.

**MOTION** Councilmember Uhring moved, and Councilmember Silverstein seconded a motion to approve the balance of the Consent Calendar. The question was called, and the motion carried unanimously.

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.

5. Acceptance of the Storm Drain Trash Screens Project

Recommended Action: 1) Accept the work performed by United Storm Water, Inc. for the Storm Drain Trash Screens Project, Specification No. 2077 as complete; and 2) Authorize the Public Works Director to submit for recordation a Notice of Completion.

The following items were pulled from the consent calendar for individual consideration:

A. Previously Discussed Items

1. Second Reading and Adoption of Ordinance No. 477

Recommended Action: Conduct second reading, unless waived, and adopt 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.

Jeff Louks expressed appreciation for the work of the Council. He indicated support for having the Council rather than an appointed hearing officer make the final decision on appeals.

Mayor Pierson stated he was concerned it was harder to get the Council together to hear appeals.

City Manager Feldman stated the Council could amend the ordinance at any time.

Mayor Pierson stated he thought the Council had agreed to see how the process worked using an appointed hearing officer.

Councilmember Uhring indicated agreement with Mayor Pierson and City Manager Feldman.

Mayor Pierson stated the residents would let the Council know if the process was not working. He stated the appointed hearing officer should reflect the desires of the Council

Councilmember Farrer indicated agreement with Mayor Pierson, City Manager Feldman, and Councilmember Uhring.

MOTION

Councilmember Uhring moved, and Mayor Pro Tem Grisanti seconded a motion to adopt 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. The question was called, and the motion carried 4-1, Councilmember Silverstein abstaining.

B. New Items

2. Approve Warrants

Recommended Action: Allow and approve warrant demand 61965-62175 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. 673 in the amount of the warrant appearing opposite their names, for the purposes stated on the respective demands in a total amount of \$3,581,704.53. City of Malibu payroll check number 5139-5146 and ACH deposits were issued in the amount of \$421,618.47.

Ryan Embree stated the Warrant Register had a larger total than normal. He stated the document needed to be searchable by the public. He requested the last three years of Warrant Registers be linked on the City’s website.

Councilmember Silverstein stated the Council was responsible for making sure the City Manager spent the City’s money appropriately and honestly. He stated he wanted to get answers to his questions about the item through a recorded Zoom meeting with the City Manager. He stated he sent his list of questions to the City Manager via email.

City Manager Feldman stated the Council adopted an annual budget and a lot of Councilmember Silverstein’s questions were regarding agreements approved by the Council. She stated most, if not all, of the agreements in question had gone through the request for proposals (RFP) process. She stated finance records were publicly available.

In response to Councilmember Silverstein, City Manager Feldman stated Assistant City Manager Soghor was prepared to answer all the questions posed by Councilmember Silverstein.

Assistant City Manager Soghor stated the Warrant Register was larger than usual due to the Council going dark for the second meeting of December 2020. She stated the Warrant Register was presented for ratification, which was typical for small cities. She stated everything paid out was included in the annual budget. She stated all agreements in excess of \$25,000 required Council approval. She discussed the internal invoice workflow and approval. She stated weekly batch payments were reviewed first by the Finance Manager and then routed to her for another review. She stated the City was audited annually by an independent audit firm during two separate reviews. She stated there had been no audit finding regarding payment of invoices. She stated original invoice and check stubs were maintained and

available for review at City Hall. She stated City Manager Feldman checked Finance Department work periodically. She stated Burns Pacific Construction was the City's street maintenance contractor. She stated GMZ Engineering was performing the Civic Center Way Improvements Project. She stated Woodard & Curran was designing Phase 2 of the Civic Center Water Treatment Facility. She stated Landscape Development, Inc. performed landscape maintenance for City parks. She stated Cotton, Shires and Associates, Inc. performed geology, coastal engineering, and environmental health reviews of projects submitted to the City. She stated all the agreements discussed had been approved the Council.

Councilmember Silverstein stated only one of his questions had been answered. He read from the cover page of the Warrant Register. He questioned what source documents were reviewed prior to the meeting, when the review occurred, how long the review took, how were the samples randomly selected, who selected the samples, what cash flow reports were analyzed, what form did the analysis take, and what record there was of the review and analysis.

In response to Councilmember Silverstein, City Manager Feldman stated she delegated certain responsibilities. She stated the Finance Manager managed daily cash flow. She stated staff was happy to demonstrate how that worked at City Hall. She stated the Assistant City Manager personally reviewed every accounts payable check and invoice before payment. She stated she took that on if the Assistant City Manager was unavailable. She stated she was happy to introduce Councilmember Silverstein to the independent auditing team so they could explain their random sampling process. She stated she was confident in certifying the Warrant Register that everything had been properly accounted for. She stated she had provided answers to questions from other Councilmembers on the Warrant Register. She stated staff took spending taxpayer money seriously. She stated she did not recall the exact source documents she reviewed but would make a note to record that if that was necessary moving forward.

In response to Councilmember Silverstein, City Manager Feldman stated invoices from Best Best & Krieger LLP were confidential and available to him for review at City Hall. She stated no other Councilmember had requested the invoice from Best Best & Krieger LLP listed on the Warrant Register.

Councilmember Silverstein questioned whether the payment made to Burns Pacific Construction was for an amount specified in the agreement or whether there had been change orders or overages.

City Manager Feldman stated the agreement with Burns Pacific Construction provided for an hourly rate and per person rate as well as costs for task specific projects, equipment provided, and special services.

Councilmember Uhring stated procedural tests were part of audits. He stated the City had been through several audits that had been favorable to the City that indicated the process for payment was working.

Councilmember Silverstein stated an audit did not address the questions he asked regarding change orders and overages. He stated answers to his questions should be immediately provided.

Mayor Pierson stated the reputation of the City's Finance Department was wonderful and he had never seen anything improper. He stated he was comfortable approving the Warrant Register.

Councilmember Uhring suggested City Manager Feldman and Assistant City Manager Soghor provide answers to Councilmember Silverstein after the meeting.

MOTION

Mayor Pro Tem Grisanti moved to allow and approve warrant demand numbers 61965-62175 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. 673 in the amount of the warrant appearing opposite their names, for the purposes stated on the respective demands in a total amount of \$3,581,704.53. City of Malibu payroll check number 5139-5146 and ACH deposits were issued in the amount of \$421,618.47.

Mayor Pro Tem Grisanti stated he spent 16 years on the Public Works Commission. He stated the City had an excellent record of handling contracts.

Councilmember Uhring seconded the motion. The question was called, and the motion carried 4-1, Councilmember Silverstein abstaining.

RECESS

At 9:24 p.m., Mayor Pierson recessed the meeting. The meeting reconvened at 9:38 p.m. with all Councilmembers present.

3. Approval of Minutes

Recommended Action: Approve the minutes for the November 9, 2020 Malibu City Council Regular meeting and the November 23, 2020 Malibu City Council Regular meeting.

Councilmember Silverstein stated he had many changes to discuss with City Clerk Glaser and requested approval of the minutes be postponed to the January 25, 2020 Council meeting.

MOTION

Councilmember Silverstein moved, and Mayor Pierson seconded a motion to direct staff to bring back to the January 25, 2021 Council meeting the minutes for the November 9, 2020 Malibu City Council Regular meeting and the November 23, 2020 Malibu City Council Regular meeting. The



question was called, and the motion carried 4-1, Councilmember Farrer dissenting.

4. Amendment to Professional Services Agreement with Stone Environmental, Inc.

Recommended Action: Authorize the Mayor to execute Amendment No. 1 to Professional Services Agreement with Stone Environmental, Inc. to increase the total compensation for services.

In response to Councilmember Silverstein, Environmental Sustainability Director Bundy discussed the work done by Stone Environmental, Inc. She stated the Environmental Sustainability Department was understaffed. She stated Stone Environmental, Inc. provided a specialized service for which the City did not send out an RFP.

In response to Councilmember Silverstein, City Manager Feldman stated Professional Services Agreements (PSA) were not required to be executed with the lowest bidder if an RFP was issued.

In response to Councilmember Silverstein, Interim City Attorney Cotti indicated agreement with City Manager Feldman. He stated no PSA could be amended without prior approval from the City. He stated he was not aware of any policy that prevented a low bid PSA from being amended to increase costs.

MOTION

Mayor Pro Tem Grisanti moved, and Councilmember Farrer seconded a motion authorize the Mayor to execute Amendment No. 1 to Professional Services Agreement with Stone Environmental, Inc. to increase the total compensation for services. The question was called, and the motion carried unanimously.

6. Award City Hall Roof Replacement Project.

Recommended Action: 1) Authorize the Mayor to execute a construction contract with 101 Roofing and Construction, Inc. in the amount \$234,248 for the City Hall Roof Replacement Project, Specification No. 2071; and 2) Authorize the Public Works Director to approve potential change orders up to 15% of Agreement contract.

In response to Councilmember Silverstein, Public Works Director DuBoux discussed the process for reviewing bids. He stated the references had been checked and 101 Roofing and Construction was comfortable with the bid it submitted to the City. He discussed the bid bond process. He stated he was confident in the contractor.

MOTION

Councilmember Silverstein moved, and Councilmember Uhring seconded a motion to: 1) authorize the Mayor to execute a construction contract with 101 Roofing and Construction, Inc. in the amount \$234,248 for the City Hall Roof Replacement Project, Specification No. 2071; and 2) authorize

the Public Works Director to approve potential change orders up to 15% of Agreement contract.

Councilmember Silverstein congratulated Public Works Director DuBoux.

The question was called, and the motion carried unanimously.

7. Amendment to Professional Services Agreement with 4Leaf, Inc. for Expedited Woolsey Fire Consulting Services

Recommended Action: Authorize the Mayor to execute Amendment No. 1 to the Professional Services Agreement with 4Leaf, Inc. for Woolsey Fire expedited consultant services.

Councilmember Silverstein withdrew his request to pull the item.

MOTION

Councilmember Uhring moved, and Councilmember Farrer seconded a motion to authorize the Mayor to execute Amendment No. 1 to the Professional Services Agreement with 4Leaf, Inc. for Woolsey Fire expedited consultant services. The question was called, and the motion carried unanimously.

8. Award Agreements for Wireless Communication Facility Application Review Services

Recommended Action: Authorize the Mayor to: 1) Execute an agreement with The Center for Municipal Solutions (dba Monroe Telecom Associates, LLC) for wireless communication facility application review services; and 2) Execute an agreement with HR Green Pacific, Inc. for wireless communication facility application review services.

Ryan Embree thanked the Council for making progress on this item. He stated the community should not have to pay for City staff to review approvals or conduct appeals. He stated noticing to the public should be widely done.

Nichole McGinley indicated support for increasing the scope of work for both consultants to include post-approval compliance, final inspections, radio frequency (RF) emissions and noise testing (including field testing), mapping of existing facilities, and enforcement of unpermitted facilities. She stated the agreement should explicitly include that non-RF engineering reviews ensure the applicant has applied adequate design rigor with regard to structural and electrical fire safety. She requested language be added to the agreements to allow the consultants to adapt its reviews to the changing landscape of the telecom industry.

Jonathan Kramer, Telecom Law Firm, thanked the City for working with Telecom Law Firm in the past.

In response to Mayor Pro Tem Grisanti, Mr. Embree stated the City should

send a larger post card notice to the community for wireless installations.

Acting Planning Director Mollica stated the post card notice to the community regarding wireless installations were now a different color and double the size of normal notice post cards sent by the City.

Councilmember Silverstein discussed noticing as required by the law. He indicated support for noticing that got the community involved and helped residents understand when something was happening that could affect their rights.

In response to Mayor Pierson, Acting Planning Director Mollica stated the notices for wireless installations directed people to the City's wireless webpage. He stated the Planning Department was working with Ms. McGinley and Ms. Gordon on improving notices. He stated the new notices were a different color and double the size of normal notice post cards sent by the City and included a map that showed the placement of the installation. He stated staff was actively seeking community input and was open to ideas for improvement.

In response to Councilmember Uhring, Acting Planning Director Mollica confirmed it was a \$750 fee to appeal a decision. He stated there was a standard filing fee based on a fee study. He stated there was also a revised plan submittal fee. He stated the fees were paid by the applicant and designed to recover as much of the cost of the consultant's review as possible.

City Manager Feldman stated staff could bring back an analysis on the fees versus the costs.

Councilmember Uhring stated the Council may want to consider reducing the appeal fee.

City Manager Feldman recommended discussing appeal fees during the budget hearing when the fee schedule was presented to the Council.

Mayor Pierson stated the fee would probably depend on the number of appeals the City received.

Councilmember Uhring stated he felt there would be a lot of appeals.

Mayor Pierson indicated support for increasing the scope of work for both consultants based on Ms. McGinley's comment. He stated he was not sure what non-RF reviews were or how language for consultant adaptability could be added.

In response to Councilmember Uhring, Mayor Pierson confirmed new rules

would come from the Federal Communications Commission or a court.

In response to Councilmember Farrer, City Manager Feldman stated the City had to conduct a fee study when new fees were added. She stated a fee could not be in excess of cost recovery. She stated many Planning fees did not cover the actual cost of services provided.

In response to Councilmember Farrer, Acting Planning Director Mollica stated the consultants offered services beyond the scope of the RFP approved by the Council. He discussed post-approval compliance inspections that Malibu For Safe Tech was hopeful would be included in the scope of work. He stated an applicant paid \$3500 per wireless communications facility application.

Councilmember Uhring discussed possibly passing appeal fee costs on to the applicant.

In response to Mayor Pierson, Planning Director Mollica confirmed field testing would include checking for unpermitted additions.

**MOTION** Mayor Pierson moved, and Mayor Pro Tem Grisanti seconded a motion to: 1) authorize the Mayor to: a) execute an agreement with The Center for Municipal Solutions (dba Monroe Telecom Associates, LLC) for wireless communication facility application review services; and b) execute an agreement with HR Green Pacific, Inc. for wireless communication facility application review services; and 2) direct staff to bring back amendments to increase the scope of work to include post-approval compliance, final inspections, radio frequency emissions and noise testing, mapping of existing facilities, and enforcement of unpermitted facilities. The question was called, and the motion carried unanimously.

9. Utility Easement Acceptance

Recommended Action: 1) Adopt Resolution No. 21-01 authorizing the granting of utility easements to Southern California Gas Company and Southern California Edison Company (SCE) and finding the same exempt from the California Environmental Quality Act; and 2) Direct staff to record a certified copy of the resolution and easement in the Office of the County Recorder.

Scott Dittrich stated the City should require undergrounding any poles that require replacement in the City.

Ryan Embree questioned why the City would grant easements for utilities for the La Paz development. He indicated opposition to the recommended action and stated it was not in the best interests of the City.

Councilmember Silverstein questioned whether the City was legally obliged

to grant the easement. He stated the City should get something in return from the utilities and the property that benefitted from the easement. He questioned why the item had been added to the agenda 72 hours before the meeting.

In response to Councilmember Silverstein, Public Works Director DuBoux discussed the section of the parcel that had been planned out for utilities that would also benefit the City's parcel. He stated he did not feel the City was legally obliged to provide the easement, but the benefit to the City was that utilities would be brought up to the City's parcel at the developer's expense. He stated a cost-benefit analysis had not been done.

Interim City Attorney Cotti indicated agreement with Public Works Director DuBoux.

Mayor Pro Tem Grisanti discussed the depiction of where the utilities would be placed. He stated the City would be responsible for placing utilities in the driveway to service its own parcel. He stated it was a significant benefit to the City to have the developer do that work for the City.

Councilmember Silverstein stated the City should know whether it was getting more value than it was sacrificing.

Mayor Pierson stated there was a benefit to the La Paz property.

City Manager Feldman stated the Development Agreement included a donation of two acres and \$500,000.

In response to Councilmember Silverstein, Councilmember Uhring confirmed those things were owed to the City regardless of whether it granted the utility easement.

Mayor Pro Tem Grisanti stated he was in favor of getting utilities to the City's parcel at no cost to the City.

Councilmember Silverstein stated the City should require additional funds to grant the utility easement if the benefit favored the developer more than the City.

In response to Mayor Pierson, City Manager Feldman stated Assistant City Attorney Rusin had been working with the developer on the easements and it had not been ready at the time the original agenda packet went out.

In response to Councilmember Uhring, City Manager Feldman stated she understood the La Paz construction schedule was dependent on the utility easements being granted.

In response to Councilmember Uhring, Public Works Director DuBoux stated a cost-benefit analysis would take a few days. He questioned how the City could request additional funding since a Development Agreement had already been executed.

In response to Mayor Pierson, Public Works Director DuBoux stated a previous Council had granted an access easement to La Paz and both parcels were accessed by the same driveway.

In response to Councilmember Uhring, Public Works Director DuBoux stated the driveway still belonged to the City and that was why the utility easements were required.

In response to Councilmember Farrer, Councilmember Uhring stated the utility easements had not come before the Planning Commission before.

In response to Mayor Pro Tem Grisanti, Public Works Director DuBoux stated he could bring back more information if it was helpful to the Council.

In response to Mayor Pierson, Mayor Pro Tem Grisanti stated utilities were required to be placed underground.

In response to Councilmember Silverstein, Interim City Attorney Cotti stated he would bring back information on whether the City had the legal ability to extract an additional benefit for the City in return for granting the utility easements.

MOTION Councilmember Uhring moved, and Councilmember Silverstein seconded a motion to direct staff to bring back: 1) a cost-benefit analysis on granting utility easements for the property located at 23465 Civic Center Way; and 2) information on whether the City has the legal ability to negotiate additional benefits in exchange for granting the utility easements. The question was called, and the motion carried unanimously.

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

- A. Ordinance to Require Electronic Filing of Campaign Disclosure Statements and Statements of Economic Interests  
Recommended Action: 1) Introduce on first reading Ordinance No. 479 adding Chapter 2.68 (Electronic Filing) to Title 2 (Administration and Personnel) to the Malibu Municipal Code to require electronic filing of campaign statements and statements of economic interests and finding the same exempt from the California Environmental Quality Act; and 2) Direct staff to schedule second reading and adoption of Ordinance No. 479 for the January 25, 2021 Regular City Council meeting.

City Clerk Glaser presented the staff report. She introduced Tom Diebert, NetFile, to answer additional questions about the electronic filing process.

Hamish Patterson indicated support for the item. He stated he could not support the dehumanization of anyone. He stated City Manager Feldman deserved an apology.

In response to Mayor Pro Tem Grisanti, Mr. Diebert stated filers had free access to the software required to file electronically. He stated campaign treasurers using third party software approved by the Secretary of State could upload filings straight into NetFile.

In response to Councilmember Uhring, Mr. Diebert stated the Fair Political Practices Commission was the filing officer for Government Code Section 87200 filers. He stated the FPPC had switched over around five years ago to requiring electronic filing by 87200 filers. He stated filing with NetFile allowed an expanded statement filing to satisfy multiple filing requirements.

**MOTION** Councilmember Uhring moved, and Councilmember Farrer seconded a motion to: 1) introduce on first reading Ordinance No. 479 adding Chapter 2.68 (Electronic Filing) to Title 2 (Administration and Personnel) to the Malibu Municipal Code to require electronic filing of campaign statements and statements of economic interests and finding the same exempt from the California Environmental Quality Act; and 2) direct staff to schedule second reading and adoption of Ordinance No. 479 for the January 25, 2021 Regular City Council meeting.

Interim City Attorney Cotti read the title of the ordinance.

The question was called, and the motion carried unanimously.

In response to Councilmember Uhring, City Manager Feldman stated newly appointed Planning Commissioners would be sworn in at the next Planning Commission meeting.

**MOTION** Councilmember Silverstein moved, and Councilmember Uhring seconded a motion to hear Item No. 7.A. before Item No. 6.A. The question was called, and the motion unanimously.

**ITEM 5 OLD BUSINESS**

None.

**ITEM 7 COUNCIL ITEMS**

- A. City Council Appointments to City Commissions and Committees  
Recommended Action: 1) Mayor Pro Tem Grisanti and Councilmembers Silverstein and Uhring to each make an appointment to the Cultural Arts Commission, Parks and Recreation Commission, Planning Commission, Public

Safety Commission, Public Works Commission, and Wastewater Advisory Committee; 2) Mayor Pierson 2) Councilmember Farrer to make an appointment to the Public Works Commission; 3) Council may appoint or affirm appointments of an ex officio member to the Cultural Arts Commission, Parks and Recreation Commission, and Public Safety Commission; 4) Council to appoint or affirm two at-large appointments to the Wastewater Advisory Committee; 5) Council to appoint or affirm five appointments and two alternate appointments to the Building Board of Appeals; and 6) Council to defer appointment of members to the Mobilehome Park Rent Stabilization Commission until such a time as it is necessary for the Commission to meet

Pamela Conley Ulich requested the Council make appointments that were more diverse and inclusive. She stated diversity was more reflective of the community and would improve the City. She stated volunteers should be treated with respect.

Marissa Coughlan stated she wanted to speak on Item No. 6.A.

Norman Haynie stated he was available to answer questions about the Wastewater Advisory Committee.

Ryan Embree stated people should be appointed by qualification. He offered to serve on the Public Safety Commission or the Public Works Commission.

In response to Councilmember Uhring, City Clerk Glaser stated Ex Officio members were allowed for some Commissions, had to live within the 90265-zip code but outside the City limits, were not a voting member, and could not serve as either chair or vice chair.

In response to Councilmember Silverstein, City Clerk Glaser stated Ex Officio members were specifically required to live outside the City limits but within the 90265-zip code.

Mayor Pro Tem Grisanti appointed Fireball Lawrence to the Cultural Arts Commission, Edward N. Miller to the Parks and Recreation Commission, Dennis Robert Smith to the Planning Commission, Joshua Spiegel to the Public Safety Commission, Brian Merrick to the Public Works Commission, and Kevin Poffenbarger to the Wastewater Advisory Committee.

Councilmember Silverstein appointed Peter C. Jones to the Cultural Arts Commission, Judy Villablanca to the Parks and Recreation Commission, Kraig Hill to the Planning Commission, Daphne Anneet to the Public Safety Commission, James Palmer to the Public Works Commission, and Steve Braband to the Wastewater Advisory Committee.

Councilmember Uhring appointed Lotte Cherin to the Cultural Arts Commission, Suzanne Guldemann to the Parks and Recreation Commission, John Mazza to the Planning Commission, Keegan Gibbs to the Public Safety Commission, Scott



Dittrich to the Public Works Commission, and Andrew Sheldon to the Wastewater Advisory Committee.

Councilmember Farrer appointed Wade Major to the Public Works Commission.

**MOTION** Councilmember Uhring moved, and Councilmember Silverstein seconded a motion to affirm the existing Ex Officio member of the Cultural Arts Commission, Graeme Clifford. The question was called, and the motion carried unanimously.

Councilmember Uhring recommended Christine Clark to serve as an Ex Officio member of the Parks and Recreation Commission.

**POINT OF ORDER**

Mayor Pro Tem Grisanti stated City Clerk Glaser stated Ex Officio members had to live within the 90265-zip code.

Councilmember Uhring stated he would come back to the Council with a recommendation on an Ex Officio member of the Parks and Recreation Commission.

In response to Councilmember Silverstein, City Clerk Glaser confirmed an Ex Officio member could not be a resident of the incorporated portion of the City.

**MOTION** Mayor Pierson moved, and Mayor Pro Tem Grisanti seconded a motion to appoint Brent Woodworth as an Ex Officio member of the Public Safety Commission. The question was called, and the motion carried unanimously.

**MOTION** Mayor Pro Tem Grisanti moved, and Councilmember Uhring seconded a motion to affirm the existing at-large appointments to the Wastewater Advisory Committee, Barbara Bradley and John Yaroslaski. The question was called, and the motion carried unanimously.

**MOTION** Mayor Pro Tem Grisanti moved, and Councilmember Uhring seconded a motion to affirm the existing at-large appointments to the Building Board of Appeals, Marissa Coughlan, Joseph M. Girard, Scott Halley, Lynn Heacox, and Lisa Niles. The question was called, and the motion carried unanimously.

Mayor Pierson noted the Council would defer appointment to the Mobilehome Park Rent Stabilization Commission since it had not needed to meet in many years. He also noted no Councilmembers had nominations for the two alternate appointments to the Building Board of Appeals.

**ITEM 6 NEW BUSINESS**

**A. Prioritization of Staff Resources**

Recommended Action: Provide direction to staff on how to prioritize staff resources.

Lynn Norton questioned whether the remainder of the agenda would be continued to another date. She stated the City started collecting transient occupancy tax without it having come before the Council. She stated some things requested by Councilmember Silverstein were not practical to provide and some were easy to provide. She stated it should not be overly hard for Councilmembers to request information from the City.

Colleen Baum questioned what information of value to the citizens of Malibu was being revealed by Councilmember Silverstein's requests. She stated Councilmember Silverstein's request for the City Manager's phone records was a witch hunt. She indicated concern for the well-being of the Councilmembers, City Manager Feldman, and City staff. She stated Councilmember Silverstein was singularly focused on his vendetta and the City needed to hire someone to focus on his requests.

Jonathan Kaye was not present at the time of the hearing.

Mark Baute clarified he called Councilmembers Silverstein and Uhring "rookies" because neither had never served on a City Council before. He stated Councilmember Silverstein's campaign promise to remove City Manager Feldman had become a vendetta. He stated Councilmember Silverstein needed to be candid about legal issues. He stated consent was required to record conversations because there was no legal right to do so. He stated Councilmember Silverstein needed to request information on what was relevant. He indicated opposition to trying to get someone to quit with a hostile, abusive, and gender-bullying approach.

Joseph Patterson stated Councilmembers should have access to whatever information they request. He indicated support for transparency in City business.

Kraig Hill stated the City Manager's replies to Councilmember Silverstein had been few and far between and fueled Councilmember Silverstein's frustration. He stated Councilmember Silverstein was right about a lot of things and had some good ideas but stated he disagreed with Councilmember Silverstein's approach. He stated the placement of this item on the agenda made City Manager Feldman look like she had something to hide. He stated the videos of all Commission meetings should be saved online. He stated Councilmember Silverstein should be allowed to record his meetings with City Manager Feldman.

Marissa Coughlan stated she had never seen as much hatred, condemnation, and vitriol among neighbors as she had recently. She stated 90% of City records could be searched for by Councilmember Silverstein on the City's website. She stated the City had to respond to many other public records requests. She stated staff had never denied her access to anything she asked for and worked with her as a team. She stated no one had the right to record her. She stated the City needed to focus on Woolsey Fire rebuilds, new developments, and persons experiencing homelessness.

Ryan Embree stated he requested a copy of the wireless ordinance under review, which was not provided to him pursuant to certain government codes quoted by City staff. He stated he requested a copy of a report on school district separation, which was not provided to him pursuant to certain government codes quoted by the City Attorney's office. He stated it was necessary for Councilmember Silverstein to demand access to documents.

Rosemarie Ihde was not present at the time of the hearing.

Laura Rosenthal was not present at the time of the hearing.

Pamela Conley Ulich stated so many hostile adjectives had been used by Councilmember Silverstein. She expressed hope Councilmember Silverstein would use his time to help the City. She questioned how much looking through the past would help the City with its current and future problems. She encouraged Councilmember Silverstein to use his time and energy in a positive way. She stated Councilmember Silverstein needed to get out of litigation mode. She stated Councilmember Silverstein had a good heart and needed to help Malibu.

Scott Dittrich stated the City not providing all information requested by Councilmember Silverstein had resulted in a situation where people were fighting each other. He stated it was Councilmember Silverstein's right to look over everything he requested from the City. He stated Councilmember Silverstein's tone could be improved. He stated staff answered to the Council. He thanked the Council for its service.

Mayor Pierson stated he wanted the Council to be cohesive group. He indicated support for full transparency. He stated the Council needed to establish a workable pace for the use of staff time. He stated some of the requests submitted by Councilmember Silverstein felt like harassment. He stated no other Councilmember requested 20 hours of staff time a week. He indicated support for a special investigation to investigate whether there was any impropriety or corruption at City Hall. He discussed the Council-approved Work Plan.

Councilmember Farrer stated she had a problem with the tone and volume of communications from Councilmember Silverstein. She stated the communications were a witch hunt. She stated the Council worked as a body. She discussed Work Plan items that had been put on hold to accommodate rebuilding after the Woolsey Fire and funding fee waivers. She stated City Hall had been paralyzed by the demands of one Councilmember. She stated no Councilmember had the right to monopolize staff time. She stated the Council only had authority to act as a body. She discussed the council-manager form of government. She read from an email from Councilmember Silverstein. She stated a man only looks under the bed when he had hidden there himself.

Councilmember Uhring stated Councilmember Silverstein was entitled to whatever documents he wanted. He stated everything did not have to be redacted when

Councilmember Silverstein was the one to request information. He stated a pace needed to be set for response to Councilmember Silverstein's requests. He stated the Council needed to learn to work together.

Mayor Pro Tem Grisanti stated Assembly Bill 992 did not allow Councilmembers to communicate with each other on social media. He stated Councilmember Silverstein had a poor plan for getting what he wanted. He stated City Manager Feldman had been responsive to his questions about the Warrant Register. He stated Councilmember Silverstein's refusal to speak with City Manager Feldman on the phone was not a good way to utilize the resources of the City. He stated this was a team sport and not litigation.

Councilmember Silverstein thanked Ms. Ulich for her comments. He stated it was a problem that Mayor Pierson did not trust him. He stated Councilmember Farrer did not know what she was talking about. He stated none of the Council had seen all of the correspondence between him and City Manager Feldman. He stated he started off asking for things nicely and was stonewalled. He stated the item was filled with misrepresentations. He stated he would not have proxies request information for him. He stated he asked City Manager Feldman for her emails to see what she did. He stated the City Manager did not do much work in writing, which he found troubling. He stated after he became a Councilmember, he requested documents that were previously withheld pursuant to certain government codes. He stated there was not much difference between what he saw as a member of the public. He stated he did not understand why the information had been withheld in the first place. He read from an email he received from Walter Zelman regarding Item No. 7.F. He stated the City Manager had mischaracterized his response to review documents at City Hall. He stated the actual documents responsive to his request were less than 1,000. He stated he had stated to the City Clerk that if his requests posed a problem to speak with him on an efficient way to respond. He stated he told the City Manager the City could take as long as it needed to respond to his public records requests. He stated he requested the City Manager's telephone logs, which the City Manager refused to provide. He stated when someone put a lot of effort into avoiding scrutiny it made him suspicious.

Mayor Pierson stated Councilmember Silverstein came off as harassing and he did not think that was his intent.

Councilmember Silverstein stated that was not his problem. He stated what he did on social media was none of the City staff's business. He stated he had to escalate in response to the City Manager's escalation.

Mayor Pierson stated Councilmembers were allowed to take an hour of staff time.

Councilmember Silverstein stated the Brown Act did not prohibit City staff from providing information to the entire Council. He stated the City had a desire to keep things secretive and away from the public.

Councilmember Uhring stated Councilmember Silverstein had made an attempt to not bury City staff. He stated he did not know Councilmember Silverstein to lie.

Mayor Pierson stated it was a matter of perspective.

Councilmember Silverstein stated he made multiple requests for City Manager emails because he was told he could not have a standing request. He suggested the City Manager copy him on each email.

Mayor Pierson stated his requests came across as harassing because of his other actions.

Councilmember Silverstein questioned whether Mayor Pierson thought he was lying.

Mayor Pierson stated he was unsure. He stated he came across very intense. He stated had a right to request information from the City.

Councilmember Silverstein stated he preferred to get along with everyone. He stated Mayor Pierson did not trust him.

Mayor Pierson stated the other Councilmembers were not on social media attacking him but that was what he was doing to other Councilmembers.

Councilmember Silverstein stated that had no bearing on substantive issues.

Mayor Pierson indicated disagreement with Councilmember Silverstein.

Councilmember Farrer questioned whether Councilmember Silverstein would appreciate being called a fascist by the other Councilmembers on social media. She stated Work Plan items had been put on hold to respond to the Woolsey Fire. She stated the COVID-19 pandemic had slowed government processes. She stated the City's work had been further slowed and this meeting was a perfect example. She questioned how things were supposed to work as the City got further behind.

Mayor Pro Tem Grisanti stated the Council was required to treat each other with respect. He stated the same thing should apply to Commissions. He stated he looked forward to working together. He discussed the fiscal uncertainty the City had navigated. He indicated support for being productive.

Councilmember Silverstein stated the assumptions about his motives were wrong. He stated Councilmember Uhring and he spent a lot of time working on Item Nos. 7.E. and 7.F. but the Council had been forced to discuss his records requests. He stated it was crazy that he should be limited to one hour of the City Manager's time.

Councilmember Farrer stated past Councils had gotten business done sticking to a one-hour limit for things not on the City's Work Plan.

MOTION Councilmember Farrer moved, and Mayor Pro Tem Grisanti seconded a motion to direct City staff to spend no more than a total of one hour per week per Councilmember on requests not related to the Adopted Work Plan.

Councilmember Uhring stated Mayor Pro Tem Grisanti had accused him of being among dysfunctional members of the Planning Commission. He stated Arnold York had to print a retraction in The Malibu Times. He stated the Council needed to come up with a plan for Councilmember Silverstein to get documents he requested without slowing down City operations. He stated limiting any Councilmember requests to one hour sent a bad message to the community.

Councilmember Silverstein stated limiting any Councilmember requests was acting in bad faith and he would respond in kind.

Councilmember Uhring questioned what suggestions City Manager Feldman had for providing Councilmember Silverstein documents without slowing down City operations.

Councilmember Farrer stated Councilmember Silverstein seemed to be unsatisfiable, which was why she suggested a one-hour limit. She requested Councilmember Silverstein get back to the business of the City.

In response to Councilmember Uhring, City Manager Feldman stated Councilmember Farrer's motion was a good start. She stated she was bogged down with responding to Councilmember Silverstein's public records requests. She stated she worked at the direction of the Council. She stated she would always say no to doing something for one Councilmember that the Council had not directed her to do. She stated she felt it was inappropriate to provide her phone records to Councilmember Silverstein unless the Council directed her to do so. She stated she was happy to meet or speak with Councilmember Silverstein, but she would not be recorded.

Councilmember Silverstein stated Interim City Attorney Cotti indicated City Manager Feldman had to produce her phone records.

Councilmember Farrer stated she was proud of the work she had done on behalf of the City without requiring discussions to be recorded.

Councilmember Silverstein stated the community wanted more transparency. Mayor Pierson stated he wanted the City's business to get done.

Councilmember Farrer restated her motion.

Mayor Pierson stated he thought it was already a City Council Policy.

Councilmember Silverstein stated Councilmember Farrer did not understand the City Council Policy. He stated Councilmember Farrer was making a motion to implement Item No. 7.D. and he objected to that procedurally.

Mayor Pierson questioned whether Councilmember Silverstein wanted to take as much staff time as he wanted on items not on the Work Plan.

Councilmember Silverstein said no.

Mayor Pierson stated that answer did correspond to what seemed to be happening. He stated it was hard to trust Councilmember Silverstein was being authentic when he was continually attacking the City Manager. He stated it was hard to trust Councilmember Silverstein's motives were pure when his actions and words did not seem to go together.

Councilmember Silverstein stated he believed the City Manager was duplicitous, deceitful, and unethical from his interactions with her over the past two months and because of things that happened with the Bell property. He stated he understood he did not have the votes for removing the City Manager. He stated he did not have a hidden agenda.

Mayor Pierson stated Councilmember Silverstein had continually attacked him on social media.

Councilmember Silverstein stated he was capable of making rational decisions as a Councilmember separate and apart from what he may think outside that realm.

In response to Mayor Pierson, Interim City Attorney Cotti stated the Council directed the use of staff resources and he did not see a problem with the motion. He stated the Council discussion was moving beyond the topic of the item.

In response to Councilmember Silverstein, Interim City Attorney Cotti stated the motion was not to adopt a policy but to direct the use of City resources.

The question was called, and the motion carried 3-2, Councilmember Silverstein and Uhring dissenting.

## **ITEM 7 COUNCIL ITEMS (continued)**

Mayor Pierson stated the Council would not get to some very important items and indicated support for maintaining the combination of items approved earlier in the meeting. He stated Item No. 7.E. needed to be broken down into priorities. He stated the investigation was a high priority to get going.

Councilmember Silverstein indicated support for considering Item No. 7.C. if it could be done quickly. He stated he could not speak with Mayor Pierson regarding Item No. 7.E. since it was cosponsored by Councilmember Uhring.

MOTION At 1:02 .a.m., on Tuesday, January 12, 2021, Councilmember Uhring moved, and Councilmember Farrer seconded a motion to adjourn the meeting.

In response to City Manager Feldman, Mayor Pierson stated the remainder of the items needed to be continued. He indicated support for considering Item No. 7.C. He stated Item No. 7.E. needed to be considered at the Special meeting.

Deputy City Clerk Pettijohn noted there were speakers signed up to speak on Item No. 7.C.

City Manager Feldman noted an Administration and Finance Subcommittee needed to be formed for the mid-year budget review that was scheduled to come back to the Council at its next meeting.

Mayor Pierson stated he was exhausted, and the rest of the agenda should be continued to a date uncertain.

Councilmember Silverstein questioned why the items would be continued to a date uncertain as opposed to the next Regular meeting.

In response to Mayor Pierson, City Manager Feldman stated the next Regular meeting was already a full agenda and had two appeals of Planning Commission decisions. She stated if a Special meeting was needed before the next Regular meeting she would reach out to the Council.

Mayor Pro Tem Grisanti suggested starting a Special meeting at 3:00 p.m.

Mayor Pierson stated the community complained when meetings were held earlier. He apologized to the members of the community that stayed to hear the items that were being continued.

In response to City Clerk Glaser, Mayor Pierson confirmed adjournment of the meeting was in memory of Bill Koeneker.

The question was called, and motion carried unanimously.

The following items were continued to a date uncertain:

B. City Council Subcommittees, Ad Hoc Committees and Outside Agency Appointments

Recommended Action: 1) Review current City Council Subcommittees, determine whether to retain each Subcommittee, and affirm, modify or make new appointments as necessary; 2) Confirm which City Council Ad Hoc Committees have completed assigned tasks and dissolve such Committees or determine to retain the Committee and affirm, modify or make new appointments as necessary; 3) Consider creation of new City Council Ad Hoc Committees and appoint members; and 4) Affirm Outside Agency appointments and make appointments as necessary.



- C. Special City Council Meeting Regarding Homelessness (Mayor Pierson)  
Recommended Action: At the request of Mayor Pierson, consider scheduling a Special City Council meeting to discuss homelessness issues and solutions.
- D. Council Policy Review and Amendments to City Council Policy #8 (Mayor Pro Tem Grisanti)  
Recommended Action: At the request of Mayor Pro Tem Grisanti, 1) Provide direction to the City Council Policy Review Ad Hoc Committee on a priority list for review of current Council Policies; and 2) Consider amendments to City Council Policy #8.
- E. Proposal to Amend the Malibu Municipal Code to Reduce Overnight Parking on PCH and Otherwise Regulate the Time and Location of Camping, Lodging or Sleeping in Public (Councilmembers Silverstein and Uhring)  
Recommended Action: At the request of Councilmember Silverstein, 1) After the City Attorney reads the title, introduce on first reading Ordinance No. \_\_\_\_ (Attachment 1) amending Section 9.08.090 of the Malibu Municipal Code to create a permit “exception” to the statute’s current “unconditional” prohibition against camping, lodging, or sleeping in public (including in a vehicle parked on a public street) within the City limit of Malibu in order to ensure that the statute will be enforceable in the face of arguments arising under *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019), and finding the action exempt from the California Environmental Quality Act; and 2) Direct staff to schedule second reading and adoption of Ordinance No. \_\_\_\_ for the January 25, 2021 Regular City Council meeting.
- F. Proposal to Instill Transparency, Accountability and Ethics in All Aspects of Malibu’s City Government (Councilmembers Silverstein and Uhring)  
Recommended Action: At the request of City Councilmembers Silverstein and Uhring, 1) Adopt Transparency, Accountability, and Ethics Policy; 2) Appoint City Councilmembers Uhring and Silverstein to City Council Policy Review Ad Hoc Committee; 3) Amend City Council Policy No. 8 to provide City Councilmembers unconstrained inspection and information rights; 4) Amend City Council Policy No. 28 to provide City Council control over the Agenda for meetings of City Council; 5) Schedule Semi-Annual Performance Evaluation of City Manager, and discuss and vote on whether the Performance Evaluation shall be conducted transparently in a Public Session or secretly in a Closed Session; 6) Establish a True Document “Retention” (as opposed to “Destruction”) Policy by amending City Council Policy No. 51 and Administrative Directive 5.1; 7) Create Special Independent Investigation Subcommittee to investigate the allegations set forth in the Affidavit of Jefferson Wagner and related matters; 8) Consider reforms to City Council Meeting process that are inviting to and respectful of the residents; and 9) Consider other possible initiatives for Government Reform.

**ADJOURNMENT**

At 1:05 a.m. on Tuesday, January 12, 2021, the Council adjourned the meeting in memory of Bill Koeneker.

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

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

ATTEST:

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

MINUTES  
MALIBU CITY COUNCIL  
SPECIAL MEETING  
JANUARY 22, 2021  
TELECONFERENCED - VARIOUS LOCATIONS  
12:30 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.**

**MEETING CALL TO ORDER**

Mayor Pierson called the meeting to order at 12:35 p.m.

**ROLL CALL**

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

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

ALSO PRESENT: John Cotti, Interim City Attorney; Reva Feldman, City Manager; and Kelsey Pettijohn, Deputy City Clerk

**PUBLIC COMMENT ON CLOSED SESSION**

Pamela Conley Ulich was not present at the time of the hearing.

**RECESS TO CLOSED SESSION**

At 12:36 p.m., on the advice of counsel and based on existing facts and circumstances, the Council recessed to Closed Session to discuss the following items listed on the Closed Session agenda:

**Conference with Legal Counsel – Anticipated litigation**

1. Significant exposure to litigation pursuant to Government Code Section 54956.9(d)(2)  
Number of Cases: 1

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

1. Public Employee Performance Evaluation  
Title: City Manager

## **CLOSED SESSION REPORT**

Interim City Attorney Cotti reported that the Special meeting convened at 12:30 p.m., after which time the City Council recessed to a Closed Session pursuant to Government Code Sections 54956.9(d)(2) and 54957, with all Councilmembers present. He stated the Council directed him to provide the letter sent by Therese Cannata on behalf of City Manager Feldman to the California Joint Powers Insurance Authority. He stated no other report able action was taken.

## **ADJOURNMENT**

**MOTION** At 2:33 p.m., Councilmember Uhring moved, and Mayor Pro Tem Grisanti 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 \_\_\_\_\_, 2021.

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MIKKE PIERSON, Mayor

**ATTEST:**

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HEATHER GLASER, City Clerk  
(seal)

MINUTES  
MALIBU CITY COUNCIL  
REGULAR MEETING  
JANUARY 25, 2021  
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 6:32 p.m.

**ROLL CALL**

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

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

ALSO PRESENT: John Cotti, Interim 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; Richard Mollica, Planning Director; Rob DuBoux, Public Works Director; Kelsey Pettijohn, Deputy City Clerk; Susan Dueñas, Public Safety Manager; Jerry Vandermuelen, Fire Safety Liaison; Raneika Brooks, Associate Planner; and Jessica Thompson, Associate Planner

**PLEDGE OF ALLEGIANCE**

Mayor Pierson led the pledge of allegiance.

**APPROVAL OF AGENDA**

MOTION Councilmember Farrer moved to approve the agenda.

The motion died due to lack of a second.

Councilmember Uhring suggested hearing Item Nos. 7.C. and 7.D. concurrently and Item Nos. 7.E. and 7.F. concurrently. He stated the Council had decided to hear these items concurrently at its January 11, 2021 Regular meeting.

Mayor Pro Tem Grisanti questioned if the minutes for the January 11, 2021 Regular meeting reflected that those items were to be heard concurrently.

Councilmember Uhring stated the motion on January 11, 2021 to hear the items concurrently was made by himself, seconded by Councilmember Farrer and carried unanimously.

In response to Councilmember Farrer, City Clerk Glaser stated as she recalled on January 11, 2021 the items agenzized tonight as Item Nos. 7.C. and 7.D. were to be heard concurrently and the items agenzized tonight as 7.E. and 7.F. were to be heard concurrently.

MOTION Councilmember Uhring moved to hear Item Nos. 7.E. and 7.F. concurrently.

In response to Councilmember Uhring, Councilmember Farrer suggested considering motions to hear items concurrently one at a time. She indicated opposition to hearing Item Nos. 7.E. and 7.F. concurrently.

Councilmember Silverstein seconded the motion.

The question was called, and the motion carried 3-2, Councilmember Farrer and Mayor Pro Tem Grisanti dissenting.

In response to Councilmember Silverstein, City Clerk Glaser stated seven speakers had signed up for Item No. 7.C. and 15 had signed up for Item No. 7.D.

MOTION Councilmember Silverstein moved, and Councilmember Uhring seconded a motion to hear Item Nos. 7.C. and 7.D. concurrently.

Councilmember Silverstein stated he was concerned that if the items were heard separately the Council would not have time to get to Item No. 7.D. and many people had signed up to speak on that item.

The question was called, and the motion carried unanimously.

MOTION Councilmember Uhring moved to approve the balance of the agenda.

The motion died due to lack of a second.

Councilmember Silverstein stated he believed Item No. 7.D. should have been placed under Section 4 - Ordinances and Public Hearings. He stated he had already spoken to Interim City Attorney Cotti regarding the placement of this item on the agenda. He stated Item No. 7.D. should be heard before the other items in Section 7 – Council Items since many people had signed up to speak on the item at the January 11, 2021 Regular meeting and again at this meeting. He stated it would be unfortunate if the meeting again ran too late to hear the item.

Mayor Pierson stated there were a lot of important issues including two appeals on the agenda.

Councilmember Silverstein stated Item No. 7.D. should be heard after the appeals. He stated the appeals were important to the residents.

In response to Mayor Pierson, Interim City Attorney Cotti stated Councilmember Silverstein made his request based on Resolution No. 98-083, which set forth the ordering of the agenda. He stated he had a discussion with Councilmember Silverstein that highlighted some ambiguity in Section A of Resolution No. 98-083. He stated Councilmember Silverstein believed his item should have been placed on the agenda under Section 4 - Ordinances and Public Hearings. He stated it was within the Council's discretion to move the item up.

Mayor Pierson stated Item Nos. 7.A. and 7.B. should be pretty quick.

Councilmember Silverstein stated he believed Council appointments would take longer than they usually did. He stated he had received over 100 written comments in support of Item No. 7.D. and it was important to get to that item tonight.

MOTION Councilmember Silverstein moved to hear Item No. 7.D. after 4.B.

The motion died due to lack of a second.

Mayor Pierson stated he believed Item No. 7.D. should be considered at a Special meeting regarding homelessness.

Councilmember Silverstein stated the Council's action on the item would be determined after it was presented.

Councilmember Uhring stated homelessness was the biggest issue for the Council this year. He stated if the Council did not get to the item tonight he would recommend adjourning the meeting to a date later in the week.

In response to Mayor Pro Tem Grisanti, Mayor Pierson stated the motion to hear Item No. 7.C. and 7.D. concurrently had carried unanimously.

MOTION Councilmember Farrer moved, and Councilmember Uhring seconded a motion to approve the balance of the agenda. The question was called, and the motion carried 4-1, Councilmember Silverstein dissenting.

MOTION Mayor Pierson moved, and Mayor Pro Tem Grisanti seconded a motion to adjourn in memory of Kathy Sullivan. 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 January 14, 2021.

**ITEM 1 CEREMONIAL/PRESENTATIONS**

None.

**ITEM 2.A. PUBLIC COMMENTS**

Councilmember Silverstein requested the City Manager keep her camera on during public comment.

In response to Councilmember Farrer, Interim City Attorney Cotti stated he was not aware of a requirement for the City Manager to be on screen. He stated the Brown Act required the Councilmembers to be on screen to determine a quorum. He stated the Council could direct the City Manager to stay on screen.

**MOTION** Councilmember Farrer moved and Mayor Pro Tem Grisanti seconded a motion to direct the City Manager to turn her camera on and off at her discretion.

Councilmember Silverstein stated when Council meetings were held in chambers it was not up to anyone's discretion if they sat on the dais.

The question was called, and the motion carried 3-2, Councilmember Silverstein and Councilmember Uhring dissenting.

Bill Sampson expressed concern he had heard Mayor Pierson may be working behind closed doors with a federal judge on camping and homelessness issues. He indicated opposition to buying City Manager Feldman out of her contract.

Pamela Conley Ulich thanked the Council for adjourning in memory of Kathy Sullivan. She expressed hope Malibu could be an example of how to disagree civilly. She stated everyone in the meeting loved Malibu and wanted to make it better. She stated the City would celebrate its 30<sup>th</sup> anniversary in 2021. She stated when she was on Council for the 16<sup>th</sup> anniversary a mural was created at Bluffs Park.

Robert Brinkman stated he was a resident in Malibu Park. He stated his house burned down in the Woolsey Fire and he was in the process of rebuilding. He stated his neighbor sold his property and the new owner was trying to rebuild a much larger house. He stated the neighbor's project had been reduced but it included a concrete wall placed to detract from Mr. Brinkman's view. He stated spite walls were being permitted because they were attached to the house.

Dermot Stoker thanked City staff for its work permitting his home improvement project. He thanked City Manager Feldman for her work and commended her professionalism. He stated City Manager Feldman was dedicated to the City and had strong relationships with other agencies. He stated the majority of residents who voted for Councilmember Silverstein must be appalled by his behavior. He indicated support for recalling Councilmember Silverstein.



Josh Spiegel stated City Manager Feldman had been treated poorly by many people in the City. He stated it was inappropriate to harass, threaten and insult someone when you were unhappy with their job performance.

Daphne Anneet stated she was recently appointed to the Public Safety Commission by Councilmember Silverstein. She stated Councilmember Silverstein and she had more differences of opinion than she expected. She stated people went into public service with a good heart, hard work ethic, and a desire to bring benefits to the communities they served. She stated if there was an issue with how the City was run people needed to look to their elected officials and the direction they were giving to the City Manager. She stated it was inappropriate to make City Manager Feldman a target for name calling and insults. She stated City Manager Feldman's offer to let the City buy her out of her contract was reasonable.

Tracy Stoker was not present at the time of the hearing.

Dana Graulich stated the community clearly expected more civil interactions from their representatives. She questioned what the City was doing to investigate the hostile work environment claims from City Manager Feldman. She stated it would be difficult to attract a qualified City Manager in a culture of bullying and harassment with challenges including the COVID-19 pandemic, rebuilding from the Woolsey Fire, wildfire threats and homelessness. She discussed the importance of efficiently working through agenda items. She stated the residents needed City services to function.

Drew Leonard indicated support for Ms. Anneet's comments. He expressed disappointment that a small group of political activists otherwise uninvolved in City government had been able to impact City Manager Feldman's job performance.

Lloyd Ahern discussed the January 11, 2021 Regular meeting. He stated Councilmember Silverstein took over 20 minutes to discuss the approval of the agenda and took up significant amounts of time on other small items. He stated the Council was unable to get to Councilmember Silverstein's items because of time spent on other items.

Mark Baute stated the January 11, 2021 Regular meeting was an embarrassment. He stated Councilmember Silverstein and Councilmember Uhring did not know how to work as a team. He stated shouting on social media did not work. He stated the No Camping Ordinance was poorly conceived and drafted. He stated the City needed outside investigations into City Manager Feldman's and Councilmember Silverstein's Human Resources complaints. He stated Councilmember Silverstein had promised to get rid of City Manager Feldman during his campaign but he did not have the votes to terminate her contract. He indicated support for the two female leaders in the City, Councilmember Farrer and City Manager Feldman.

Doug Stewart stated the claims in the letter from City Manager Feldman's attorney had been well-documented on video and social media. He stated Councilmember

Silverstein was using his position to stop the operation of the City government. He stated it was important to work with the rest of the Council. He stated the City had a duty to investigate work place harassment claims to create a safe work environment for other employees. He discussed how a corporate board would respond to a workplace harassment claims like this. He stated the City may have a sitting Councilmember who violated state and federal laws.

Barb Dijker was not present at the time of the hearing.

Jo Drummond encouraged the Council to think of the greater good and work together. She expressed disappointment some of the speakers demonized an elected official. She stated the tension may have begun when Councilmember Silverstein was not elected Mayor Pro Tem. She stated City Manager Feldman had a right to resign.

Chris Frost stated the Councilmembers he had worked with were congenial, receptive and willing to do the work to get things done. He stated he had always found staff helpful. He stated he had always been able to find common ground with Councilmember Uhring on public safety issues. He stated unheard items from the January 11, 2021 Regular meeting had delayed the hearing of the mid-year budget. He stated public safety items were included in the mid-year budget report. He stated proposals related to public safety needed to go through the Public Safety Commission. He stated the City was operating at half its capability due to recent divisiveness and hostility. He stated the staff's work was what kept the City moving. He stated the City had many important safety issues to address through collaboration between the Council, staff, and Commissions.

Terry Davis stated she was dismayed by the announcement that City Manager Feldman had offered to leave the City. She stated political tactics including bullying, slander, lies, and violence were destructive. She stated the City Manager had been pushed into a corner and forced to either spend City time defending herself or leave. She stated challenge was healthy. She stated if there was wrongdoing in the City it had to be found and addressed civilly and respectfully.

Julie Hoffman was not present at the time of the hearing.

Jeff Harris stated he had lived in the City since 1976. He stated the City was formed to protect the citizens and environment and allow people to have cordial interactions with their local government. He stated he was disappointed one Councilmember had paralyzed the inner workings of the City. He stated the City was coping with the COVID-19 pandemic and rebuilding from the Woolsey Fire. He stated Councilmember Silverstein needed to be more cordial, responsible, and reasonable. He stated Councilmember Silverstein's treatment of City Manager Feldman was disheartening and there should be independent investigations.

Alexis Aria was not present at the time of the hearing.

E. Barry Haldeman stated he had never seen the City in such disarray as since the November 2020 General Municipal Election. He stated there had been accusations of fraud, bribery, and dishonesty with very little hard evidence. He stated Councilmember Silverstein had filed two complaints to the State Bar of California regarding Interim City Attorney Cotti and Best & Krieger LLP. He stated the potential litigation from City Manager Feldman may lead to increased attorney costs, insurance premiums, and additional turnover. He stated the cost of buying out the City Manager's contract was the equivalent of one and a half additional Sheriff's Department vehicles. He recommended an outside labor firm investigate the practices of the City.

Joe Patterson questioned if City Manager Feldman would be put on administrative leave after threatening litigation due to a hostile workplace. He discussed recent small fires in the City and questioned if the cause of the fires was being investigated. He questioned what the City was doing to prevent future fires. He questioned what information from the Los Angeles County Fire Department and Los Angeles County Sheriff's Department could be provided. He stated people wanted transparency and indicated support for Item No. 7.F. He stated overnight parking restrictions along Pacific Coast Highway (PCH) had a big impact. He indicated support for Item No. 7.D.

Hamish Patterson stated the Council was a nonpartisan body. He stated the Council represented the residents and reflected the community as a whole. He stated everyone needed to take responsibility for themselves. He stated very few people participated in the public process. He stated he was involved to help build things. He encouraged the Council to have an in-person public forum.

Norman Haynie discussed the sacrifices Councilmembers made in their service to the community. He commended Planning Director Mollica for his work and congratulated him on his appointment as Planning Director. He expressed concern his hotel project was facing delays during the initial study process. He discussed the environmental impacts of the current uses of the property.

Lynn Norton stated she never said City Manager Feldman should be fired. She stated she was shocked by some claims in the letter from City Manager Feldman's attorney. She stated the letter implied former Councilmember Jefferson Wagner may present a physical threat to City Manager Feldman. She stated the Public Records Act provided an opportunity for the public to investigate government. She stated some records were only available to the Council and the City's phone records should be provided to Councilmembers. She indicated support for Mr. Haynie's project.

Hak Wong stated he had lived in the City for 25 years. He indicated support for more transparency in the City and holding public servants responsible. He discussed distribution of COVID-19 vaccines through the counties. He stated there was no accountability in the City. He stated it was good the Councilmembers had different perspectives.

Scott Dittrich discussed the recent fire up Rambla Pacifico Street outside the City. He stated Councilmember Silverstein ran on a platform to replace City Manager Feldman. He stated it was wrong that City Manager Feldman was not providing Councilmember Silverstein with the information he requested. He stated City Manager Feldman was a control freak and did not always release information at the appropriate time. He stated Councilmembers Silverstein and Uhring got the most votes based on their platform to replace the City Manager. He stated he wished the conversation would focus on the pros and cons of the City Manager instead of Councilmember Silverstein's tone. He stated former Councilmember Rick Mullen got the most votes in the November 2016 General Municipal Election and got the fewest in the November 2020 General Municipal Election. He stated everyone supported Mr. Haynie's project, but it had dragged on through the City's processes. He stated projects people wanted got buried.

Georgia Goldfarb encouraged the Council to focus on critical issues in the City. She recommended the public speakers hold themselves to the same standards as the Councilmembers. She indicated support for City Manager Feldman's resignation.

Kraig Hill recommended placing an item on an upcoming agenda to address onsite wastewater treatment system (OWTS) requirements for inter-family property transfers in response to Proposition 19. He stated there had been sniping on all sides. He stated the City Manager should prioritize the Vision and Mission statements. He stated if the City Manager understood the rural values of the City she would not allow paving the Civic Center with sidewalks, paving the Bell lot, turning the Island parcel into a parking lot, slowing down the pesticide ban, and implicitly permitting short-term rentals (STR) by charging transient occupancy tax. He stated the City Manager should choose to cut staff positions or delay paving projects instead of cutting an Environmental Commission, Dark Sky Ordinance enforcement, and the solar panel projects. He stated City Manager Feldman was not solely to blame but the City was off-track.

Melanie Goudzwaard congratulated Councilmember Silverstein for following through on his campaign promise. She congratulated Councilmember Uhring on supporting Councilmember Silverstein. She stated after the Council's January 11, 2021, she believed it was only a matter of time before City Manager Feldman separated from the City. She stated City Manager Feldman responded respectfully to the vitriol she faced. She questioned if a man would be treated the same way. She stated she did not know City Manager Feldman well but she had always been helpful and responsive. She stated she hoped the Woolsey Fire rebuild appeal would be heard tonight.

John Mazza stated many of the people speaking against Councilmember Silverstein did not vote for him. He stated there was a group in the City that tried to get things done but many items were delayed including rodenticide ban and STR regulations. He stated that group was active in the most recent election to create change. He stated Councilmembers Silverstein and Uhring were elected to create change and they had been. He stated a lawyer would be able to determine if there had been

harassment. He indicated opposition to the implication that former Councilmember Jefferson Wagner was a threat to City Manager Feldman and that he lived outside the City when he was in office.

Howard Rudzki stated the way to get things done was to get to know someone as a person. He recommended Councilmember Silverstein get to know City Manager Feldman through unrecorded meetings. He stated placing items on the agenda that may not be enforceable or legal could lead to expensive litigation. He recommended getting items reviewed by the City Attorney. He stated \$375,000 would pay for one motorcycle officer for a year or 15 Woolsey Fire rebuild permits.

Ryan Embree stated the City would need to have cutbacks to balance the budget. He stated infighting was a distraction. He stated being a City Manager was a difficult job and part of the job was providing information. He stated it was inappropriate for staff to respond negatively to transparency and accountability measures that were common in other cities. He stated the City Manager needed to interface with other agencies and may find job opportunities there. He stated minority opinions should not be squashed. He stated the Council had never adopted a policy to suspend time deferrals for public speakers. He stated the Commissions may make recommendations on assigned items but many items had and could go straight to Council.

Rosemarie Ihde indicated support for transparency.

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

City Manager Feldman stated there were 8,243 new cases of COVID-19 in the County of Los Angeles and over one million cases total. She stated the testing positivity rate was 14% and two weeks ago it was over 20%. She stated there had been 295 COVID-19 cases in Malibu and six deaths. She stated Governor Newsom had announced revised orders and staff had pushed out that information. She stated the County of Los Angeles would have a revised order on January 29, 2021, and remained in the purple tier. She stated there was a link on the City's website for vaccination information. She announced there would be drive-through testing at City Hall on January 28, 2021. She stated 286 Woolsey Fire rebuilds were permitted through Planning, 166 had been issued building permits, and 20 rebuilds had been completed. She stated two inches of rain were predicted in Malibu over the next seven days and there would be crews available in the City to make sure roads stayed open. She stated the STR permit program deadline was January 15, 2021, and the City had received 192 permit applications. She stated 148 STF permits had been approved and 313 listings were still being advertised. She stated staff was finding duplicate listings on different platforms and was working with many platforms to get unpermitted listings taken down. She discussed recent Public Safety Power Shut-off (PSPS) events. She stated she was working with Caltrans and Southern California Edison (SCE) to develop plans to minimize impacts on PCH. She stated Caltrans had agreed to replace back up batteries at signals so they would last longer and was looking into solar backup. She stated Caltrans was

working with SCE to try to avoid turning off traffic signals. She stated some people had reported problems emailing the City due to its very robust spam filter. She recommended people call City Hall if their email did not go through. She announced a Civic Center Water Treatment Facility (CCWTF) Phase 2 meeting on January 26, 2021. She stated City staff had productive conversations with the State Water Resources Control Board about getting some low interest loans from the State Revolving Fund to help fund CCWTF Phase 2. She stated she would request a representative from the Los Angeles County Fire Department to attend the February 8, 2021 Council meeting to discuss recent fires. She extended condolences to Kathy Sullivan's family.

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

Councilmember Farrer stated she had attended two California Contract Cities Association virtual legislative tours, a seminar on eviction crisis, and a Zoom meeting with Congressman Ted Lieu regarding his rehousing plan for homeless veterans at the West Los Angeles Veterans Affairs building. She stated she attended a Los Angeles County Board of Supervisors City Selection Committee meeting as the Las Virgenes-Malibu Council of Governments representative. She requested consensus to investigate the Wagner Affidavit.

Mayor Pro Tem Grisanti indicated support for investigating the Wagner Affidavit.

In response to Mayor Pierson, Interim City Attorney Cotti stated the matter was not placed on the agenda and the Council could not take action.

Councilmember Farrer stated the Wagner Affidavit could be discussed with Item No. 7.F. She stated she was dismayed by uncivilized comments on social media, in correspondence, and during Council meetings. She thanked Ms. Anneet for her perspective. She stated it was counterproductive to insult City staff, Commissioners or elected officials.

Councilmember Uhring stated he had received requests to put STR permit information in an online database. He stated an online database could save City staff time and make it easier to identify houses with visitors in an emergency. He stated Poison Free Malibu reported poisons were being used at Zuma Beach. He requested an update on Mr. Haynie's hotel project.

Councilmember Silverstein stated he worked hard at being a spiritual human being and that was what drove him to be an advocate for victims of the Woolsey Fire. He apologized for his behavior at the January 11, 2021 Council meeting. He expressed hope everyone would be in a better place this week. He encouraged everyone to stay safe even though the State stay at home order had been lifted. He thanked Ms. Ulich and Mr. Patterson for their comments. He stated there were serious issues with City Manager Feldman that were being discussed in Closed Session.

Mayor Pro Tem Grisanti stated the Councilmembers were not supposed to discuss

Closed Session.

Councilmember Silverstein thanked Assistant City Manager Soghor for helping him review the Warrant Register. He stated he believed the City Manager's certification of the Warrant Register was improper. He stated the Council received written comments recommending putting City Manager Feldman on administrative leave. He encouraged people to look for copies of the written public comments distributed submitted to the Council. He stated he was working towards his campaign promises and he was not going to back down because some members of the public complained. He stated most of the people complaining had not voted for him and were dissatisfied with the election results. He stated he would continue to do what he campaigned to do. He questioned if Mr. Baute represented a party in the Huizar litigation as it might be related to allegations in the Wagner Affidavit. He stated many of the people speaking against him were beholden to City Manager Feldman. He stated he welcomed an outside investigation. He stated he was happy he appointed Ms. Anneet and commended her for being an independent thinker. He stated he hoped Ms. Anneet would run for Malibu City Council in 2022. He stated he received many written comments encouraging him. He stated he was berated by another Councilmember at the January 11, 2021 Council meeting. He stated he spent over six hours preparing for Item No. 4.A.

Mayor Pro Tem Grisanti thanked everyone watching the meeting, the speakers and those who submitted written comments. He thanked the fire fighters who put out the Rambla Pacifico fire so quickly. He stated arson watch had been putting people out to watch during recent hot nights with high winds.

Mayor Pierson thanked the speakers for being involved. He congratulated Martin Copenhafer on his 100<sup>th</sup> birthday and being the oldest member of the Malibu Navy League. He stated it was important to be civil. He stated he was committed to moving items forward. He indicated support for Mr. Patterson's comments.

### **ITEM 3      CONSENT CALENDAR**

Item No. 3.A.1. was pulled by the public. Item No. 3.B.4 was pulled by the Council.

**MOTION**      Councilmember Farrer moved, and Mayor Pro Tem Grisanti seconded a motion to approve the Consent Calendar, pulling Item Nos. 3.A.1. and 3.B.4. The question was called, and the motion carried unanimously.

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

62176-62287 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. 674 in the amount of the warrant appearing opposite their names, for the purposes stated on the respective demands in a total amount of \$1,463,971.74. City of Malibu payroll check number 5147 and ACH deposits were issued in the amount of \$203,573.01.

3. Malibu Park Drainage Improvements Project – Reject Bids  
Recommended Action: 1) Reject all bids received for the Malibu Park Drainage Improvements Project, Specification No. 2086; and 2) Direct staff to return all bid bonds to the bidders.

The following items were pulled from the consent calendar for individual consideration:

A. Previously Discussed Items

1. Second Reading and Adoption of Ordinance No. 479

Recommended Action: Conduct second reading, unless waived, and adopt Ordinance No. 479 adding Chapter 2.68 (Electronic Filing) to Title 2 (Administration and Personnel) of the Malibu Municipal Code to require electronic filing of campaign statements and statements of economic interests and finding the same exempt from the California Environmental Quality Act.

E. Barry Haldeman stated he would comment at a future meeting and he was not opposed to the ordinance.

MOTION

Councilmember Uhring moved, and Mayor Pro Tem Grisanti seconded a motion to adopt Ordinance No. 479 adding Chapter 2.68 (Electronic Filing) to Title 2 (Administration and Personnel) of the Malibu Municipal Code to require electronic filing of campaign statements and statements of economic interests and finding the same exempt from the California Environmental Quality Act.

In response to Councilmember Silverstein, Interim City Attorney Cotti stated the ordinance was introduced at the last Council meeting and was on the agenda tonight for adoption. He stated the recommended action was to adopt the ordinance.

The question was called, and the motion carried unanimously.

B. New Items

4. Amendment to Professional Services Agreement with Kimley Horn and Associates, Inc.

Recommended Action: Authorize the Mayor to execute Amendment No. 3 to the Professional Services Agreement with Kimley-Horn and Associates, Inc. in the amount of \$25,000 for a total not to exceed \$586,840 for additional engineering design services during construction for the Civic Center Way Improvements Project.



In response to Councilmember Uhring, Public Works Director DuBoux stated the amendment was related to a number of unforeseen conditions in the Civic Center Way Improvement Project and improvements for intersection signals to better comply with the Dark Sky Ordinance.

**MOTION**

Councilmember Uhring moved, and Mayor Pro Tem Grisanti seconded a motion to authorize the Mayor to execute Amendment No. 3 to the Professional Services Agreement with Kimley-Horn and Associates, Inc. in the amount of \$25,000 for a total not to exceed \$586,840 for additional engineering design services during construction for the Civic Center Way Improvements Project. The question was called, and the motion carried unanimously.

**ITEM 4      ORDINANCES AND PUBLIC HEARINGS**

- A. Appeal No. 19-002 and Coastal Development Permit No. 17-043 and Associated Entitlements (29043 Grayfox Street; Owners/Appellants, John and Tatiana Atwill)  
Recommended Action: Adopt Resolution No. 21-02 determining the project is categorically exempt from the California Environmental Quality Act (CEQA), granting Appeal No. 19-002, and approving Coastal Development Permit (CDP) No. 17-043 for demolition of an existing single-family residence and associated development and the construction of a new 5,085 square foot, two-story single-family residence plus a 966 square foot attached garage, a 345 square foot covered loggia on the first floor, a 312 square foot trellised loggia on the second floor, swimming pool, perimeter walls, landscaping, hardscaping and grading, and the installation of a new onsite wastewater treatment system (OWTS), including Demolition Permit (DP) No. 17-013 for the demolition of an existing single-family residence and associated development and Site Plan Review (SPR) No. 17-014 for construction in excess of 18 feet in height up to 28 feet for a pitched roof located in the Rural Residential-One Acre (RR-1) zoning district at 29043 Grayfox Street (Atwill).

Councilmember Uhring stated this item came before him at the Planning Commission.

In response to Councilmember Silverstein, Assistant City Attorney Rusin stated disclosures should be heard before the public hearing.

In response to Councilmember Silverstein, Interim City Attorney Cotti stated due process would require a Councilmember to be disinterested and, while there was no Fair Political Practices Commission conflict in this case, since Councilmember Uhring already expressed his views on the project while considering the matter at the Planning Commission due process would require Councilmember Uhring to recuse himself. He stated if considered by a court Councilmember Uhring would likely not be considered disinterested. He stated there was decisional law about the concept of disinterested decision makers but he did not know if there was a case

specific to a Planning Commissioner that had been elected to the City Council. He stated the due process provisions were still applicable.

At 8:48 p.m., Councilmember Uhring recused himself and left the meeting.

Planning Director Mollica presented the staff report. He stated staff recommended revising paragraph 2 of Resolution No. 21-02 to add the word “changes” to read “make additional changes to better reflect the character of the neighborhood.”

Councilmember Farrer stated she had nothing to disclose.

Councilmember Silverstein stated he had multiple communications with Don Schmitz. He stated he declined an invitation from Mr. Schmitz for a site visit. He stated he also responded to Mr. Schmitz’s email requesting the item not be delayed and agreed that it should be heard on January 25, 2021. He stated he sent multiple emails with questions regarding the appeal to Interim City Attorney Cotti and copied Mr. Schmitz. He stated he thanked John Stockwell for providing his written objection and letting him know he may have questions during the hearing. He stated he had privileged communications Assistant City Attorney Rusin regarding the appeal. He stated all of his communications were in writing and he only discussed the merits of the appeal with Assistant City Attorney Rusin. He stated he did not learn anything outside the staff report. He discussed the California Supreme Court’s determination that considering permit appeals, issuing building permits, granting variances and making property specific zoning decisions were quasi-judicial actions in which the Council acted in a quasi-adjudicatory capacity similar to judges. He stated when acting in a quasi-adjudicatory capacity Councilmembers must be neutral and unbiased, free of conflict of interest, not pre-judge the specific facts and free of prejudice against or in favor of any party impacted by the decision. He discussed the importance of having a reliable and trustworthy record equally available to all decision makers and the public on which decisions could be made. He stated in this appeal and others some but not all Councilmembers may have conducted site visits and engaged in unrecorded ex-parte conversations with one of the parties or City staff. He stated City staff presumably participated in ex-parte communications when forming its own recommendation. He stated based on the reasons described above he declined to participate in a site visit and conversation with the applicant’s representative. He stated disclosures made at the hearing could not include a full exposition of unrecorded activities and communications. He stated he did not believe a quasi-adjudicatory decision could be made when Councilmembers had participated in ex-parte communications that could not be fully recounted for the record. He discussed the City of Belmont’s ethics code regarding communications for quasi-adjudicatory decisions and stated the City of Los Angeles prohibited ex-parte communications. He stated he was ready and able to consider this appeal to the best of his abilities and knowledge. He stated whichever party was unhappy with the Council’s decision may have a basis for a legal challenge if one or more of the Councilmembers had information not available to the other Councilmembers.

Mayor Pro Tem Grisanti stated he visited the property with Mr. Schmitz to see how the neighboring properties were situated. He stated he did not learn anything outside the staff report. He stated he received correspondence included in the public record. He stated visiting the property was helpful to understand the topographical information provided in the staff report.

Assistant City Attorney Rusin stated the purpose of disclosures was to include any information not in the staff report or elsewhere in the public record.

In response to Assistant City Attorney Rusin, Mayor Pro Tem Grisanti stated he did not find any inaccuracies in the staff report. He stated he saw how the property was situated in relation to the properties around it and walked up the sidewalk.

Mayor Pierson stated he visited the property as a Planning Commissioner but the project was not heard while he was on the Planning Commission. He stated he visited the property and met with a neighboring tenant. He stated he did not learn anything new outside the staff report. He stated he viewed the story poles on the property. He stated seeing the property helped him visualize the project. He stated he offered to visit the project site with Mr. Stockwell but they did not end up visiting together. He stated the plans and staff report were accurate but it was helpful to visit the property.

Don Schmitz, appellant, stated Fred Gaines was available to answer questions. He stated John Stockwell had opposed the project since 2019. He stated the portion of the house closest to Mr. Stockwell's property was 17 feet and 6 inches high and the side yard setback was being increased from the existing setback. He stated the tower was 28 feet high and the bedrooms were on the second floor. He stated the project was designed to have the second story on the far side from Mr. Stockwell's property. He discussed other houses in the neighborhood with second stories. He stated the large front yard setback minimized visual impacts. He stated the project would have a larger setback compared to neighboring properties. He discussed Council direction for the project on October 14, 2019. He stated the project was well below the maximum total development square footage (TDSF). He discussed the size of other second stories in the neighborhood. He stated the average second story was 1,842 square feet. He stated the size and visibility of the second story had been greatly reduced from previous designs. He discussed Mr. Stockwell's August 11, 2020 request for a redesign of the second story. He stated Mr. Stockwell's requests were not feasible for the design of the project.

John Stockwell stated the project had four public hearings and the property owner had received recommendations to work with the neighbors. He stated he had provided recommendations to redesign the second story to minimize impacts to the neighbors. He stated projects with construction over 18 feet in height were subject to a site plan review. He stated his architect had recommended he build a second story the same size or smaller than his neighbors to avoid complaints from the neighbors. He stated he understood the applicant had a single story design ready if this project was rejected. He stated neighborhood character could not be

determined by a formula. He stated the Council had appropriately corrected Planning Commission overreach in neighborhood character findings before. He stated the neighborhood character finding existed for exactly this type of project. He stated the majority of homes in the neighborhood with large second stories were approved before Malibu incorporated.

Don Schmitz stated Mr. Stockwell's TDSF was larger than the proposed project's TDSF. He stated neighborhood character was defined by what existed in the neighborhood. He stated the square footages in his presentation were accurate. He stated 57% of the homes in the area had second stories. He stated the property owner had shifted the second story away from Mr. Stockwell's property. He stated pursuant to direction from the Council the second story was reduced by 40% to be more consistent with the size of second stories in the area. He stated Mr. Stockwell's house had a second story and a reduced front yard setback. He stated the proposed project was consistent with Local Coastal Program (LCP) requirements. He stated the project had been redesigned several times to try to work with the neighbors.

Councilmember Silverstein stated he was shocked it had taken so long for the project to get to this point. He stated permitting delays also plagued people rebuilding from the Woolsey Fire. He stated the staff report was very helpful but it was an advocacy piece that focused only on facts supporting the recommended action. He stated he would appreciate it if the staff report was more objectively balanced.

In response to Councilmember Silverstein, Mr. Schmitz stated the comments made by the Planning Commissioners made it clear they were applying a neighborhood standards analysis to the project.

Councilmember Silverstein stated he did not see a neighborhood standards analysis in the documents provided to him.

In response to Councilmember Silverstein, Mr. Stockwell stated many homes on Point Dume had studios over the garage but they did not have a big impact on the neighborhood. He stated a bulky second story impacted the whole neighborhood and looked more like homes approved before Malibu incorporated. He stated Mr. Schmitz's calculations did not account for the many homes that did not have second stories. He stated the Council had directed the applicant to work with the neighbors.

Councilmember Silverstein stated he had difficulties seeing a clear argument that the project did not fit into the neighborhood character.

In response to Councilmember Silverstein, Mr. Schmitz discussed the two-thirds rule as it applied to the original design. He stated if the loggia and garage on the first floor were excluded from the calculation the two-thirds rule would still allow a 2,174-square-foot second floor. He stated the section of the upstairs referred to

as a loggia in the staff report was not a loggia as it had a trellised roof. He stated he did not have the exact dimensions of the trellised patio on the second floor.

Planning Director Mollica stated he was looking up the dimensions of the trellised patio on the second floor.

Councilmember Silverstein stated he wanted to know if the project complied with the two-thirds rule if the garage was excluded and the trellised patio on the second floor was included.

In response to Councilmember Silverstein, Assistant City Attorney Rusin stated staff was not a decision maker and any communications with the applicant would not be required to be disclosed as a part of due process.

In response to Councilmember Silverstein, Planning Director Mollica stated he had communications with Mr. Schmitz and the property owner as the original planner on the project. He stated he did not recall if he spoke with Mr. Stockwell. He stated he believed Associate Planner Brooks spoke with both sides. He stated he was at the Planning Commission hearing and the last City Council hearing where Mr. Schmitz and Mr. Stockwell both spoke.

In response to Councilmember Silverstein, Mayor Pierson stated the Council had a duty to disclose any personal or professional relationships at the beginning of the public hearing.

Mayor Pro Tem Grisanti stated he did not have a personal or professional relationship with any of the parties. He stated he had known Mr. Schmitz for 20 years but he had never received any money from Mr. Schmitz. He stated Mr. Schmitz had presented to real estate groups and at many City Council meetings.

Councilmember Silverstein stated his only remaining question was related to the two-thirds rule calculation from Planning Director Mollica.

Mayor Pierson stated in a small town many people would know each other. He stated he knew Mr. Schmitz and Mr. Stockwell but they did not have a close relationship.

Assistant City Attorney Rusin asked the Councilmembers to confirm no one had received any compensation or had a relationship that would preclude them from being fair and impartial in this hearing.

In response to Assistant City Attorney Rusin, Councilmember Farrer stated if that was the case she would have already said so. She stated she had lived in the City for a long time and it was hard to hear an issue where she did not know any of the parties.

Councilmember Silverstein stated he was only asking if there were any existing relationships with any of the parties.

Mayor Pierson stated it was important to include that type of information in disclosures at the beginning of the hearing.

Councilmember Farrer stated she would have recused herself if she had a close relationship with any of the parties.

Mayor Pro Tem Grisanti stated the two-thirds rule was intended to prevent boxy houses. He stated it did not affect the visual massing of the structure if part of the first story was a garage or another room. He stated he understood the project easily met the two-thirds rule and he did not have further questions.

Councilmember Farrer stated Point Dume was an eclectic neighborhood with houses approved over time by different agencies. She stated the staff report and presentations were very thorough.

In response to Mayor Pierson, Mr. Stockwell stated he wished some of the second story mass would run east to west. He stated the applicant redesigned the second story without consulting the neighbors and decided to remove most of the street-facing bulk. He stated the biggest impact was on the property owner's sister-in-law's neighboring property.

In response to Mayor Pierson, Mr. Schmitz stated the comments he heard at the Planning Commission and City Council hearings centered on the impact of the second story on neighborhood character. He stated minimizing the street facing bulk minimized the neighborhood character impact. He stated Mr. Stockwell initially objected to the placement of second story windows near his house and it seemed counter intuitive to move more of the bulk towards Mr. Stockwell's house and increase the visibility from the public viewing area.

In response to Mayor Pierson, Mr. Stockwell stated the central issues were light and privacy in his yard and he was not concerned with the street facing side. He stated neighbors were part of the neighborhood. He stated all of this could have been resolved if the applicant had worked with the neighbors.

Councilmember Silverstein stated it would be better if Mr. Stockwell and Mr. Schmitz could be on camera during virtual meetings.

In response to Councilmember Silverstein, Mr. Stockwell stated it was wise to work with neighbors. He stated when multiple neighbors objected to a project it was likely to conflict with neighborhood character. He stated it was hard to make an adverse neighborhood character finding when all the neighbors supported a project.

In response to Councilmember Silverstein, Mr. Schmitz stated indemnification was a sensitive issue. He stated indemnification was typically required by many

agencies. He stated he advised his clients on what indemnification meant and they typically agreed to that term.

In response to Councilmember Silverstein, Assistant City Attorney Rusin stated the Council had the statutory authority to grant the permit without remanding it back to the Planning Commission.

Planning Director Mollica discussed the two-thirds rule calculation including the trellised patio on the second story and including or excluding the ground floor loggia and garage. He stated if the trellised patio on the second story was included in the calculation the square footage upstairs would be 2,152-square feet, which was about 900-square feet under the allowable based on the existing first floor. He stated removing the garage from the first-floor calculation created a first floor that was 3,590-square feet and allowed a second story up to 2,369-square feet.

MOTION Mayor Pro Tem Grisanti moved, and Councilmember Farrer seconded a motion to adopt Resolution No. 21-02, as amended, as amended, determining the project is categorically exempt from the California Environmental Quality Act (CEQA), granting Appeal No. 19-002, and approving Coastal Development Permit (CDP) No. 17-043 for demolition of an existing single-family residence and associated development and the construction of a new 5,085 square foot, two-story single-family residence plus a 966 square foot attached garage, a 345 square foot covered loggia on the first floor, a 312 square foot trellised loggia on the second floor, swimming pool, perimeter walls, landscaping, hardscaping and grading, and the installation of a new onsite wastewater treatment system (OWTS), including Demolition Permit (DP) No. 17-013 for the demolition of an existing single-family residence and associated development and Site Plan Review (SPR) No. 17-014 for construction in excess of 18 feet in height up to 28 feet for a pitched roof located in the Rural Residential-One Acre (RR-1) zoning district at 29043 Grayfox Street (Atwill).

Councilmember Silverstein stated he did not like the project but based on the evidence the project did not negatively impact neighborhood character and met the other legal requirements and therefore should be approved. He stated the draft resolution included many statements he disagreed with. He stated the draft resolution identified the substantial evidence standard, which was an inappropriate legal standard. He stated based on his discussions with Interim City Attorney Cotti he believed the Council's task was to make findings based on the evidence. He stated a substantial evidence standard was applied by a Court if the Council's decision was challenged. He stated the term neighborhood character was undefined and juris prudence dictated substantial deference be granted to the applicant when the standard was applied. He stated there could be obvious cases where a project adversely impacted neighborhood character but a code amendment was needed to clarify the neighborhood character definition and requirements. He stated he did not see sufficient evidence to conclude the project negatively impacted neighborhood character. He stated the draft resolution also required the Council to adopt everything in the staff report and he did not see how the Council could do

that.

In response to Mayor Pro Tem Grisanti, Councilmember Silverstein stated he had sent an email to the City Attorney that identified each of his issues with the resolution. He stated he believed the project needed to be approved but he could not agree with all of the findings in the resolution.

RECESS      At 10:13 p.m., Mayor Pierson recessed the meeting. The meeting reconvened at 10:21 p.m. with all Councilmembers except Councilmember Uhring present.

In response to Mayor Pierson, Councilmember Silverstein stated Interim City Attorney Cotti addressed many of his questions before the meeting. He stated he believed the project satisfied the code, but the resolution presented to the Council included statements he could not agree with. He discussed Section 3 Findings for Granting the Appeal in the draft resolution. He stated he took issue with the substantial evidence finding and adopting all analysis and conclusions in the staff report and Planning Commission staff report. He stated he could not make every finding in the staff reports and he did not believe the Council needed to. He discussed Section 3(B) in the draft resolution. He stated he disagreed with the rationale provided in the resolution for the neighborhood character finding and he did not believe that language was required. He discussed Section 5(A)(2) in the draft resolution. He stated he could not agree there was no evidence that an alternative project would substantially lessen potential impacts to the environment. He stated there was some evidence but it was insufficient to cause him to find otherwise. He discussed Section 5(B)(4) in the draft resolution. He stated he did not know if the project complied with all State and local laws. He stated he knew the project did not violate the laws identified as being applicable. He discussed Section 5(B)(5). He stated it could not be said the project minimized visual impacts and landform alteration when there were less maximal alternatives, but he did believe the project design was sufficient under the law. He discussed Section 7(8) in the draft resolution. He stated he was informed by Interim City Attorney Cotti that neighbors would not be provided notice of alterations approved by the Planning Director. He recommended providing neighbors notification of any alterations. He stated he believed the resolution could be altered to address his concerns and still approve the project. He stated he had raised his issues with Interim City Attorney Cotti before the meeting but he could not discuss them with the other Councilmembers before the meeting due to the Brown Act.

The question was called, and the motion failed 2-1-0, Councilmember Silverstein dissenting, Mayor Pierson abstaining, and Councilmember Uhring absent.

Assistant City Attorney Rusin stated a majority vote of the Council was required to adopt the resolution. He recommended Mayor Pierson make a decision. He stated if the Council could not adopt the resolution it could approve the project by minute order.



Councilmember Silverstein stated he supported the project and could approve it by minute order.

Assistant City Attorney Rusin stated a minute order would include the same provisions as the resolution. He asked Mayor Pierson to make a decision one way or another on the item.

Mayor Pierson stated if he voted again he would vote no.

Mayor Pro Tem Grisanti stated he would like to approve the project by minute order.

In response to Councilmember Silverstein, Assistant City Attorney Rusin stated there needed to be written findings finding for a decision so the minute order would need to adopt the findings in the resolution.

MOTION Mayor Pro Tem Grisanti moved, and Councilmember Farrer seconded a motion to adopt a minute order reflecting the actions and findings laid out in the resolution.

The question was called, and the motion failed 2-2-0, Councilmember Silverstein and Mayor Pierson dissenting and Councilmember Uhring absent.

Interim City Attorney Cotti stated the Council needed written findings for an approval and recommended directing staff to bring back a revised resolution that could be approved by a majority of the Council.

Councilmember Silverstein stated the project satisfied the law and he believed there was a way to rewrite the findings in the resolution so he could approve them. He stated he did not want to hold up the project, but he could not approve a finding he did not agree with.

Assistant City Attorney Rusin stated staff could bring back a revised resolution that addressed Councilmember Silverstein's concerns and a written minute order.

Mayor Pierson indicated support for bringing the item back.

MOTION Mayor Pro Tem Grisanti moved, and Mayor Pierson seconded a motion to direct staff to bring back: 1) a revised version of Resolution No. 21-02 that addressed Councilmember Silverstein's comments; and 2) language for a minute order granting Appeal No. 19-002 and approving Coastal Development Permit (CDP) No. 17-043 and Associated Entitlements (29043 Grayfox Street; Owners/Appellants, John and Tatiana Atwill). The question was called, and the motion carried 4-0, Councilmember Uhring absent.

Assistant City Attorney Rusin cautioned the Council to avoid further discussion with the interested parties on this item so the public hearing would not need to be reopened.

B. Appeal No. 20-008 - Appeal of Planning Commission Resolution No. 20-58 (5936 Filaree Heights Avenue; Appellant Stacy Clunies-Ross)

Recommended Action: Adopt Resolution No. 21-03 determining the project is categorically exempt from the California Environmental Quality Act (CEQA), denying Appeal No. 20-008 and approving Administrative Plan Review-Woolsey Fire No. 19-060 and Site Plan Review No. 19-099 for improvements to modify an in-kind fire rebuild of a previously approved residence destroyed by the Woolsey Fire, including a second-story addition, new subterranean garage, new swimming pool and pool deck, and a new driveway, including a site plan review to allow construction above 18 feet, not to exceed 24 feet for a flat roof located in the Rural Residential-Two acre zoning district at 5936 Filaree Heights Avenue (Denker Family Trust).

Councilmember Silverstein stated he would recuse himself from this item.

In response to Mayor Pierson, Interim City Attorney Cotti stated Councilmember Uhring was also recused from this item because he participated in a previous public hearing as a Planning Commissioner.

In response to Councilmember Farrer, Councilmember Silverstein stated he was good friends with one of the parties and had many discussions with that party before his election. He stated his participation in the public hearing would be unfair to the other parties.

At 10:39 p.m., Councilmember Silverstein recused himself and left the meeting.

Planning Director Mollica presented the staff report.

Councilmember Farrer stated she did not have any disclosures.

Mayor Pro Tem Grisanti stated he was contacted by the property owner to do a site visit. He stated he visited the property alone and looked at the story poles and neighboring properties. He stated the appellant contacted him as well and he visited their property and viewed the story poles from their house with Terry Lucoff. He stated he was told by Mr. Lucoff that the story poles were incorrectly placed and should be 39 feet apart. He stated while visiting Mr. Lucoff's party another neighbor shared that he was opposed to the project. He stated he got a good feel for the distance between houses and the terrain.

Mayor Pierson stated he visited the property several months ago at the request of the appellant with Mr. Lucoff and the Clunies-Rosses. He stated he also visited the property with the Denkers. He stated he knew all of the parties but did not have a close relationship with any of them. He stated it was easier to understand a project and plans after visiting the property.

Mayor Pro Tem Grisanti stated he had worked with Terry Lucoff for 25 years at Coldwell Banker and he discovered recently that Mrs. Denker also works with his

new company, Pinnacle, but they had not met through work. He stated he could give a fair and unbiased hearing.

Craig Clunies-Ross stated he did not intend to cause the Denkers's additional financial costs or delay their rebuild. He discussed the existing ocean view from his property. He stated his new house was designed to provide the best ocean view possible from the second story. He stated the second story of the Denkers's Woolsey Fire rebuild would block his view. He stated flipping the position of the second story was not a like-for-like rebuild. He stated allowing this would allow other people to make dramatic changes to their homes in the future and call it like-for-like. He stated the Denkers reconfigured the layout of their second story to improve their view. He stated two other neighbors had also objected to the reconfiguration and additional height of the second story. He stated he and his wife made their best efforts to work with their neighbors but Jen Denker had insulted the Clunies-Rosses's new house and stated she planned to plant tall trees along the property line. He stated the Council needed to set a precedent for what was a like-for-like.

Jen Denker introduced a slide show displaying pictures of the project site, the neighborhood and her family. She stated she agreed with the decision of the Planning Department staff. She stated her family and the Clunies-Rosses had agreed that the Denkers would plant new landscaping along the back of their property up to 6-feet in height so the Clunies-Rosses's new house would not be visible from the Denker property.

Terry Lucoff recommended the Council begin meetings at 5:00 p.m. He stated the Denkers's decision to underground their garage required the second story of their home to be reconfigured. He stated the project had a similar foot print to the old house, but it was not like-for-like. He stated the second story had been substantially increased. He stated the project would impact his privacy and change the character of the neighborhood.

Richard Carter stated he represented the Denkers and that Mr. Lucoff had not filed an appeal of the Planning Commission decision. He indicated support for the Planning Commission's action.

Robert Brinkman indicated support for Mr. Clunies-Ross's comments. He stated the Denkers did not communicate with their neighbors in the rebuild process. He stated the staff report advocated support for the project. He stated the size of the main structure was increasing substantially. He discussed his rebuild where he was reducing the height and size of his second story to be within the in-kind rebuild standards. He stated Ms. Clunies-Ross would have already completed construction on her house if not for the Woolsey Fire.

Mr. Clunies-Ross stated his family lost everything on two properties in the Woolsey Fire. He stated his new house was designed to maximize the view and if not for the Woolsey Fire the house would be complete and have a certificate of occupancy.

He stated he objected to the reconfiguring of the second story and the increased size and height.

Ms. Denker stated she had tried to rebuild something more similar to the original structure, but she was required to make changes by the Fire Department. She stated undergrounding the garage had been expensive and complicated. She stated the Clunies-Rosses had not started construction on their new house at the time of the Woolsey Fire. She stated most of her neighbors had second stories.

Mayor Pro Tem Grisanti stated he read through the staff report multiple times and it was clear there was not a primary view protection filed for the Clunies-Ross property. He stated due to the emergency primary view ordinance the Clunies-Rosses would not be able to file for a primary view determination. He stated property owners only had a right to views from the first story and could not create a view when existing landscape blocked it. He stated there had been concerns after the Woolsey Fire that Malibu would change because of the destroyed landscape. He stated it was important to get people back into their homes.

Councilmember Farrer stated it was an awkward position to have to make this decision after having lived in the City for so long and knowing so many parties. She stated she had expected people would file primary view determinations after the Woolsey Fire to try to save views created by the Fire.

Mayor Pierson stated this was an unfortunate situation. He stated the Clunies-Rosses had designed their house to take advantage of the views around the Denkers's house. He stated there was no way to have anticipated the Fire Department's requirement to relocate the driveway. He questioned if the project could have been designed to position the second story over the garage. He stated he understood why the Clunies-Rosses were upset. He stated the Denkers were doing what they had to do to rebuild their home. He stated he could support allowing the second story to be placed above the garage. He stated it was important to consider that there were a lot more homes to rebuild and the reconfiguration of a second story could have a big impact on neighbors.

**MOTION** Mayor Pro Tem Grisanti moved, and Councilmember Farrer seconded a motion to adopt Resolution No. 21-03 determining the project is categorically exempt from the California Environmental Quality Act (CEQA), denying Appeal No. 20-008 and approving Administrative Plan Review-Woolsey Fire No. 19-060 and Site Plan Review No. 19-099 for improvements to modify an in-kind fire rebuild of a previously approved residence destroyed by the Woolsey Fire, including a second-story addition, new subterranean garage, new swimming pool and pool deck, and a new driveway, including a site plan review to allow construction above 18 feet, not to exceed 24 feet for a flat roof located in the Rural Residential-Two acre zoning district at 5936 Filaree Heights Avenue (Denker Family Trust). The question was called, and the motion failed 2-1-0, Mayor Pierson opposed and Councilmember Silverstein and Councilmember Uhring absent.

In response to Mayor Pro Tem Grisanti, Planning Director Mollica stated the second story was getting wider and would be 25 feet and 4 inches wide. He stated the second story was being moved approximately 35-40 feet. He stated the distance from the back of the proposed project to the Clunies-Rosses's new house was approximately 230 feet.

In response to Mayor Pierson, Planning Director Mollica stated second stories were sometimes reconfigured for fire rebuilds and when changes like that happened it would be processed as an Administrative Plan Review with a Site Plan Review. He stated changes to the original structure that would require discretionary approval were processed with a Site Plan Review. He stated the Planning Commission approved the Site Plan Review for this project. He stated in order to keep the second story in the same place the City would have to grant a variance from the prohibition that stated homes shall be no taller than two stories.

Assistant City Attorney Rusin stated it would be difficult to make findings to justify granting a variance for a third story.

In response to Mayor Pierson, Planning Director Mollica stated the Denkers could provide more details but he believed the Fire Department required a fire truck be able to get to a point on the property where it could do a 150 foot hose run in each direction.

Mayor Pro Tem Grisanti stated the staff report included a picture of the required fire truck turn around, which took up a lot of space on the property. He stated in order to reposition the garage again it would have to be placed away from the house and even closer to the Clunies-Ross property.

Mayor Pierson stated he felt for all parties but he was concerned about setting precedent by moving the second story.

Mayor Pro Tem Grisanti stated if not for the Woolsey Fire the Clunies-Rosses would not have a view through that area.

Mayor Pierson stated the Denkers had many trees on the property, but the Clunies-Rosses had intentionally faced their project to the left of the Denkers' house.

In response to Assistant City Attorney Rusin and Mayor Pro Tem Grisanti, Mayor Pierson stated he wanted the Denkers to rebuild and he could approve a variance to keep the second story where it was.

Mayor Pro Tem Grisanti stated a project with a third story variance was unlikely to be approved by the Planning Commission. He stated digging further underground would cause water to drain into the garage.

Mayor Pierson stated garages could be waterproofed.

In response to Assistant City Attorney Rusin, Mayor Pierson stated he was having difficulty making the Site Plan Review findings.

Mayor Pro Tem Grisanti stated based on the placement of the Denkers's original second story and the trees on the property the view blockage was about the same as the new project. He stated based on the angles of the Clunies-Ross project and the Denker project the relative wideness of the second story would appear to be about the same.

Mayor Pierson stated he was willing to spend time talking about this project more but he was uncomfortable with the reconfiguration of the second story.

Mayor Pro Tem Grisanti stated there were only 20 completed Woolsey Fire rebuilds.

Mayor Pierson stated he supported Woolsey Fire rebuilds. He expressed concern future rebuilds may also make significant changes to the original design.

Mayor Pierson stated he would meet with the Denkers and City staff to discuss the project further if the hearing was continued.

Planning Director Mollica stated the Denkers may not have time to create an alternative design in time for the February 8, 2021 Council meeting.

Mayor Pro Tem Grisanti stated the Denkers may be able to convince Mayor Pierson they had exhausted their options.

Mayor Pierson stated he would try to help communication between the neighbors and see what the options were.

Councilmember Farrer stated there were a lot of unknowns about the feasibility of redesigning this project. She stated the City heard a lot of complaints about City staff delay in moving items forward, but this was not a City staff delay.

Mayor Pierson stated he wanted to move items forward quickly but he was struggling with the reconfiguration of the second story.

Councilmember Farrer recognized that this item was being continued because of the Council, not the City staff.

Mayor Pierson stated this is the first Council meeting where this item was heard.

Councilmember Farrer stated this was not the first item where the Council had caused delays. She stated she would like to be part of the solution and it was important to make hard decisions.

Mayor Pierson stated he would like another chance to look at this and see if he could approve the project.

MOTION Mayor Pierson moved, and Mayor Pro Tem Grisanti seconded a motion to continue to the February 8, 2021 Council meeting consideration of Appeal No. 20-008 - Appeal of Planning Commission Resolution No. 20-58 (5936 Filaree Heights Avenue; Appellant Stacy Clunies-Ross). The question was called, and the motion carried 3-0, Councilmember Silverstein and Councilmember Uhring absent.

RECESS At 11:54 p.m., Mayor Pierson recessed the meeting. The meeting reconvened at 11:59 p.m. with all Councilmembers present.

Councilmember Silverstein proposed adjourning the meeting to another date and time to consider the rest of the items on the agenda. He stated he had an objection on Item No. 7.A. that would take some time to hear.

Councilmember Uhring stated he spoke to City Manager Feldman about continuing the meeting and the Council could adjourn it to another date within five days as long as the agenda did not change. He recommended adjourning to a date and time within five days when City staff was available.

Mayor Pro Tem Grisanti questioned if the meeting could be started earlier that 6:30 p.m. He suggested starting at 5:00 if all the Councilmembers were available.

Councilmember Silverstein stated he knew residents had complained before when meetings started earlier. He stated he viewed it as an accommodation to the public to start earlier while people were awake.

Mayor Pro Tem Grisanti indicated support for Councilmember Silverstein's comments. He stated the Council had already heard Item No. 2.A. and other long items with public comment.

In response to Councilmember Uhring, City Manager Feldman stated staff could coordinate an Adjourned Regular meeting. She stated January 26, 2021, was not available because the City was hosting a CCWTF Phase 2 meeting. She stated the rest of the week should be open. She stated the Council just needed to identify the items it wanted to continue.

Councilmember Uhring proposed moving all the unheard items to a date that worked for City staff.

City Manager Feldman stated the Councilmembers could identify any dates that did not work for them.

Mayor Pierson stated Thursday made more sense than Friday.

Councilmember Farrer stated Thursday worked.

Councilmember Uhring recommended Wednesday or Thursday.

Mayor Pro Tem Grisanti stated he was available Thursday.

City Manager Feldman stated the City still did not have an Administration and Finance Subcommittee. She stated staff would not be able to bring the mid-year budget to the Council until it was considered by the Administration and Finance Subcommittee.

In response to Councilmember Uhring, City Manager Feldman stated the Administration and Finance Subcommittee agenda needed to be posted at least 24 hours in advance so there would not be time to notice the meeting for Friday, January 29, 2021, after appointments were made on Thursday, January 28, 2021. She stated even if the Administration and Finance Subcommittee meeting was held on January 29, 2021, its recommendations would not be made in time for the February 8, 2021 Regular meeting.

Mayor Pro Tem Grisanti suggested appointing the Administration and Finance Subcommittee and continuing the rest of the appointments to the Adjourned Regular meeting.

**MOTION** Councilmember Uhring moved, and Councilmember Silverstein seconded a motion to adjourn January 28, 2021, at 5:00 p.m. to consider of the remainder of the agenda after making appointments to the Administration and Finance Subcommittee. The question was called, and the motion carried unanimously.

**ITEM 5 OLD BUSINESS**

None.

**ITEM 6 NEW BUSINESS**

None.

**ITEM 7 COUNCIL ITEMS**

- A. City Council Subcommittees, Ad Hoc Committees and Outside Agency Appointments (Continued from January 11, 2021)  
Recommended Action: 1) Review current City Council Subcommittees, determine whether to retain each Subcommittee, and affirm, modify or make new appointments as necessary; 2) Confirm which City Council Ad Hoc Committees have completed assigned tasks and dissolve such Committees or determine to retain the Committee and affirm, modify or make new appointments as necessary; 3) Consider creation of new City Council Ad Hoc Committees and appoint members; and 4) Affirm Outside Agency appointments and make appointments as necessary.



MOTION Mayor Pro Tem Grisanti moved, and Councilmember Farrer seconded a motion to appoint Mayor Pierson and Councilmember Uhring to the Administration and Finance Subcommittee.

Councilmember Uhring stated Mayor Pierson was on a lot of committees.

Mayor Pierson stated the Council had not made committee appointments yet.

In response to Councilmember Uhring, Mayor Pro Tem Grisanti stated the incumbent Councilmembers may or may not be reappointed to the Subcommittees they had already served on.

Councilmember Silverstein stated he would like to be on the Administration and Finance Subcommittee. He stated he was on the management committee for a law firm with a budget larger than the City's. He stated this would be an opportunity for him to work with and get to know City Manager Feldman and other staff.

Councilmember Uhring stated the Council had made strides this evening. He stated Councilmember Silverstein's Councilmember comments were on track. He stated Councilmember Silverstein received the most votes in the November 2020 General Municipal Election.

Mayor Pierson stated he had wanted to be appointed to the Administration and Finance Subcommittee when the Council made subcommittee appointments in 2019 and was outvoted by the other Councilmembers.

Councilmember Uhring stated he would step back and let Councilmember Silverstein serve with Mayor Pierson.

In response to Mayor Pro Tem Grisanti, Councilmember Uhring stated he had a strong financial background.

Councilmember Silverstein stated he did not have an accounting background. He stated he had expertise in litigation of valuation and financial issues. He stated he had experience learning about financial and accounting issues in the working world. He stated during the 2008 financial crisis his law firm made a commitment not to lay off staff. He stated they did a painstaking analysis of expenses and saved \$1-2 million. He stated he believed the City need analyze its expenses and that was one of the platforms he ran on.

Mayor Pierson stated he had ideas for other subcommittees Councilmember Silverstein would be well suited to.

Councilmember Silverstein stated all the Councilmembers would serve on a few subcommittees.

Councilmember Farrer suggested voting for the Administration and Finance Subcommittee members one at a time.

In response to Councilmember Uhring, Mayor Pierson stated the Council could change appointments in the future.

Councilmember Uhring stated he would be willing to serve.

The question was called, and the motion carried unanimously.

The following items were continued to an Adjourned Regular meeting to be held on January 28, 2021, at 5:00 p.m.:

- A. City Council Subcommittees, Ad Hoc Committees and Outside Agency Appointments (Continued from January 11, 2021)  
Recommended Action: 1) Review current City Council Subcommittees, determine whether to retain each Subcommittee, and affirm, modify or make new appointments as necessary; 2) Confirm which City Council Ad Hoc Committees have completed assigned tasks and dissolve such Committees or determine to retain the Committee and affirm, modify or make new appointments as necessary; 3) Consider creation of new City Council Ad Hoc Committees and appoint members; and 4) Affirm Outside Agency appointments and make appointments as necessary
- B. City Council Appointments to City Commissions  
Recommended Action: 1) Mayor Pierson to make his appointment to the Cultural Arts Commission; and 2) Council may appoint an ex officio member to the Parks and Recreation Commission.
- C. Special City Council Meeting Regarding Homelessness (Mayor Pierson) (Continued from January 11, 2021)  
Recommended Action: At the request of Mayor Pierson, consider scheduling a Special City Council meeting to discuss homelessness issues and solutions.
- D. Proposal to Amend the Malibu Municipal Code to Reduce Overnight Parking on PCH and Otherwise Regulate the Time and Location of Camping, Lodging or Sleeping in Public (Councilmembers Silverstein and Uhring) (Continued from January 11, 2021)  
Recommended Action: At the request of Councilmember Silverstein, 1) After the City Attorney reads the title, introduce on first reading Ordinance No. \_\_\_\_ (Attachment 1) amending Section 9.08.090 of the Malibu Municipal Code to create a permit “exception” to the statute’s current “unconditional” prohibition against camping, lodging, or sleeping in public (including in a vehicle parked on a public street) within the City limit of Malibu in order to ensure that the statute will be enforceable in the face of arguments arising under *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019), and finding the action exempt from the California Environmental Quality Act; and 2) Direct staff to schedule second reading and

adoption of Ordinance No. \_\_ for the January 25, 2021 Regular City Council meeting.

- E. Council Policy Review and Amendments to City Council Policy #8 (Mayor Pro Tem Grisanti) (Continued from January 11, 2021)  
Recommended Action: At the request of Mayor Pro Tem Grisanti, 1) Provide direction to the City Council Policy Review Ad Hoc Committee on a priority list for review of current Council Policies; and 2) Consider amendments to City Council Policy #8.
- F. Proposal to Instill Transparency, Accountability and Ethics in All Aspects of Malibu's City Government (Councilmembers Silverstein and Uhring) (Continued from January 11, 2021)  
Recommended Action: At the request of City Councilmembers Silverstein and Uhring, 1) Adopt Transparency, Accountability, and Ethics Policy; 2) Appoint City Councilmembers Uhring and Silverstein to City Council Policy Review Ad Hoc Committee; 3) Amend City Council Policy No. 8 to provide City Councilmembers unconstrained inspection and information rights; 4) Amend City Council Policy No. 28 to provide City Council control over the Agenda for meetings of City Council; 5) Schedule Semi-Annual Performance Evaluation of City Manager, and discuss and vote on whether the Performance Evaluation shall be conducted transparently in a Public Session or secretly in a Closed Session; 6) Establish a True Document "Retention" (as opposed to "Destruction") Policy by amending City Council Policy No. 51 and Administrative Directive 5.1; 7) Create Special Independent Investigation Subcommittee to investigate the allegations set forth in the Affidavit of Jefferson Wagner and related matters; 8) Consider reforms to City Council Meeting process that are inviting to and respectful of the residents; and 9) Consider other possible initiatives for Government Reform.

## ADJOURNMENT

At 12:15 a.m., on Tuesday, January 26, 2021, Mayor Pierson adjourned the meeting to January 28, 2021, at 5:00 p.m. in memory of Kathy Sullivan

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

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

ATTEST:

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

MINUTES  
MALIBU CITY COUNCIL  
ADJOURNED REGULAR MEETING  
JANUARY 28, 2021  
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 5:00 p.m.

**ROLL CALL**

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

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

ALSO PRESENT: John Cotti, Interim City Attorney; Reva Feldman, City Manager; Heather Glaser, City Clerk; Lisa Soghor, Assistant City Manager; Jesse Bobbett, Community Services Director; Yolanda Bundy, Environmental Sustainability Director; Richard Mollica, Planning Director; Elizabeth Shavelson, Assistant to the City Manager; and Matt Myerhoff, Media Information Officer

**ITEM 7      COUNCIL ITEMS**

A.    City Council Subcommittees, Ad Hoc Committees and Outside Agency Appointments (Continued from January 11, 2021)

Recommended Action: 1) Review current City Council Subcommittees, determine whether to retain each Subcommittee, and affirm, modify or make new appointments as necessary; 2) Confirm which City Council Ad Hoc Committees have completed assigned tasks and dissolve such Committees or determine to retain the Committee and affirm, modify or make new appointments as necessary; 3) Consider creation of new City Council Ad Hoc Committees and appoint members; and 4) Affirm Outside Agency appointments and make appointments as necessary.

Mark Baute stated he was a lawyer with 34 years of experience, and he had taught trial advocacy at University of Los Angeles School of Law. He stated the City had two human resources complaints, one from a Councilmember against City Manager Feldman and one by City Manager Feldman directed at the Councilmember. He stated he believed administrative leave had been rejected by City Manager Feldman. He recommended the Council hold a Closed Session meeting and consider creating a 60- or 90-day order to limit contact between the Councilmember and City Manager Feldman until the human resources claims were independently investigated. He stated one of the Councilmembers had violated Closed Session

rules through on the record quotes on patch.com. He stated Interim City Attorney Cotti should provide legal advice on whether that Councilmember should be censured. He discussed the importance of moving items forward even if the decisions were not unanimous. He encouraged Councilmember Uhring to accept the nominations of the other Councilmembers. He stated Councilmember Silverstein should not be put on any significant Committees. He encouraged Councilmember Silverstein to keep his comments on Item No. 7.B. brief.

Lance Simmens stated he had been dismayed by the conduct of the Council since the November 2020 General Municipal Election. He stated he did not pass judgement on City Manager Feldman during the November 2020 General Municipal Election and did not intend to do so until an independent investigation was conducted. He stated he had experience in senior level policy positions, authored two books on public policy and taught courses on public policy. He discussed the importance of compromise to resolve disputes between policy makers. He stated the Councilmembers were responsible for representing all of the citizens. He stated a refusal to back down was not a productive attitude for leadership on a public policy body. He discussed the importance of civility.

Mayor Pierson requested nominations for the Environmental Sustainability Subcommittee.

Councilmember Uhring stated he would like to serve on the Environmental Sustainability Subcommittee.

Mayor Pierson stated he would be interested in serving on the Environmental Sustainability Subcommittee.

MOTION Councilmember Uhring moved, and Mayor Pro Tem Grisanti seconded a motion to appoint Mayor Pierson and Councilmember Uhring to the Environmental Sustainability Subcommittee. The question was called, and the motion carried unanimously.

Mayor Pierson requested nominations for the Library Subcommittee.

MOTION Councilmember Farrer moved to appoint Mayor Pierson and Councilmember Farrer to the Library Subcommittee.

Mayor Pierson stated he would accept the nomination to serve on the Library Subcommittee.

Councilmember Uhring seconded the motion. The question was called, and the motion carried unanimously.

Mayor Pierson stated the Parks and Recreation Subcommittee, Public Safety Subcommittee and Public Works Subcommittee did not meet regularly.

In response to Mayor Pierson, City Manager Feldman stated the Council could choose to dissolve subcommittees. She stated there were established Commissions for Parks and Recreation, Public Safety, and Public Works. She stated the Council could always direct staff to bring back an item to reform a Subcommittee if it was needed.

MOTION Councilmember Uhring moved, and Mayor Pierson seconded a motion to defer appointments to the Parks and Recreation Subcommittee, Public Safety Subcommittee and Public Works Subcommittee until necessary to meet. The question was called, and the motion carried unanimously.

MOTION Mayor Pierson moved to appoint Mayor Pierson and Councilmember Uhring to the Zoning Ordinance Revisions & Code Enforcement Subcommittee (ZORACES).

The motion died due to lack of a second.

Councilmember Silverstein stated he had not been appointed to any subcommittees.

Mayor Pierson stated the Council had been identifying appointments for Subcommittees one at a time.

Councilmember Silverstein stated this was the last Subcommittee.

Mayor Pierson stated there were other appointments to be made.

Councilmember Silverstein stated there were no other Subcommittees.

Councilmember Uhring stated he would like to serve on ZORACES, but the Council should appoint Councilmember Silverstein to a Subcommittee and ZORACES would give him an opportunity to learn more about the City. He recommended Mayor Pierson and Councilmember Silverstein serve on ZORACES together.

Mayor Pierson stated there were other appointments to make beyond Subcommittees.

Councilmember Uhring stated ZORACES members became very familiar with what was happening in the City and the Malibu Municipal Code. He stated this learning opportunity could help Councilmember Silverstein grow as a Councilmember.

Mayor Pierson stated it was a steep learning curve and it was important for ZORACES members to have some experience. He recommended giving Councilmember Silverstein more time to learn how issues were dealt with at the local level.

Councilmember Uhring indicated support for giving Councilmember Silverstein a chance.

MOTION Councilmember Uhring moved, and Councilmember Silverstein seconded a motion appoint Mayor Pierson and Councilmember Silverstein to ZORACES. The question was called, and the motion failed 2-3, Councilmember Farrer, Mayor Pro Tem Grisanti, and Mayor Pierson dissenting.

Councilmember Uhring stated if the Council would not appoint Councilmember Silverstein he would serve on ZORACES.

Mayor Pierson stated the Council could always change appointments later.

MOTION Councilmember Uhring moved, and Mayor Pierson seconded a motion to appoint Mayor Pierson and Councilmember Uhring to ZORACES. The question was called, and the motion carried unanimously.

MOTION Councilmember Farrer moved to appoint Councilmember Farrer and Mayor Pro Tem Grisanti to the City Council Policy Review Ad Hoc Committee.

Councilmember Farrer stated the City Council Policy Review Ad Hoc Committee had scheduled two meetings but had been unable to meet on those dates.

Councilmember Uhring recommended appointing Councilmember Silverstein and himself to the City Council Policy Review Ad Hoc Committee. He stated the body would be able to meet and bring forward suggestions.

Councilmember Farrer stated she had been ready to meet at the previously scheduled City Council Policy Review Ad Hoc Committee meetings with former Councilmember Jefferson Wagner. She stated the policies needed to be reviewed.

Councilmember Uhring stated people were anxious to get the policies updated and guaranteed Councilmember Silverstein and he would be able to meet.

Mayor Pro Tem Grisanti seconded the motion.

Councilmember Silverstein stated he had demonstrated an interest in doing the work of the City Council Policy Review Ad Hoc Committee since before his election. He stated he had already started doing the work of the City Council Policy Review Ad Hoc Committee and had a lot of experience that would be beneficial.

In response to Councilmember Silverstein, Interim City Attorney Cotti stated an Ad Hoc Committee was a body with a defined task and end time that reported back to the Council upon completion of its findings and then it was dissolved.

Councilmember Silverstein stated his understanding was that the City Council Policy Review Ad Hoc Committee's task would be ongoing as policies continued to be reviewed and revised over time.

Mayor Pierson stated the City Council Policy Review Ad Hoc Committee was formed less than two years ago but it had not been able to meet.

Councilmember Farrer stated she had been working on policies for the City and reviewing policies from other municipalities. She stated she had many improvements to suggest.

In response to Councilmember Uhring, Councilmember Silverstein stated if he was on the City Council Policy Review Ad Hoc Committee he would be inclined to cut back on his discussion of Item No. 7.F. and discuss most of those issues at the City Council Policy Review Ad Hoc Committee. He stated if he was not on the City Council Policy Review Ad Hoc Committee he wanted to present all of his ideas to the Council.

The question was called, and the motion carried 3-2, Councilmember Silverstein and Councilmember Uhring dissenting.

Mayor Pierson suggested dissolving the Disaster Response and Recovery Ad Hoc Committee.

Councilmember Farrer stated the Disaster Response and Recovery Ad Hoc Committee's work was complete.

In response to Mayor Pierson, City Manager Feldman stated an Ad Hoc Committee could be dissolved if its task was complete.

MOTION Councilmember Silverstein moved, and Mayor Pierson seconded a motion to dissolve the Disaster Response and Recovery Ad Hoc Committee. The question was called, and the motion carried unanimously.

Mayor Pierson requested nominations for the School District Separation Ad Hoc Committee.

Councilmember Farrer stated she had been serving on the School District Separation Ad Hoc Committee and had been working on school district separation for over 12 years.

MOTION Councilmember Farrer moved to appoint Mayor Pierson and Councilmember Farrer to the School District Separation Ad Hoc Committee.

Councilmember Farrer stated Mayor Pierson was the only other member of the Council who had attended and sent his children to the local schools.



Mayor Pierson seconded the motion.

In response to Councilmember Uhring, Councilmember Farrer stated Mayor Pierson was familiar with the school system.

In response to Councilmember Uhring, Mayor Pierson stated he had been on a number of committees for local schools and the Santa Monica-Malibu Unified School District.

Councilmember Silverstein stated he was in favor of appointing Mayor Pierson and Councilmember Farrer to the School District Separation Ad Hoc Committee. He questioned if an Ad Hoc Committee was appropriate. He stated there was not a clear time frame for the Ad Hoc Committee to complete its work.

In response to Councilmember Silverstein, Interim City Attorney Cotti stated Ad Hoc Committees could not exist for an indefinite period of time. He stated if the School District Separation Ad Hoc Committee would operate for an indefinite period of time it should be converted to a standing committee and be subject to the Brown Act noticing requirements.

Councilmember Silverstein stated the School District Separation Ad Hoc Committee should be a standing committee.

Mayor Pro Tem Grisanti indicated support for a committee dedicated to school district separation as issues were coming to a head.

Councilmember Farrer when the school district separation was complete the School District Separation Ad Hoc Committee would be dissolved.

Councilmember Silverstein expressed concern school district separation was such a prolonged process it may need a standing committee. He stated he supported Councilmember Farrer and Mayor Pierson serving on the committee.

Councilmember Farrer stated she had worked on this issue for 12 years, but the School District Separation Ad Hoc Committee had not existed for 12 years.

Mayor Pierson requested Interim City Attorney Cotti look into the School District Separation Ad Hoc Committee and bring back a recommendation on if it should be converted to a standing committee.

The question was called, and the motion carried unanimously.

Mayor Pierson requested nominations for California Contract Cities Association.

Councilmember Uhring stated he watched a California Contract Cities Association meeting and found it interesting and informative. He stated he would like to represent the City at the California Contract Cities Association.

Councilmember Uhring suggested Mayor Pierson continue to serve on the California Contract Cities Association.

MOTION Councilmember Uhring moved, and Mayor Pierson seconded the motion to appoint Mayor Pierson as delegate and Councilmember Uhring as alternate to the California Contract Cities Association. The question was called, and the motion carried unanimously.

Mayor Pierson indicated support for appointing Councilmember Silverstein to the California Joint Powers Insurance Authority. He stated he believed this would be good fit for Councilmember Silverstein's skill set.

MOTION Mayor Pierson moved, and Councilmember Uhring seconded a motion to appoint Councilmember Silverstein as delegate and Mayor Pro Tem Grisanti as alternate to the California Joint Powers Insurance Authority. The question was called, and the motion carried unanimously.

Mayor Pierson requested nominations for the Clean Power Alliance.

MOTION Councilmember Farrer moved, and Mayor Pro Tem Grisanti seconded a motion to appointment Mayor Pierson as delegate and Councilmember Uhring as alternate to the Clean Power Alliance. The question was called, and the motion carried unanimously.

Mayor Pierson requested nominations for the Las Virgenes-Malibu Council of Governments (COG).

Councilmember Farrer stated she was the City's representative on the COG and the COG Vice President.

MOTION Councilmember Farrer moved, and Councilmember Uhring seconded a motion to appoint Councilmember Farrer as delegate and Mayor Pierson as alternate to the COG. The question was called, and the motion carried unanimously.

Mayor Pierson requested nominations for the Los Angeles International Airport Community Noise Roundtable.

Mayor Pro Tem Grisanti stated he would like to represent the City at the Los Angeles International Airport Community Noise Roundtable and he had a good working relationship with Public Works Director DuBoux.

MOTION Mayor Pro Tem Grisanti moved, and Councilmember Silverstein seconded a motion to appointment Mayor Pro Tem Grisanti to the Los Angeles International Airport Community Noise Roundtable. The question was called, and the motion carried unanimously.

Councilmember Silverstein stated he had spoken with Interim City Attorney Cotti and expressed concern the election of the Mayor Pro Tem on December 14, 2021 was improper because it was held before the new Councilmembers had been sworn in. He recommended holding the election of the Mayor Pro Tem again to make sure it was done properly. He stated he did not expect another election would have a different result.

Interim City Attorney Cotti stated Councilmember Silverstein was correct. He stated the Constitution required the Councilmembers to take an oath before assuming their duties. He stated he did not believe it was necessary, but the Council could place an item on a future agenda to hold the election of the Mayor Pro Tem again.

In response to Mayor Pierson, Councilmember Silverstein stated other cities typically elected officers after the new Councilmembers were sworn in.

Interim City Attorney Cotti stated after the last two general municipal elections the Council conducted the election of the Mayor Pro Tem and then swore in the Councilmembers. He stated technically the Councilmembers should have been sworn in first. He stated he believed there was legal doctrine that allowed the election of the Mayor Pro Tem to be valid, but it was within the Council's discretion to consider the matter again.

In response to Councilmember Silverstein, Interim City Attorney Cotti stated he had not seen a legal case where a Council had taken these same actions. He stated he believed there was legal authority to support the action.

Mayor Pierson requested Interim City Attorney Cotti do research and bring back a recommendation.

Mayor Pro Tem Grisanti suggested rescheduling the election of the Mayor Pro Tem for February 8, 2021.

Councilmember Silverstein stated he believed the election of the Mayor Pro Tem could be dealt with quickly.

#### CONSENSUS

By consensus, the Council directed staff to place election of Mayor Pro Tem on the February 8, 2021 Council agenda.

City Manager Feldman stated the North Santa Monica Bay Watershed Council Executive Committee was not an active committee and did not need any appointees at this time.

Mayor Pierson stated the Pacific Coast Highway (PCH) Taskforce had met infrequently during the year due to the COVID-19 pandemic. He stated he would like to continue serving on the Taskforce.

MOTION Councilmember Silverstein moved, and Councilmember Uhring seconded a motion to appoint Mayor Pierson and Councilmember Silverstein to the PCH Taskforce. The question was called, and the motion carried unanimously.

Mayor Pierson stated he was recently appointed to the Santa Monica Bay Restoration Commission by the COG. He stated there was room for an alternate.

In response to Councilmember Silverstein, Mayor Pierson stated the alternate need to be a Councilmember.

Mayor Pro Tem Grisanti stated he would like to serve as the alternate for the Santa Monica Bay Restoration Commission.

City Manager Feldman stated the delegate and the alternate for the Santa Monica Bay Restoration Commission were appointed by the COG. She stated if another Councilmember was interested in serving as the alternate staff could inform the Executive Director of the COG.

In response to Mayor Pierson, Councilmember Farrer stated she could bring forward the nomination of the alternate to the Santa Monica Bay Restoration Commission at a COG meeting.

Mayor Pierson requested nominations for the Santa Monica Mountains Conservancy Advisory Committee.

MOTION Councilmember Farrer moved, and Mayor Pro Tem Grisanti seconded a motion to appoint Lloyd Ahern to the Santa Monica Mountains Conservancy Advisory Committee.

Councilmember Silverstein indicated support for re-appointing Patt Healy. He stated she was a respected individual in the community with a reputation for fighting for conservancy.

Councilmember Uhring stated Mr. Ahern had issues with Santa Monica Mountains Conservancy Advisory Executive Director Joe Edmiston. He stated the Santa Monica Mountains Conservancy Advisory Committee was primarily an educational body where information was provided to the committee members that should be shared with the Malibu community. He indicated support for re-appointing Ms. Healy. He stated being confrontational in those meetings would not be productive.

Mayor Pro Tem Grisanti questioned if Ms. Healy had ever reported to the Council on Santa Monica Mountains Conservancy Advisory Committee meetings.

Councilmember Farrer stated she had not heard a report while she had been on the Council from Ms. Healy.

Mayor Pierson stated Ms. Healy was his neighbor. He stated Ms. Healy and Mr. Ahern were both good candidates.

The question was called, and the motion carried 3-2, Councilmember Silverstein and Councilmember Uhring dissenting.

Mayor Pierson stated the Southern California Association of Governments delegate was appointed by the COG. He stated the Trails Working Group had not meet in many years. He stated the Water Education Foundation may not exist anymore.

B. City Council Appointments to City Commissions

Recommended Action: 1) Mayor Pierson to make his appointment to the Cultural Arts Commission; and 2) Council may appoint an ex officio member to the Parks and Recreation Commission.

Mayor Pierson stated his Cultural Arts Commissioner Kathy Eldon had stepped down to focus her energies on an art accelerator program for young artists. He appointed Barry Haldeman to the Cultural Arts Commission. He stated Mr. Haldeman had an incredible and diverse career supporting artists.

Councilmember Uhring stated the person he was interested in appointing as the Ex Officio member to the Parks and Recreation Commission did not live with the 90265-zip code and was ineligible to serve as the Ex Officio.

Item Nos. 7.C. and 7.D. were heard concurrently.

C. Special City Council Meeting Regarding Homelessness (Mayor Pierson) (Continued from January 11, 2021)

Recommended Action: At the request of Mayor Pierson, consider scheduling a Special City Council meeting to discuss homelessness issues and solutions.

D. Proposal to Amend the Malibu Municipal Code to Reduce Overnight Parking on PCH and Otherwise Regulate the Time and Location of Camping, Lodging or Sleeping in Public (Councilmembers Silverstein and Uhring) (Continued from January 11, 2021)

Recommended Action: At the request of Councilmember Silverstein, 1) After the City Attorney reads the title, introduce on first reading Ordinance No. \_\_\_\_ (Attachment 1) amending Section 9.08.090 of the Malibu Municipal Code to create a permit “exception” to the statute’s current “unconditional” prohibition against camping, lodging, or sleeping in public (including in a vehicle parked on a public street) within the City limit of Malibu in order to ensure that the statute will be enforceable in the face of arguments arising under *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019), and finding the action exempt from the California Environmental Quality Act; and 2) Direct staff to schedule second reading and adoption of Ordinance No. \_\_\_\_ for the January 25, 2021 Regular City Council meeting.

Mayor Pierson stated he was requesting the Council schedule a Special meeting to make headway on homelessness issues.

Councilmember Silverstein stated the Council voted at the January 25, 2021 Regular meeting to hear Item Nos. 7.C. and 7.D. concurrently. He stated there were a number of speakers for the two items and there was overlap between the two speaker lists. He stated the Council needed to decide if speakers who signed up for both items would have three or six minutes to speak.

In response to Councilmember Uhring, Mayor Pierson stated he wanted to come out of the Special meeting with concrete steps to improve homelessness issues.

MOTION Councilmember Farrer moved, and Mayor Pro Tem Grisanti seconded a motion to consider the proposal in Item No. 7.D. at a Special meeting.

Councilmember Silverstein stated his understanding was that the normal process was to hear the staff report before public comment. He stated there was a presentation for Item No. 7.D. He stated there were over 100 written comments in the public record for Item No. 7.D. He stated many people had attempted to comment on this item at the January 11, 2021 Regular meeting, January 25, 2021 Regular meeting and this meeting.

In response to Mayor Pierson, Councilmember Silverstein stated his presentation for Item No. 7.D. was not identical to the staff report.

Mayor Pierson stated the presentation was a 25-slide presentation that covered the same information as the staff report.

Councilmember Silverstein stated his proposal was a 25-page single spaced document and the presentation was 25 slides presenting a boiled down version of the proposal. He stated his presentation was the same as staff presentations that were often 10-20 slides. He stated if the other Councilmembers did not want the public who signed up to speak on the item to have the benefit of the presentation, he could not stop the Council from changing the process. He stated it would be a mistake.

Councilmember Farrer stated this was the third time many of these items were before the Council. She stated it would have been her preference to hear these items at the January 11, 2021 Regular meeting. She stated the subject was monumental and needed the time and attention of a Special meeting.

Mayor Pro Tem Grisanti questioned if a staff report had ever been delivered by a Councilmember.

Councilmember Uhring stated Mayor Pierson had just delivered his staff report for Item No. 7.A.

Councilmember Silverstein stated he believed Pamela Conley Ulich had also made presentations to the Council.

Councilmember Uhring stated homelessness was the biggest issue in the City. He discussed recent break-ins by people experiencing homelessness. He stated it was projected the population of people experiencing homelessness was going to explode once the COVID-19 eviction moratoriums were lifted. He indicated support for a Special meeting. He stated the meeting needed to help the Council find a solution to discuss with the public.

Mayor Pierson stated the Council needed to be serious at the Special meeting. He stated the proposal in Item No. 7.D. needed to be studied by the City's attorneys. He stated items like Item No. 7.D. often went to the Public Safety Commission and Planning Commission first.

Councilmember Uhring questioned when the City would see a recommendation from the Homelessness Working Group.

Mayor Pierson stated recommendations would be presented at the Special meeting.

Councilmember Silverstein stated the two main questions were: 1) how to best protect the health, safety and welfare of the community; and 2) what can we do to help? He stated the two questions were related but not the same. He stated part of protecting the health, safety and welfare of the community included preventing wildfires. He stated Councilmember Uhring and he had attempted to tackle a problem that was plaguing the community in Item No. 7.D.

In response to Mayor Pierson, Councilmember Silverstein stated he was talking about whether there would be a presentation before public comment. He stated the community was clamoring for the City to help with health, fire safety, and crime issues. He stated the Council could begin fleshing out the proposal in Item No. 7.D. at this meeting. He stated he did not see a reason to delay discussion of Item No. 7.D.

Mayor Pierson stated Councilmember Silverstein's presentation for Item No. 7.D. was a recitation of the entire staff report. He stated he did not see the value of spending time on the in-depth presentation.

Councilmember Silverstein stated he would like the Council vote on whether it would hear his presentation before public comment.

Mayor Pierson indicated support for bringing the proposal in Item No. 7.D. forward at a Special meeting on homelessness issues and having it studied by the City Attorney's Office.

Councilmember Farrer stated she already moved to discuss Item No. 7.D. at a Special meeting.

In response to Councilmember Uhring, Mayor Pierson stated if the motion on the floor passed the Council would discuss the proposal in Item No. 7.D. at a dedicated Special meeting.

The question was called, and the motion carried 3-2, Councilmember Silverstein and Councilmember Uhring dissenting.

City Manager Feldman stated it was up the Council to decide how to organize the speakers who signed up for Item Nos. 7.C. and 7.D.

In response to Mayor Pierson, Councilmember Silverstein recommended deciding on the speaking process before the speaker's names were read. He suggested giving speakers who signed up for both items four and a half minutes to speak.

#### CONSENSUS

By consensus, the Council determined speakers who signed up for Item Nos. 7.C. and 7.D. would have four and a half minutes to speak.

City Clerk Glaser recommended speakers who had signed up for both items state so at the beginning of their time.

Howard Rudzki stated the community wanted something similar to the proposal in Item No. 7.D. He recommended sending a proposal to the California Coastal Commission (CCC) and getting its feedback before spending too much time on the project. He stated other agencies may be obstacles. He recommended Councilmember Silverstein negotiate with other agencies.

Pamela Conley Ulich was not present at the time of the hearing.

Marissa Coughlan indicated support for scheduling a Special meeting. She stated she had interviewed people experiencing homelessness and some of them were experiencing homelessness due to extenuating circumstances while others were experiencing homelessness by choice. She stated people in motorhomes were more often experiencing homelessness by choice. She stated most of the people she interviewed needed some type of help. She stated the CCC did not know what to do about the motorhomes parked along PCH. She stated motorhomes limited access for day use visitors to the beach. She discussed an incident where a person experiencing homelessness photographed a child undressing at the beach. She encouraged the Council to schedule a Special meeting. She encouraged members of the public with personal stories to attend the Special meeting. She stated she did not want the State to set regulations for the City.

Hamish Patterson stated there were four groups categorized as homeless: 1) people experiencing homelessness without substance abuse problems who were experiencing homelessness due to extenuating circumstances; 2) people experiencing homelessness with substance abuse problems; 3) people experiencing homelessness with mental illness; and 4) criminal elements. He stated these groups



needed different resources. He stated the State was using the homelessness issue as an excuse to build more infrastructure that did not help anyone. He stated people experiencing homelessness due to circumstances should not be rehoused with people with substance abuse problems or mental illness. He stated some people experiencing homelessness were trespassing and vandalizing private and public property. He stated it was important to get the criminal element out the City. He expressed concern resources would not be appropriately distributed.

Bill Sampson indicated support for Mr. Patterson's comments. He stated some people were experiencing homelessness due to medical bills. He stated it was important not to conflate campers and people experiencing homelessness. He recommended the Council not make the City more attractive to visitors. He discussed the original opinion in *Martin v. City of Boise*. He stated overnight parking and camping may be prohibited.

Joe Patterson stated he was disgusted by the stonewalling of Councilmember Silverstein. He indicated support for scheduling a Special meeting. He stated he volunteered for organizations supporting people experiencing homelessness. He stated the County of Los Angeles and City of Los Angeles had contributed to the homelessness problem by ignoring it. He discussed Malibu Municipal Code (MMC) 9.08.090 prohibiting overnight camping. He stated MMC 9.08.090 had not been enforced for the past two years. He stated the *Martin v. City of Boise* decision was very narrow in scope and was not meant to prevent municipalities from protecting public health, safety and welfare. He stated if MMC 9.08.090 was unenforceable it needed to be amended. He indicated support for Item No. 7.D.

Joey Goodman was not present at the time of the hearing.

Scott Dittrich questioned why MMC 9.08.090 had not been enforced. He stated many things in the City were not enforced. He stated empathy for people experiencing homelessness could not overshadow the fire danger. He indicated support for scheduling a Special meeting. He stated many of the people experiencing homelessness in the City were choosing to live in a motorhome and camp. He indicated support for Item No. 7.D.

Jo Drummond indicated support for scheduling a Special meeting. She discussed recent fires in Tuna Canyon caused by people experiencing homelessness. She stated a long-term solution was needed and there was an imminent fire danger. She indicated support for Mr. Patterson's comments. She indicated support for Item No. 7.D. She stated people experiencing homelessness presented a fire danger. She stated a proposal like Item No. 7.D. was long overdue.

Lori Patterson stated she was disgusted by the stonewalling of Councilmember Silverstein. She stated the Special meeting should include a plan of how to provide services to people experiencing homelessness in a shelter. She stated the City needed to create policies for a shelter before identifying a location and size for a shelter. She stated a shelter should be approved by an initiative voted on by the

public. She stated a safe parking location should also be approved by an initiative. She stated the Council represented the tax paying citizens of Malibu. She recommended the Council hire special counsel to interpret the *Martin v. City of Boise* decision. She stated former City Attorney Christi Hogin and Best Best & Krieger had misinterpreted the *Martin v. City of Boise* decision. She recommended Mayor Pierson, Mayor Pro Tem Grisanti, and Councilmember Farrer overlook their personal feelings and seriously consider the proposal in Item No. 7.D. She stated the City streets had been overtaken by motorhomes. She stated the City should challenge the CCC assertion that the public needed access to beach parking at night.

Rosemarie Ihde indicated support for the proposal in Item No. 7.D. She discussed the fire danger posed by people camping in the mountains. She stated people experiencing homelessness needed support but they could not be left to live in encampments in the City. She stated the City did not used to have a problem with people experiencing homelessness. She stated the City should help people experiencing homelessness who wanted to work.

Lynn Norton stated she was frustrated the Council made a motion before hearing public comment. She stated the Councilmembers should have come to the meeting prepared to vote on Item No. 7.D. She questioned what information the Council still needed to make a decision. She stated Item No. 7.D. gave law enforcement more options. She indicated support for the permit program. She recommended considering a simplified version of the proposal in Item No. 7.D. She stated the Special meeting needed a specific goal. She recommended focusing on how to get people experiencing homelessness into a shelter or rehoused. She stated the permit program could provide more specific data on the homeless population.

Kraig Hill stated there was a letter online from Malibu/Lost Hills Sheriff's Station Captain Chuck Becerra indicating support Item No. 7.D.

Malibu/Lost Hills Sheriff's Station Lieutenant Braden stated the Los Angeles County Sheriff's Deputies used to regularly cite people for camping and sleeping in their cars. He stated after the *Martin v. City of Boise* decision the Los Angeles County District Attorney's Office gave direction that the Sheriff's Department could not cite people for camping and sleeping in their cars anymore. He stated that decision did not come from the City. He stated anything enforced by the Sheriff's Department needed to be supported by the District Attorney's Office. He stated across the Country people were examining the constitutionality of policing. He discussed the different groups experiencing homelessness as described by Mr. Patterson. He stated he dealt with active law enforcement and arrests in Malibu on a daily basis. He stated the Sheriff's Deputies were highly active in Malibu and the surrounding areas at night. He stated the Council and Public Safety Commission had studied the problems and what the possible solutions were. He stated the overnight parking restrictions on PCH were the result of the work of many people in the City and had been highly effective. He stated Item No. 7.D. was an excellent start. He stated people with mental illness and substance abuse problems were unlikely to apply for a permit. He stated the Los Angeles County Counsel had

reviewed the proposal in Item No. 7.D. and were unsure if there was legal standing to cite a person experiencing homelessness because they did not have a permit. He stated he wished the Sheriff's Department could go back to citing people for camping and sleeping in their cars. He stated the Volunteers on Patrol had done a tremendous job helping the Sheriff's Deputies enforce the overnight parking restrictions on PCH. He stated it was not true that nothing was enforced in Malibu. He stated the COVID-19 pandemic had caused new issues the Sheriff's Department had to respond to with its limited resources. He stated the Sheriff's Deputies did a tremendous job. He commended Councilmember Silverstein for his effort on Item No. 7.D. He stated it was important to keep emotions in check. He stated the City need to create an environment that could help people who needed it and move others along. He stated it was important to have a constitutional plan that could be enforced. He stated the public was welcome to email him to discuss these issues.

Doug Stewart indicated opposition to Item No. 7.D. He stated Item No. 7.D. was factually incorrect. He stated if Item No. 7.D. were approved it would worsen the homelessness problem in the City. He stated Ordinance Nos. 460 and 469 had already improved parking conditions on PCH. He stated the Public Safety Commission had recently recommended an additional ordinance for overnight parking restrictions near Dan Blocker Beach and Broad Beach. He stated a Coastal Development Permit had recently been granted for signs to enforce Ordinance No. 427 restricting parking of oversized vehicles. He stated creating an alternative sleeping location would allow the City to enforce the existing no camping laws and support people experiencing homelessness. He stated Laguna Beach had created an alternative sleeping location. He indicated opposition to Item No. 7.D.

Mark Baute indicated support for Lieutenant Braden's comments. He stated Item No. 7.D. was a good first draft. He stated Malibu would not see a large increase in the number people experiencing homelessness once the COVID-19 eviction moratoriums were lifted. He indicated opposition to Item No. 7.D. He recommended bringing back some elements from Item No. 7.D. He stated the City was in a competition with neighboring cities to attract and retain the best people experiencing homelessness. He recommended the Council watch the movie or read the book *Nomad Land*. He stated the City needed a new regional housing needs assessment.

Walter Goldfarb read a statement on behalf of Georgia Goldfarb. He stated Ms. Goldfarb supported Item No. 7.D. He stated people camping and parking along PCH posed a serious fire danger. He stated oversized vehicles parked along PCH may hamper evacuation efforts in the event of an emergency. He stated [pathwayshousingfirst.org](http://pathwayshousingfirst.org) offered solutions. He stated Malibu needed a more effective program.

Mayor Pierson suggested directing Interim City Attorney Cotti to review Item No. 7.D. He stated there was a process to follow. He commended Councilmember Silverstein for taking the homelessness issue seriously.

Councilmember Uhring questioned how quickly Interim City Attorney Cotti could review Item No. 7.D. He questioned who would be responsible for presenting a complete plan on how to address homelessness. He stated he was used to setting firm deadlines for projects.

Mayor Pierson stated he would like to schedule a Special meeting in the next few weeks. He stated the agenda should include analysis for the proposal in Item No. 7.D., the Homeless Working Group's recommendations and other outside speakers like Lieutenant Braden. He stated there was no point in doing something that could not be enforced.

In response to Councilmember Uhring, Mayor Pierson stated he believed Public Safety Manager Dueñas would be responsible for presenting a plan.

City Manager Feldman stated before the COVID-19 pandemic the Council had a Special meeting on January 29, 2020 to discuss issues related to homelessness and provided direction to staff. She stated staff had done research per the direction from Council and was prepared to present a written and verbal report to the Council. She stated there were new issues that had come up and staff would work to address those as well.

Councilmember Uhring stated he believed the population of people experiencing homelessness was going to increase once the COVID-19 eviction moratoriums were lifted. He stated if the City had a plan beyond Item No. 7.D. the details needed to be presented to the public.

Mayor Pro Tem Grisanti suggested Councilmember Silverstein meet with CCC staff or other municipalities to discuss the proposal in Item No. 7.D.

In response to Mayor Pro Tem Grisanti, Councilmember Silverstein stated the Los Angeles County Counsel refused to speak with him. He stated a junior lawyer in the Los Angeles County Counsel's Office had stated the Office was unable to give legal advice to anyone its client. He stated that was a very unusual response. He stated he did not believe the City was purposely avoiding enforcing the laws. He stated the *Martin v. City of Boise* decision was being used by politicians in the County of Los Angeles to pursue a political agenda that was not related to what the opinion said. He stated people were using a purposeful misconstruction of the *Martin v. City of Boise* decision to force the creation of shelters, safe parking locations and other benefits for people experiencing homelessness. He stated substance abuse and mental illness were huge contributors to the homelessness problem. He stated people with substance abuse problems or mental illness could not be helped unless they wanted to be helped. He stated these people would take resources that would enable them to continue on their path without helping them recover. He stated government could not legally compel people with mental illness to get help.

Mayor Pro Tem Grisanti stated he was glad some attorneys in the community believed there were elements of the proposal in Item No. 7.D. that could be used.

Councilmember Silverstein stated some of the public speakers were attorneys with their own agendas. He stated he would like to discuss the legal merits of the proposal in Item No. 7.D. He stated it was a matter of education and that was why he had prepared a presentation.

Mayor Pierson stated Councilmember Silverstein represented the City as a Councilmember and was not the City Attorney. He stated an ordinance needed to be legally vetted by the City Attorney.

Councilmember Silverstein stated the City had not gotten an interpretation of the *Martin v. City of Boise* decision that was not biased by Los Angeles County's political agenda. He stated the proposal in Item No. 7.D. was based on what the City could do under the *Martin v. City of Boise* decision.

Mayor Pierson recommended getting more information on what the legal options were that the Sheriff's Department could enforce.

Councilmember Silverstein stated the City paid approximately \$8,000,000 a year for law enforcement services and had a contractual right to have any constitutional law enforced. He stated the City had an existing law that may be considered unconstitutional. He stated he proposed to approve a law that had never been deemed unconstitutional and followed the template of the *Martin v. City of Boise* decision. He stated the County could be liable for failing to provide law enforcement services to enforce the law. He stated people made different decisions in the real world than in hypothetical situations. He stated the City did not need the approval of the CCC to weaken an existing statute.

Councilmember Farrer stated people would like stronger parking restrictions on PCH, but the 12:00 a.m.-2:00 a.m. and 2:00 a.m.-4:00 a.m. timeframes were what would be approved by the CCC for the County of Los Angeles and the City. She stated these overnight parking restrictions were already in effect. She stated she did not want to put time and staff resources into an ordinance that may be struck down by the CCC or set the City up for a lawsuit. She stated there was value in working out the details before approving an ordinance. She recommended setting a date for the Special meeting.

#### MOTION

Councilmember Farrer moved, and Mayor Pro Tem Grisanti seconded a motion to direct staff to schedule a Special City Council meeting to consider: 1) a legal analysis of the proposal to amend the Malibu Municipal Code to reduce overnight parking on Pacific Coast Highway and otherwise regulate the time and location of camping, lodging or sleeping in public; and 2) follow-up to Council direction to staff at its January 29, 2020 meeting.

In response to Mayor Pierson, City Manager Feldman recommended scheduling the meeting towards the end of February 2021 so staff would have time to prepare the reports and perform the necessary analysis. She stated February 25, 2021 and March 4, 2021 were available.

Mayor Pierson indicated support for February 25, 2021.

Councilmember Farrer stated February 25, 2021 worked for her.

Councilmember Silverstein stated he could make any date work.

Councilmember Uhring questioned what the Council and the public would see at the Special meeting.

Mayor Pierson stated the Homelessness Working Group had a plan that would be presented. He stated Public Safety Manager Dueñas oversaw the Homelessness Working Group.

In response to Councilmember Uhring, City Manager Feldman stated there were a number of people involved in the efforts to deal with issues related to homelessness. She stated people working on these issues for the City included Public Safety Manager Dueñas, staff from The People Concern, the COG Homeless Outreach Coordinator Gabriel Graham and Sheriff's Department staff. She stated there was also the Homelessness Working Group and other stakeholder groups in the community. She stated she believed there would need to be a presentation from all of those groups. She stated this could not be solved by one staff member.

Councilmember Uhring stated there needed to be a detailed plan from the City and someone needed to be the point person. He stated the City needed to move forward.

Mayor Pierson stated it may take more than one meeting and the public needed the opportunity to provide input.

Councilmember Uhring stated the City needed to give the public detailed options.

Mayor Pierson stated the Council would also need to provide feedback on the direction it wanted to go in.

#### CONSENSUS

By consensus, the Council selected February 25, 2021 as the date for a Special meeting.

In response to Councilmember Uhring, Mayor Pierson stated he wanted to see a plan on how to deal with the homelessness situation.

Councilmember Uhring questioned who was responsible for delivery of the plan. He stated the public needed to know exactly what the options were.

Councilmember Silverstein expressed concern the Council was conflating the issues of providing protection to the community and providing services to people experiencing homelessness. He stated the proposal in Item No. 7.D. focused exclusively on protecting the community. He stated if the safety issues and services were treated as one item the Council would not be able to address the safety issues because the community would not be able to come together to make a decision on how to support people experiencing homelessness.

Mayor Pierson stated the Councilmembers were responsible for making the hard decisions for the City.

Councilmember Silverstein stated in addition to discussion of services and shelters the Special meeting also need to address health, safety, and welfare. He stated every day the City did not have something enforceable in place to protect the community was another day the community could be harmed. He stated the City had delayed long enough.

Mayor Pierson stated no one was delaying anything. He stated it was a complicated issue. He stated the City should not bring forward an ordinance that was unenforceable or would result in litigation.

Councilmember Silverstein stated Mayor Pierson had prejudged the proposal in Item No. 7.D.

Mayor Pierson stated it was time to move forward and there was a plan to do so.

Lieutenant Braden stated the energy of Councilmembers Silverstein and Uhring energy was a positive thing and it was important to work together. He stated he agreed with Councilmember Uhring that the City should discuss a detailed plan.

Mayor Pierson stated it was time to move forward and the topic would be discussed at the Special meeting.

In response to Councilmember Silverstein, Interim City Attorney Cotti stated the Mayor had the authority to end discussion and call for a vote on the motion.

The question was called, and the motion carried 4-1, Councilmember Silverstein dissenting.

RECESS      At 7:50 p.m., Mayor Pierson recessed the meeting. The meeting reconvened at 7:55 p.m. with all Councilmembers present.

Item Nos. 7.E. and 7.F. were heard concurrently.

E.      Council Policy Review and Amendments to City Council Policy #8 (Mayor Pro Tem Grisanti) (Continued from January 11, 2021)

Recommended Action: At the request of Mayor Pro Tem Grisanti, 1) Provide direction to the City Council Policy Review Ad Hoc Committee on a priority list for review of current Council Policies; and 2) Consider amendments to City Council Policy #8.

F. Proposal to Instill Transparency, Accountability and Ethics in All Aspects of Malibu's City Government (Councilmembers Silverstein and Uhring) (Continued from January 11, 2021)

Recommended Action: At the request of City Councilmembers Silverstein and Uhring, 1) Adopt Transparency, Accountability, and Ethics Policy; 2) Appoint City Councilmembers Uhring and Silverstein to City Council Policy Review Ad Hoc Committee; 3) Amend City Council Policy No. 8 to provide City Councilmembers unconstrained inspection and information rights; 4) Amend City Council Policy No. 28 to provide City Council control over the Agenda for meetings of City Council; 5) Schedule Semi-Annual Performance Evaluation of City Manager, and discuss and vote on whether the Performance Evaluation shall be conducted transparently in a Public Session or secretly in a Closed Session; 6) Establish a True Document "Retention" (as opposed to "Destruction") Policy by amending City Council Policy No. 51 and Administrative Directive 5.1; 7) Create Special Independent Investigation Subcommittee to investigate the allegations set forth in the Affidavit of Jefferson Wagner and related matters; 8) Consider reforms to City Council Meeting process that are inviting to and respectful of the residents; and 9) Consider other possible initiatives for Government Reform.

MOTION Mayor Pierson moved, and Councilmember Farrer seconded a motion to refer to the City Council Policy Review Ad Hoc Committee review of current Council policies and the proposal to instill transparency, accountability and ethics in all aspects of Malibu's City government.

Councilmember Silverstein questioned why the Council was skipping the presentation before public comment.

Mayor Pierson stated the staff report was a public document and the public had a chance to see it.

Councilmember Silverstein stated all staff reports were public documents, but the Council always received a presentation first. He questioned why Mayor Pierson was changing the rules.

Mayor Pierson stated the presentation was 75 slides long.

Councilmember Silverstein stated he was not going to do the 75-slide presentation. He stated he had questioned if there was going to be any presentation at all.

Mayor Pierson stated he was trying to move forward. He stated these items needed to go to the City Council Policy Review Ad Hoc Committee. He stated he agreed the policies needed work.



In response to Councilmember Silverstein, Interim City Attorney Cotti stated Mayor Pierson was the parliamentarian of the meeting and controlled the meeting unless his actions were overruled by a majority vote of the Council.

In response to City Clerk Glaser, Mayor Pierson stated speakers who had signed up for both items should get four and a half minutes to speak.

In response to Mayor Pierson, City Clerk Glaser stated there were 13 speakers for Item No. 7.E. and 10 additional speakers for Item No. 7.F.

Pamela Conley Ulich was not present at the time of the meeting.

Marissa Coughlan indicated support for sending these items to the City Council Policy Review Ad Hoc Committee. She expressed concern Councilmembers were not directing staff to draft items to be brought to the Council. She stated the Councilmembers already had unrestrained access to public information. She stated she had always received information she requested from staff. She stated the proposals for semi-annual employment evaluations were targeted at City Manager Feldman. She expressed concern the City would not be able to attract a new City Manager. She stated every public agency had a record destruction policy because it could not afford retention of all documents before electronic document storage became more affordable. She stated the independent investigation should not be conducted by the Council or a committee of residents.

Rosemarie Ihde was not present at the time of the hearing.

Lynn Norton stated there were a lot of issues dividing the Council. She recommended the Council focus tonight on the areas where all the Councilmembers could agree. She stated she hoped all the Councilmembers would want to investigate what happened when former Councilmembers Jefferson Wagner's house was raided. She recommended creating a policy that staff should not delete emails. She indicated support for town hall meetings that allowed for more public input. She recommended the Council request recommendations from the public on how to improve public participation in public meetings.

Kraig Hill recommended the Councilmembers focus on collaboration. He stated the Council should take a fresh look at transparency. He stated these matters should be considered as part of an extended public process. He stated the lack of a presentation on this item contributed to a lack of transparency. He stated Item No. 7.E. did not present a rationale for the proposed changes and expressed concern the proposed changes would reduce transparency and lead to slower decisions. He indicated support for opening up the flow of information. He indicated support for the City maintaining emails beyond 30 days and providing emails more readily to the public. He stated the Council should have more control over the agenda. He suggested the Council approve agendas two weeks in advance. He stated the Councilmembers should have equal access to information. He indicated support for allowing time deferrals during public comment. He indicated support for

allowing public speakers to turn on their cameras during virtual meetings. He recommended the Council look for members of the public raising their hands in Zoom.

Ryan Embree was not present at the time of the hearing.

Bill Sampson stated he never wanted a STR ordinance and had requested Councilmembers and City staff enforce the existing zoning ordinance that prohibited STRs in residential zones. He stated the City had a problem with opacity. He discussed apparent tensions between Councilmember Farrer and Councilmember Silverstein. He stated Mayor Pro Tem Grisanti had taken the Mayor Pro Tem position that was rightfully Councilmember Silverstein's. He indicated opposition to Item No. 7.E. He stated sunlight was a powerful disinfectant. He stated STR permits were being issued for applications with incorrect information. He stated Item No. 7.F. was a good proposal and Item No. 7.E. was not a reform. He stated the Council needed to respect the residents.

Joe Patterson stated government transparency was expected by the public. He stated city government was the lowest level of government but it was very important to the residents. He encouraged the Council to engage the public and make public processes more transparent. He indicated support for Item No. 7.F. and opposition to Item No. 7.E. He stated it was important to the residents to know what the City was doing.

Scott Dittrich thanked the Council and City staff for its work. He stated Item No. 7.E. was on the right track. He recommended forming a committee of citizens to make policy recommendations. He stated the residents expected transparency and had not been getting it. He stated some items were considered in Closed Session that could be heard in open session. He stated City Manager Feldman's refusal to have a recorded conversation with Councilmember Silverstein created the impression she was hiding something. He indicated support for Item No. 7.F. He stated the City had a reputation for not enforcing many things, including STR regulations. He questioned what would happen to STR operators who had not applied for a permit by January 15, 2021.

Jo Drummond indicated support for Item No. 7.F. She stated not having a presentation for this item demonstrated a lack of transparency. She stated the Big Rock homeowners association had been requesting records related to the Big Rock Assessment District. She stated she had difficulties obtaining information and records. She stated the City should be committed to true transparency.

Georgia Goldfarb discussed the importance of transparency, accountability, and ethics. She stated the City had not been upholding these values. She discussed a proposal to sell some City-owned property to the Fire Department, poor staff follow-up on the application to the California Coastal Commission for a pesticide ban, and the decision to allow Southern California Edison (SCE) to build a temporary work lot that damaged an environmentally sensitive habitat area. She

stated the City demonstrated incompetency during the Woolsey Fire. She indicated support for Item No. 7.F. and opposition to Item No. 7.E.

Howard Rudzki stated Item No. 7.E. outlined a procedure to get information. He stated he had been able to get whatever documents or information he requested from the City. He recommended the Council unanimously hire an independent firm to investigate the Wagner Affidavit.

Lori Patterson was not present at the time of the hearing.

Mark Baute indicated support for Item No. 7.E. He stated Item No. 7.E. was about professionalism. He indicated support for an independent investigation of the Wagner Affidavit. He discussed his involvement in the Huizar litigation. He stated he had experience cross-examining other lawyers. He stated Item No. 7.F. was too long and did not add anything of value. He stated it appeared Councilmember Silverstein was expelled from his law firm after involving his firm in a sunken treasure fraud case. He stated Councilmember Silverstein's law firm was sued for racketeering. He stated it only took 20 voters to sign a recall petition and 2,200 voters to recall Councilmember Silverstein.

Michael White was not present at the time of the hearing.

Robert Brinkman was not present at the time of the hearing.

Daphne Anneet was not present at the time of the hearing.

Mario Sandoval, Mountains Recreation and Conservation Authority (MRCA), stated he was speaking on behalf of Mr. Edmiston. He indicated support for Item No. 7.F. He stated he did not support the comments that impinged the integrity of City Manager Feldman or former City Attorney Christi Hogin. He stated although the MRCA often disagreed with the City it did not believe City staff operated in an underhanded manner.

Hamish Patterson indicated support for transparency. He stated there needed to be some explanation of why the COG appointed the representative to the Santa Monica Bay Restoration Commission. He expressed concern the City did not have enough independence from other agencies. He stated Pepperdine University had influence in the City despite not being part of the City.

Barry Haldeman thanked Mayor Pierson for his appointment to the Cultural Arts Commission. He stated Councilmember Silverstein had made a number of allegations of improper conduct by City officials based on the Wagner Affidavit. He stated the majority of the allegations in the Wagner Affidavit were unspecific hearsay that needed to be investigated by an outside law firm.

Joey Goodman was not present at the time of the hearing.

Lance Simmens stated Councilmember Silverstein's representation of the homelessness issue was inaccurate. He stated he had served as Assistant Executive Director of the United States Conference of Mayors for six years and did extensive work on homelessness issues. He stated proposals to address homelessness issues needed to be professionally vetted. He discussed the importance of decorum.

Walter Zelman indicated support for Item No. 7.F. He stated he had served as Executive Director of California Common Cause for 12 years. He stated he had worked on similar transparency measures. He stated he had not had time to review the proposal in detail but it seemed to be a good one. He stated the Council should lean towards more transparency rather than less. He stated more transparency would reduce the likelihood of Councilmembers or staff behaving improperly or in ways that would undermine public confidence. He recommended the Council review the proposal in detail and bring in outside help if needed.

In response to Mayor Pierson, Interim City Attorney Cotti stated he had not heard back from the Los Angeles County District Attorney regarding the Wagner Affidavit.

Mayor Pierson stated he would like Interim City Attorney Cotti to reach out to the Los Angeles County District Attorney again. He indicated support for an independent investigation of the claims in the Wagner Affidavit.

Interim City Attorney Cotti stated the Council could take additional action related to the Wagner Affidavit and did not have to wait for the District Attorney.

Mayor Pierson indicated support for an independent investigation of the claims in the Wagner Affidavit.

Councilmember Silverstein indicated support for an independent investigation of the claims in the Wagner Affidavit. He stated he would have proposed an independent investigation from the beginning, but he was concerned about the high costs of hiring a qualified law firm. He stated he had experience in this area and could investigate the claims for free for the City. He stated he would be happy to have someone else conduct the investigation. He stated the City would need to commit to spending hundreds of thousands of dollars to hire a qualified firm. He stated his heroes were people who fought for what was right. He stated it was hard to fight for what was right and it was easier to get along. He stated he could not bring himself to get along when he saw injustice. He stated sending these items to the City Council Policy Review Ad Hoc Committee was like sending them off to the Sahara Desert. He stated members of the public were clamoring for reform, accountability, and ethics. He stated the Council wanted to send these items off to a committee comprised of Councilmembers the public had concerns about. He stated some of the public speakers made comments that were inaccurate. He stated the Public Records Act (PRA) included many exemptions and it was not clear to the public what records were being withheld under those exemptions. He stated as a Councilmember he still did not know what records were being withheld under

PRA exemptions. He stated if the City was operating transparently none of this would be necessary. He stated sending these items to the City Council Policy Review Ad Hoc Committee was whitewashing.

Mayor Pierson stated no one was trying to whitewash anything. He stated he agreed with the need for more transparency. He stated there was a public process to be followed.

Councilmember Silverstein stated the public process had excluded him from all but one committee appointment.

Councilmember Uhring recommended setting a date for the City Council Policy Review Ad Hoc Committee to bring back recommendations. He stated it was important to move the process forward.

In response to Mayor Pierson, Councilmember Farrer stated she wanted to work with Interim City Attorney Cotti and see more information on policies in other cities. She suggested bringing back recommendations to the Council in 30 days.

Mayor Pro Tem Grisanti stated he could commit to bringing back recommendations to the Council in 30 days.

In response to Councilmember Uhring, Councilmember Farrer stated the City Council Policy Review Ad Hoc Committee would bring back a set of draft policies. She stated she had been ready to meet at all scheduled meetings of the City Council Policy Review Ad Hoc Committee, but the other committee member had not been present.

Councilmember Uhring stated he wanted to know what the Council would get from the City Council Policy Review Ad Hoc Committee and when the Council would get that information.

Mayor Pro Tem Grisanti stated the Council could expect to see an edited version of some of the policies in Item No. 7.F.

In response to Councilmember Uhring, Councilmember Farrer stated the City Council Policy Review Ad Hoc Committee would come back with draft policies in 30 days. She stated the Council voted as a body.

Councilmember Uhring stated he wanted to know how effective the City Council Policy Review Ad Hoc Committee would be.

Councilmember Farrer stated the City Council Policy Review Ad Hoc Committee could bring back an item at the February 22, 2021 Council meeting.

City Manager Feldman recommended the City Council Policy Review Ad Hoc Committee target the March 8, 2021 Council meeting. She stated the agenda for the February 22, 2021 Council meeting would go out in a few weeks.

Councilmember Farrer indicated support for bringing back an item at the March 8, 2021 Council meeting.

In response to Mayor Pierson, Councilmember Farrer stated the City had an existing set of policies that had been created over the years. She stated Mayor Pro Tem Grisanti and she wanted to start with a blank document and create a new set of policies.

Councilmember Silverstein recommended trusting the City Council Policy Review Ad Hoc Committee to bring back recommendations. He stated the community would be able to judge the recommended policies for itself.

In response to Councilmember Farrer, Councilmember Uhring stated it did not matter what other agencies did, what mattered was what was right for Malibu.

Councilmember Silverstein stated he was not aware of any municipality that had a policy identical to that proposed in Item No. 7.F.

Councilmember Farrer stated the Santa Monica Bay Restoration Commission appointment was made by the COG and since Malibu was the only coastal city in the COG it usually nominated a representative from Malibu.

#### FRIENDLY AMENDMENT

Councilmember Farrer moved to direct to the City Council Policy Review Ad Hoc Committee to present its recommendations at the March 8, 2021 Council meeting. The seconder accepted the amendment.

The question was called, and the motion carried 4-1, Councilmember Silverstein dissenting.

Mayor Pierson requested Interim City Attorney Cotti reach out to the Los Angeles County District Attorney to get an update on any investigation into the Wagner Affidavit. He requested support to bring an item back for an independent investigation into the Wagner Affidavit.

Councilmember Silverstein stated the Los Angeles County District Attorney's Office was not the only law enforcement agency that had the Wagner Affidavit.

Mayor Pierson stated it was great other law enforcement agencies had the Wagner Affidavit.

In response to Interim City Attorney Cotti, Mayor Pierson stated he was ready to direct staff to bring back proposals from qualified law firms to investigate the claims in the Wagner Affidavit. He questioned if the Council wanted to have more discussion.

In response to Councilmember Silverstein, Interim City Attorney Cotti stated the City did not need to have a request for proposals since this was a specialized service.

He stated staff would need direction of which firms to contact. City Manager Feldman stated the law firm that represented the City in litigation with SCE after the Woolsey Fire was initially hired by other municipalities and then the City joined that litigation.

Councilmember Silverstein suggested targeting specific firms.

In response to Mayor Pierson, Interim City Attorney Cotti stated the Councilmembers could provide him with the names of specific firms.

**MOTION** Mayor Pierson moved, and Councilmember Uhring seconded a motion determining it would research law firms to invite to make a proposal to investigate the Wager Affidavit and provide its suggestions to Interim City Attorney Cotti to coordinate the process. The question was called, and the motion carried unanimously.

#### **ADJOURNMENT**

At 9:20 p.m., Mayor Pierson adjourned the meeting.

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  
JANUARY 29, 2021  
TELECONFERENCED - VARIOUS LOCATIONS  
4:00 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 4:00 p.m.

**ROLL CALL**

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

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

ALSO PRESENT: John Cotti, Interim City Attorney; Reva Feldman, City Manager; and Kelsey Pettijohn, Deputy City Clerk

**PUBLIC COMMENT ON CLOSED SESSION**

Scott Dittrich stated there was too much divisiveness in the City. He stated a solution needed to be found. He stated if City Manager Feldman was leaving the City, an elected mayor should be considered.

**RECESS TO CLOSED SESSION**

At 4:05 p.m., on the advice of counsel and based on existing facts and circumstances, the Council recessed to Closed Session to discuss the following items listed on the Closed Session agenda:

**Conference with Legal Counsel – Anticipated litigation**

1. Significant exposure to litigation pursuant to Government Code Section 54956.9(d)(2)  
Number of Cases: 1

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

1. Public Employee Performance Evaluation  
Title: City Manager
2. Public Employee Discipline/Dismissal/Release



## **CLOSED SESSION REPORT**

Interim City Attorney Cotti reported that the Special meeting convened at 4:00 p.m., after which time the City Council recessed to a Closed Session pursuant to Government Code Sections 54956.9(d)(2) and 54957, with all Councilmembers present. He stated the Council took no reportable action.

## **ADJOURNMENT**

MOTION At 5:58 p.m., Councilmember Uhring moved, and Mayor Pro Tem Grisanti seconded a motion to adjourn the meeting. The question was called, and the motion carried 4-0, Councilmember Silverstein absent.

Approved and adopted by the City Council of the  
City of Malibu on \_\_\_\_\_, 2021.

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MIKKE PIERSON, Mayor

ATTEST:

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HEATHER GLASER, City Clerk  
(seal)