



# Council Agenda Report

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

Prepared by: Heather Glaser, City Clerk

Approved by: Reva Feldman, City Manager

Date prepared: June 8, 2020 Meeting date: June 22, 2020

Subject: Approval of Minutes

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RECOMMENDED ACTION: Approve the minutes for the May 26, 2020 Malibu City Council Regular meeting and the May 29, 2020 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 2019-2020. This project is part of normal staff operations.

DISCUSSION: Staff has prepared draft minutes for the meetings of May 26, 2020 and May 29, 2020.

ATTACHMENTS:

1. May 26, 2020 Malibu City Council Regular meeting minutes
2. May 29, 2020 Malibu City Council Special meeting minutes

MINUTES  
MALIBU CITY COUNCIL  
REGULAR MEETING  
MAY 26, 2020  
TELECONFERENCED - VARIOUS LOCATIONS  
6:30 P.M.

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

**MEETING CALL TO ORDER**

Mayor Farrer called the meeting to order at 4:34 p.m.

**PUBLIC COMMENT ON CLOSED SESSION**

Bruce Silverstein discussed his opposition to the proposed settlement agreement with Third Point Land Company. He stated the proposed settlement provided nothing to the City. He stated plaintiff was not entitled to its request for inclusion in Civic Center Water Treatment Facility (CCWTF) Phase Two.

Patt Healy, on behalf of the Malibu Coalition for Slow Growth, requested the Council deny the proposed settlement with Third Point Land Company. She stated the Malibu Bay Company had voluntarily asked to be excluded from CCWTF Phase One. She stated Third Point Land Company was trying to force the City to allow its inclusion in CCWTF Phase Two. She stated the parcel should be kept as open space.

Scott Dittrich was not present at the time of the hearing.

**RECESS TO CLOSED SESSION**

At 4:40 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 – Existing litigation pursuant to Government Code Section 54956.9(d)(1):**

1. Third Point Land Company LLC v. City of Malibu  
Los Angeles County Superior Court Case No. 198MCP00565

**Conference with Legal Counsel – Anticipated litigation**

2. Significant exposure to litigation pursuant to Government Code Section 54956.9(d)(2)  
Number of Cases: 1  
Letter dated October 25, 2019, from Milton Grimes regarding threat of litigation under California Voting Rights Act of 2001

## **REGULAR SESSION CALL TO ORDER**

Mayor Farrer called the meeting to order at 6:35 p.m.

## **ROLL CALL**

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

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

ALSO PRESENT: Christi Hogin, City Attorney; Trevor Rusin, Assistant City Manager; Reva Feldman, City Manager; Lisa Soghor, Assistant City Manager; Heather Glaser, City Clerk; Jesse Bobbett, Community Services Director; Yolanda Bundy, Environmental Sustainability Director; Bonnie Blue, Planning Director; Rob DuBoux, Public Works Director; Kelsey Pettijohn, Deputy City Clerk; and Susan Dueñas, Public Safety Manager

## **APPROVAL OF AGENDA**

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

## **REPORT ON POSTING OF AGENDA**

Deputy City Clerk Pettijohn reported that the agenda for the meeting was properly posted on May 14, 2020.

## **CLOSED SESSION REPORT**

City Attorney Hogin reported that the Regular meeting convened at 4:34 p.m. and, after hearing public comment, the City Council recessed to a Closed Session pursuant to Government Code Section 54956.9(d)(1) and 54956.9(d)(2), with all Councilmembers present. She stated the Council discussed the items listed on the Closed Session agenda and took no reportable action.

## **ITEM 1 CEREMONIAL/PRESENTATIONS**

### **A. Staff Update on COVID-19**

City Manager Feldman stated the Los Angeles County Department of Public Health (County Public Health) had reported 35 cases of COVID-19 in the City. She stated County Public Health had issued new orders to allow additional opening throughout Los Angeles County. She stated the City Emergency Operation Center (EOC) was operating with staff working seven days a week, but messaging from the City would only go out as new information became available. She stated the County of Los Angeles had reopened beach parking lots. She stated extra Los Angeles County

Sheriff's Department Deputies had been hired for Malibu during the Memorial Day weekend, which had been funded by Los Angeles County Supervisor Sheila Kuehl's office. She stated she had hired two dedicated California Highway Patrol (CHP) officers for the City during Memorial Day weekend. She thanked the Volunteers on Patrol (VOP) who issued 1,165 parking tickets over the Memorial Day weekend. She stated 40 volunteers from the County of Los Angeles Disaster Service Workers were in the City over the Memorial Day weekend explaining COVID-19 pandemic protocols to visitors. She stated City parks were opened on a limited basis, but facilities, fields, playgrounds, and the Malibu High School pool remained closed. She reminded the community and visitors about requirements to maintain physical distancing and wear face coverings. She thanked the Public Works Department for trash pick-up in the City along Pacific Coast Highway. She reminded the community about the City's virtual recreation program. She stated the City was working on a way to assist businesses as they started to reopen. She stated stage one of reopening City Hall would be by appointment only. She stated permits could be obtained and paid for online and electronic plan check was also available.

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

Bruce Silverstein indicated opposition to the City making special exceptions for one person to be included in the Woolsey Fire fee waiver program.

Colin Drummond discussed the need for backup generators for water supply to the Big Rock area during a disaster or Public Safety Power Shutoff (PSPS). He discussed the history of fires that had impacted the area. He stated 30 homes in the area had undergone a Home Ignition Zone Assessment. He discussed the fire safety measures the area had taken. He requested the City contribute to fundraising for generators.

Hashi Clark stated Universal Waste Systems was now picking up all three types of trash with one truck. She questioned where the contents of blue bins were going, what exactly was happening to trash and whether the City had been notified of the change.

Bill Sampson requested flags be lowered to half-staff in honor of Miles Davis. He discussed traffic and noise in the City. He stated the Los Angeles County Sheriff's Department was unable to stop street racing on Pacific Coast Highway. He indicated support for the City having its own police.

Zuma Dogg was not present at the time of the hearing.

Kraig Hill discussed fire preparedness in eastern Malibu. He requested the Council start a grant program to make water supply available to areas like Big Rock during a PSPS.

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

Hamish Patterson stated the Council and City staff had taken an oath to uphold and

defend the Constitution. He stated the Council had abdicated its constitutional duties to County Public Health Director Dr. Barbara Ferrer. He stated she was neither a medical doctor nor an elected official. He stated he blamed City staff and the Council for increased rates of suicide, alcoholism, domestic violence, and depression during the COVID-19 pandemic.

Kent Ko commended City staff and the Council for its work during the COVID-19 pandemic. He discussed his previous experience with Coronavirus. He discussed the mandatory mask requirement and requested residents be sent 14 masks per week. He discussed the importance of temperature checks at essential businesses. He suggested the use of stickers to identify persons entering the City.

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

City Manager Feldman stated progress on the temporary skate park was continuing on schedule. She stated repairs to the wooden fence damaged by the Woolsey Fire at Charmlee Wilderness Park were continuing. She stated the Public Works Department was working on weed abatement throughout the City. She encouraged the community to make sure necessary brush clearance was done ahead of fire season. She stated the third Woolsey Fire rebuild had been completed. She stated the City had issued 102 Woolsey Fire rebuild permits. She stated an item on short-term rentals had been scheduled to be considered by the Planning Commission on March 30, 2020, but the meeting had been cancelled due to the COVID-19 pandemic. She stated staff was ready to reschedule the item as soon as in-person meetings could be held again. She stated grant-funded City projects were moving forward as scheduled except for any portion of the process that required community meetings. She stated the Coastal Vulnerability Assessment project was moving forward. She requested the community send the City any historical photos of coastal storms in Malibu.

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

Councilmember Mullen stated he had spoken with the City Manager about ways to assist restaurants in utilizing outdoor seating as things began to reopen. He stated the City was following the guidance of the County in respect to the COVID-19 pandemic.

In response to Councilmember Mullen, City Manager Feldman stated she did not have an update on when in-person gatherings of a significant size would be allowed again. She stated the latest order allowed religious services at a very limited capacity.

Councilmember Mullen stated short-term rentals needed to be addressed when the Council could meet in-person. He discussed generators for the Big Rock area.

In response to Councilmember Mullen, City Manager Feldman stated a generator for the Big Rock area needed to be placed on County of Los Angeles property and

there were issues with the City funding the project. She stated the Council could discuss the matter further at its June 8, 2020 Public Hearing on the Proposed Budget for Fiscal Year 2020-2021.

Councilmember Peak indicated support for assisting the Big Rock area in being more fire resilient. He expressed appreciation for the community respecting the need to wear face coverings and maintain physical distancing.

Councilmember Wagner thanked Ms. Clark for her comments and stated the City should look into how trash was being processed and whether homeowners were being charged fairly. He discussed by-district elections.

Mayor Pro Tem Pierson discussed fire protection for not only the Big Rock area but all of Malibu. He discussed trash collection differences between the two haulers working within the City. He discussed short-term rentals, homelessness in the City, and crowds in the City during the COVID-19 pandemic. He stated he spoke with City of Los Angeles Mayor Garcetti and County Public Health Director Dr. Barbara Ferrer about coming up with a separate set of guidelines for allowing restaurants with available outdoor seating to reopen.

At 7:29 p.m., Councilmember Wagner left the screen.

In response to Mayor Pro Tem Pierson, Planning Director Blue discussed 5G cell service in the City.

At 7:30 p.m., Councilmember Wagner returned to the screen and Councilmember Peak left the screen.

Planning Director Blue stated the Federal government had preempted local governments' ability to regulate radio frequency emissions associated with telecommunication facilities.

At 7:31 p.m., Councilmember Peak returned to the screen.

Mayor Pro Tem Pierson discussed the possibility of extending the Woolsey Fire rebuild fee waiver program.

In response to Mayor Pro Tem Pierson, City Manager Feldman stated she would bring information to the Council about the number of residents still working with insurance companies over payouts to rebuild after the Woolsey Fire.

Mayor Pro Tem Pierson discussed slow streets, the fee for view preservation, and the progress of work at Charmlee Wilderness Park being funded by grants.

In response to Mayor Pro Tem Pierson, Planning Director Blue stated accessory dwelling units could be processed as the equivalent of a second residential dwelling unit. She stated the timeline for processing was 60 days from a complete

application. She stated accessory dwelling units were subject to the total development square footage for a property.

Mayor Pro Tem Pierson stated Bayer had agreed to an \$8 billion-dollar settlement for 125,000 lawsuits related to Roundup.

Mayor Farrer thanked City Manager Feldman and Public Safety Manager Dueñas for their work with the Sheriff's Department, County of Los Angeles, California State Parks, and Los Angeles County Department of Beaches and Harbors for a smooth Memorial Day weekend. She thanked VOP, the Community Emergency Response Team (CERT), County of Los Angeles Disaster Service Workers, the Public Works Department, and CHP. She stated Mayor Pro Tem Pierson and she had participated in many briefings with City of Los Angeles Mayor Garcetti and other Los Angeles County area mayors and elected officials, as well as University of Southern California (USC) Sol Price School of Public Policy webinars. She stated Mayor Pro Tem Pierson, City Manager Feldman and she attended the Las Virgenes-Malibu Council of Governments (COG) meeting. She discussed presenting the third certificate of occupancy for Woolsey Fire rebuilds. She stated she, Mayor Pro Tem Pierson and City Manager Feldman went to the Los Angeles County Fire Department, Lifeguard Division at Zuma Beach to thank them in advance for the work they would do over the summer. She indicated support for pursuing grant funds for generators in the Big Rock area and as many places as possible throughout the City.

In response to Mayor Farrer, Environmental Sustainability Director Bundy stated the City was coordinating with solid waste haulers to ensure the health and safety of the community. She stated the State had temporarily allowed solid waste haulers to consolidate trash collection while recycling facilities were closed during the COVID-19 pandemic. She stated the information was on the City's website. She stated the City issued permits for solid waste hauling within the City but did not operate any trash or recycling services. She stated contracts and agreements with haulers were done through the County of Los Angeles.

Mayor Farrer stated anyone interested in homelessness issues in the City could read the minutes of the January 29, 2020 City Council Special meeting regarding only that topic. She discussed grant-funded projects done by the City. She requested the community send the City any historical photos of coastal storms in Malibu.

### **ITEM 3      CONSENT CALENDAR**

**MOTION**      Councilmember Peak moved and Mayor Pro Tem Pierson seconded a motion to approve the Consent Calendar. The question was called and the motion carried unanimously.

The Consent Calendar consisted of the following items:

A.      Previously Discussed Items

None.

B. New Items

1. Waive Further Reading

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

2. Approve Warrants

Recommended Action: Allow and approve warrant demand numbers 60200-60361 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. 660 in the amount of the warrant appearing opposite their names, for the purposes stated on the respective demands in a total amount of \$2,029,041.08. City of Malibu payroll check number 6101 and ACH deposits were issued in the amount of \$208,602.06.

3. Approval of Minutes

Recommended Action: Approve the minutes for the April 27, 2020 Malibu City Council Regular meeting and April 29, 2020 Malibu City Council Special meeting.

4. Civic Center Way Storm Drain Repair Project Completion and Acceptance of Work

Recommended Action: 1) Accept the work performed by GMZ Engineering, Inc. for the Civic Center Way Storm Drain Repair Project (Specification No. 2082) as complete; and 2) Authorize the Public Works Director to submit for recordation a Notice of Completion.

5. Legacy Park Bench Refurbishment Project Completion and Acceptance of Work

Recommended Action: 1) Accept the work performed by JEC, Inc. for the Legacy Park Bench Refurbishment Project (Specification No. 2080) as complete; and 2) Authorize the Public Works Director to submit for recordation a Notice of Completion.

6. Water Bottle Filling Stations Project Completion and Acceptance of Work

Recommended Action: 1) Accept the work performed by Zusser Company, Inc. for the Water Bottle Filling Stations Project (Specification No. 2076) as complete; and 2) Authorize the Public Works Director to submit for recordation a Notice of Completion.

7. Community Development Block Grant Program for July 1, 2021 through June 30, 2024

Recommended Action: Adopt Resolution No. 20-20 approving and authorizing the City Manager to execute the agreement with the Los Angeles County Development Authority which will allow the City to participate in the Community Development Block Grant program from July 1, 2021 through June 30, 2024.

8. Professional Services Agreement with Managed Career Solutions

Recommended Action: Authorize the City Manager to execute a Professional Services Agreement with Managed Career Solutions, Social Purpose Corporation, DBA Managed Career Solutions Rehab & FTI-LA &



American Medical Careers for trail clearance and remediation work at Charmlee Wilderness Park.

9. Fiscal Year 2019-2020 Third Quarter Financial Report

Recommended Action: Receive and file Fiscal Year 2019-2020 Third Quarter Financial Report.

**ITEM 4      ORDINANCES AND PUBLIC HEARINGS**

A. Planning Appeal Fee

Recommended Action: Hold a public hearing and determine whether to adopt Resolution No. 20-21 modifying the appeal fee for Planning development applications and amending item no. 3 (Appeal Fee) of the Planning fees in Exhibit A of Resolution No. 20-18 and finding the action to be exempt from the California Environmental Quality Act.

Planning Director Blue presented the staff report.

Kraig Hill stated the item should be considered at an in-person meeting. He stated charging an extra \$250 per appeal would be negligible to the City but a 50% increase to appellants. He stated Planning Commissioners should be compensated. He stated there were only three residential appeals in the previous year. He suggested linking the appeal fee with the Consumer Price Index instead or making the fee project-based. He stated there should be a hardship waiver.

Councilmember Mullen stated the Council had already discussed the matter.

MOTION      Councilmember Mullen moved and Councilmember Peak seconded a motion to adopt Resolution No. 20-21 modifying the appeal fee for Planning development applications and amending item no. 3 (Appeal Fee) of the Planning fees in Exhibit A of Resolution No. 20-18 and finding the action to be exempt from the California Environmental Quality Act.

In response to Councilmember Peak, Planning Director Blue stated noticing costs for an appeal were approximately \$60 for mailing and a few hundred dollars for the newspaper notice.

Councilmember Wagner requested the \$750 appeal fee include the cost of noticing.

Planning Director Blue stated \$750 appeal fee included the cost of noticing.

The question was called and the motion carried unanimously.

**ITEM 5      OLD BUSINESS**

None.

**ITEM 6        NEW BUSINESS**

A.        Waiving Fees Related to the Rebuilding of Structures Damaged or Destroyed by the Woolsey Fire

Recommended Action: Provide direction to staff on what documents are required from residents to waive certain fees related to the rebuilding of structures that were damaged or destroyed by the Woolsey Fire on a property.

City Manager Feldman presented the staff report.

John Mazza stated it was important to not put staff in the position of having to deal with variables in determining residency. He recommended the Council not make any changes to the Fee Waiver program.

Mayor Pro Tem Pierson stated he wanted to make sure everyone was being treated fairly. He discussed the possibility of homeowners signing a legally binding affidavit as proof of residency.

Councilmember Wagner stated he had spent time speaking with David Dreier. He indicated agreement with Mr. Silverstein's comment during Item No. 2.A.

Councilmember Mullen stated it was traumatic to lose a home and go through the rebuilding process. He stated the purpose of the fee waiver program was to assist in making whole those community members who lost their primary residence. He discussed the already established criteria for determining primary residency. He thanked Mr. Drier for his public service.

Councilmember Peak stated it was wise to stick to the already established criteria for determining primary residency.

Mayor Farrer expressed sympathy for anyone who lost their home in the Woolsey Fire. She stated Malibu was the only City that waived certain fees after the Woolsey Fire. She stated Resolution No. 20-10 allowed for a broad number of identification items to establish primary residency.

MOTION        Councilmember Peak moved and Councilmember Mullen seconded a motion to direct staff to continue waiving certain fees related to the rebuilding of structures that were damaged or destroyed by the Woolsey Fire on a property when the property owner could provide the documentation defined in Section D of Resolution No. 20-10.

Mayor Pro Tem Pierson thanked the Council for being sensitive to those who lost their home in the Woolsey Fire.

In response to Councilmember Peak, City Manager Feldman stated the Council could discuss extending the fee waiver program at its June 8, 2020 Public Hearing on the Proposed Budget for Fiscal Year 2020-2021.

The question was called and the motion carried 4-1, Mayor Pro Tem Pierson dissenting.

B. Proposed Settlement Agreement and Release in Third Point Land Company LLC v. City of Malibu (LACSC Case No. 19SMCP00565)

Recommended Action: 1) Approve the proposed settlement with Plaintiff Third Point Land Company, LLC; and 2) Direct the Mayor to execute on behalf of the City.

City Attorney Hogin presented the staff report, discussed the history of the Civic Center Prohibition Area, and outlined the provisions of the proposed settlement agreement.

Lisa Weinberg, Gaines & Stacey LLP, attorney for Third Point Land Company, LLC, stated Third Point Land Company, LLC was a Southern California-based group of individual investors. She stated litigation with the City was brought on by a short statute of limitations after the Council's September 2019 decision to not include the Smith parcel in CCWTF Phase Two. She stated the Smith parcel was unique in that it was within the Civic Center Prohibition Area but not included in any CCWTF phase. She stated the proposed settlement agreement did not convey any development rights and did not confer any special treatment to Third Point Land Company, LLC. She requested Don Schmitz speak last in the order of speakers.

Lance Simmens indicated opposition to the proposed settlement agreement. He stated the City needed to fight the lawsuit and protect environmental assets.

Scott Dittrich indicated opposition to the proposed settlement agreement. He stated Third Point Land Company, LLC had procured the Smith parcel at a discount because it did not have the right to connect to the CCWTF. He indicated support for the City funding generators in the Big Rock area.

Patt Healy stated the previous owner of the Smith parcel, Malibu Bay Company, had the parcel excluded from the CCWTF so it would not be developed. She indicated opposition to the proposed settlement agreement. She stated the City needed to fight the lawsuit. She stated there was no taking because Third Point Land Company, LLC had no right to water. She indicated opposition to the proposed settlement agreement.

Kraig Hill indicated opposition to the proposed settlement agreement. He stated the previous owner of the Smith parcel, Malibu Bay Company, had the parcel excluded from the CCWTF so it would not be developed. He questioned what the net parcel size was and stated the effective size of the parcel was likely to be less than thought. He discussed the upcoming May 28, 2020 decision regarding environmentally sensitive habitat areas (ESHA). He stated the additional CCWTF allocation should be kept for contingencies.

John Mazza stated Third Point Land Company, LLC would develop 47,000 square feet on the parcel. He stated there would be no taking if the parcel was placed in CCWTF Phase Three. He stated the proposed settlement agreement was a gift of public funds that granted development rights.

Annie Ellis indicated opposition to the proposed settlement agreement. She stated the previous owner of the Smith parcel, Malibu Bay Company, had the parcel excluded from the CCWTF so it would not be developed. She stated the parcel should be kept as open space.

Paul Grisanti questioned how much of the parcel was mapped as ESHA, how much was mapped as ESHA buffer, and the effective size of the parcel.

Don Schmitz, on behalf of Third Point Land Company, LLC, stated the proposed settlement agreement did not convey development entitlement. He stated any development on the parcel was subject to the City's permitting process. He stated the City could not force private open space preservation through blocking connection to the CCWTF. He stated the parcel was the only one within the Civic Center Prohibition Area that was excluded from connecting in any phase of the CCWTF.

Bruce Silverstein stated the previous owner of the Smith parcel, Malibu Bay Company, had given up rights to connect to the CCWTF. He stated the City did not have any obligation to facilitate development. He stated the Council had denied additional parcels' inclusion in CCWTF Phase Two in September 2019. He stated the proposed settlement agreement stipulations did nothing for the City. He indicated opposition to the settlement agreement.

City Attorney Hogin clarified the lawsuit dealt with two separate issues. She stated the first issue dealt with whether the Council was obligated to include the parcel in CCWTF Phase Two when it was requested in September 2019. She stated the City was not obligated to include the parcel in CCWTF Phase Two. She stated the second issue dealt with a taking in that the parcel was not usable without an onsite wastewater treatment system or a way to connect to the CCWTF. She stated the City could opt to put the parcel in CCWTF Phase Three. She stated the previous owner of the Smith parcel, Malibu Bay Company, had chosen not to connect to the CCWTF because it had no intention of developing the parcel and did not want to pay the assessment. She stated that decision did not mean the property could only be kept as open space when sold. She stated an entitlement that would run with the land would be an approved coastal development permit. She stated development of the parcel was not in front of the Council. She stated the options before the Council were to authorize the proposed settlement agreement to place the parcel in CCWTF Phase Two or to spend the money to litigate the matter and wind up placing the parcel in CCWTF Phase Three.

Councilmember Wagner discussed the history of the Civic Center Prohibition Area. He stated the parcel would be difficult to do anything with, which was why the City

chose not to purchase it in 2018. He stated City Attorney Hogin had drafted what the Council had asked her to draft. He stated the community correspondence received was not in favor of the proposed settlement agreement.

Councilmember Peak stated the proposed settlement agreement was not granting an entitlement. He stated the Council should be advocates for property rights. He stated the Council had supported drafting the proposed settlement agreement and that approving it was not the same as supporting development.

In response to Mayor Pro Tem Pierson, City Attorney Hogin stated winning the lawsuit would mean the City would place the parcel in CCWTF Phase Three or permit an onsite wastewater treatment system. She stated local government could not block reasonable use of a property and could not withhold water treatment options in order to keep a parcel as open space. She stated if CCWTF Phase Three did not move forward, the parcel would then require an onsite wastewater treatment system. She stated the only thing continued litigation could address was whether the parcel would be placed in CCWTF Phase Two or CCWTF Phase Three.

In response to Councilmember Mullen, City Attorney Hogin stated the parcel was zoned Community Commercial. She stated what portion of the parcel could actually be developed was mostly irrelevant since it was not the matter before the Council. Planning Director Blue stated the Local Coastal Program allowed a minimum amount of square footage to be developed to avoid a taking if a property was entirely ESHA.

In response to Councilmember Mullen, City Attorney Hogin stated there was a 90-day statute of limitations after the Council's September 2019 decision. She stated all the other properties that requested inclusion in CCWTF Phase Two were outside the Civic Center Prohibition Area or were already part of CCWTF Phase Three. She stated if Malibu Bay Company intended for the Smith parcel to be maintained as open space, it would have recorded a covenant on the land.

In response to Councilmember Mullen, City Attorney Hogin stated Third Point Land Company, LLC was suing the City for inclusion in CCWTF Phase Two.

City Manager Feldman stated Malibu Bay Company had only offered three commercial properties to the City, which had not included the Smith parcel, when the City went to purchase land in 2018.

In response to Mayor Farrer, City Attorney Hogin stated she was unsure of the wetlands environmental consequences of an onsite wastewater treatment system versus hooking up to the CCWTF. She confirmed the proposed settlement agreement did not confer land use entitlements. She discussed the previous assertion that the proposed settlement agreement would allow 47,000 square feet of development. She stated the assessment engineer calculated the average for how much wastewater could be generated by a parcel of that size and had determined an allocation of 7,194 gallons per day. She stated actual development of the parcel was

subject to the City's permitting process. She stated 47,000 square feet of development was not necessarily allowable on the parcel given its constraints.

City Manager Feldman stated the methodology used to determine allocation had been applied to all vacant land according to the zoning within the Civic Center Prohibition Area.

In response to Mayor Farrer, City Attorney Hogin stated the 47,000 square feet had been based on the theoretical calculation of what might be possible to develop and not what would actually be allowed.

In response to Councilmember Mullen, Public Works Director DuBoux stated CCWTF Phase Two was on schedule to be connected and finalized in November 2024. City Manager Feldman clarified the November 2024 connection date was for developed properties.

Mayor Pro Tem Pierson clarified the Smith parcel was not the same as the Bell parcel, which had been utilized by Southern California Edison after the Woolsey Fire.

In response to Mayor Pro Tem Pierson, Planning Director Blue stated she was unaware of any upcoming May 28, 2020 decision regarding ESHA.

In response to Mayor Pro Tem Pierson, City Attorney Hogin stated Malibu Bay Company had recorded a covenant on the land that is now Legacy Park. She stated Third Point Land Company, LLC was looking for inclusion in Phase Two. She discussed the costs involved in litigating the taking issue depending on how long the process took.

**MOTION** Councilmember Peak moved and Councilmember Mullen seconded a motion to: 1) approve the proposed settlement with Plaintiff Third Point Land Company, LLC; and 2) direct the Mayor to execute on behalf of the City. The question was called and the motion carried 3-2, Councilmember Wagner and Mayor Pro Tem Pierson dissenting.

## **ITEM 7 COUNCIL ITEMS**

### **A. Support Local Recovery (Mayor Farrer)**

Recommended Action: At the request of Mayor Farrer, 1) Authorize the City of Malibu to join the League of California Cities' Support Local Recovery Coalition to seek State and federal aid to help cities and counties nationwide, regardless of size, respond to and recover from the COVID-19 crisis; and 2) Authorize the Mayor to send a letter to Governor Newsom requesting assistance in securing necessary funding from both the State and federal governments to enable the restoration of local economies.

Mayor Farrer presented the item.

MOTION Mayor Farrer moved and Mayor Pro Tem Pierson seconded a motion to: 1) Authorize the City of Malibu to join the League of California Cities' Support Local Recovery Coalition to seek State and federal aid to help cities and counties nationwide, regardless of size, respond to and recover from the COVID-19 crisis; and 2) Authorize the Mayor to send a letter to Governor Newsom requesting assistance in securing necessary funding from both the State and federal governments to enable the restoration of local economies. The question was called and the motion carried unanimously.

B. Senate Bill 1215 – Support (Mayor Pro Tem Pierson)

Recommended Action: At the request of Mayor Pro Tem Pierson, authorize the Mayor to send a letter of support for Senate Bill (SB) 1215, legislation introduced by Senator Henry Stern to allow communities to develop electricity microgrids to help mitigate against disruptive power outages and protect residents and businesses while also helping the State achieve its energy and resiliency goals.

Mayor Pro Tem Pierson presented the item.

Zuma Dogg was not present at the time of the hearing.

MOTION Councilmember Wagner moved and Mayor Pro Tem Pierson seconded a motion to authorize the Mayor to send a letter of support for Senate Bill (SB) 1215, legislation introduced by Senator Henry Stern to allow communities to develop electricity microgrids to help mitigate against disruptive power outages and protect residents and businesses while also helping the State achieve its energy and resiliency goals. The question was called and the motion carried unanimously.

## ADJOURNMENT

At 10:01 p.m., Mayor Farrer adjourned the meeting.

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

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KAREN FARRER, Mayor

ATTEST:

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HEATHER GLASER, City Clerk  
(seal)

MINUTES  
MALIBU CITY COUNCIL  
SPECIAL MEETING  
MAY 29, 2020  
TELECONFERENCED - VARIOUS LOCATIONS  
3:00 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 Farrer called the meeting to order at 3:01 p.m.

**ROLL CALL**

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

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

ALSO PRESENT: Christi Hogin, City Attorney; Reva Feldman, City Manager; Heather Glaser, City Clerk; and Kelsey Pettijohn, Deputy City Clerk; and Patricia Salazar, Senior Administrative Analyst

**APPROVAL OF AGENDA**

MOTION Mayor Pro Tem Pierson moved and Councilmember Peak seconded a motion to approve the agenda. The question was called and the motion carried unanimously.

**REPORT ON POSTING OF AGENDA**

Deputy City Clerk Pettijohn reported that the agenda for the meeting was properly posted on May 28, 2020.

**ITEM 1 NEW BUSINESS**

- A. Extension of Temporary Moratorium on Foreclosures and Residential and Commercial Evictions for Nonpayment of Rent During COVID-19 Pandemic  
Recommended Action: Adopt Urgency Ordinance No. 464U extending the temporary moratorium on foreclosures and evictions due to nonpayment of rent by residential and commercial tenants impacted by the COVID-19 virus, finding the same exempt from the California Environmental Quality Act and setting forth the facts constituting such urgency; a four-fifths vote of the City Council is required and, if approved, it will take effect immediately.

City Attorney Hogin presented the staff report.



In response to Councilmember Mullen, City Attorney Hogin stated under the City ordinance the tenant would have six months after the termination of the local emergency to pay back any unpaid rent.

Bruce Silverstein stated there was a bull dozer on the Smith property removing the top surface of the land.

Paul Grisanti questioned what the benefit was of the City having its own ordinance. He stated courts were closed so eviction proceedings were not possible. He stated the ordinance enacted by Los Angeles County seemed more generous than the ordinance enacted by the City.

In response to Mayor Farrer, City Attorney Hogin stated the Los Angeles County ordinance did not address foreclosures while the City ordinance did. She stated the Los Angeles County ordinance had a longer repayment period. She stated both ordinances created a legal defense for tenants who were unable to pay their rent due to COVID-19. She stated courts were currently closed but soon they would begin hearing cases remotely.

In response to Councilmember Mullen, City Attorney Hogin discussed the differences between the Los Angeles County ordinance and the City ordinance. She stated the repayment period under the Los Angeles County ordinance was a year for residential or commercial tenants with less than 10 employees. She stated tenants should work their landlord on a repayment plan. She stated most cities she worked with that had enacted a moratorium had chosen to extend their ordinance.

In response to Mayor Pro Tem Pierson, City Attorney Hogin stated she did not know how many residents or commercial tenants were not paying rent. She stated the protection against foreclosure was the major difference between the Los Angeles County ordinance and the City ordinance.

Mayor Pro Tem Pierson stated he was tempted to just stick with the Los Angeles County ordinance.

In response to Councilmember Mullen, City Attorney Hogin stated new policies at the state level were going through the legislature. She stated Malibu would be subject to the Los Angeles County's ordinance in the absence of the City extending its own ordinance. She stated the Los Angeles County ordinance gave some more time to residents to payback rent but did not cover foreclosures. She stated Los Angeles County's moratorium was set to expire on June 30, 2020.

Councilmember Peak stated it was important to recognize late rent payments also created a burden on the property owner.

MOTION Councilmember Peak moved and Mayor Pro Tem Pierson seconded a motion to allow the City's ordinance to expire.

Councilmember Wagner discussed his experience as a small business owner. He stated restaurants were the hardest hit businesses and he knew of some that were having a very difficult time continuing to pay their lease.

Mayor Farrer stated she would like to extend the moratorium to protect commercial tenants. She stated there was an impact to landlords but it was important to protect businesses.

Councilmember Mullen stated the Los Angeles County ordinance allowed more time for repayment.

Mayor Pro Tem Pierson stated the financials of paying rent back in six months was very challenging. He stated the paycheck protection program loan period was coming to an end and the financial situation for many businesses would get even tougher. He stated it was important for tenants to negotiate with their landlords.

The question was called and the motion carried unanimously.

#### **ADJOURNMENT**

At 3:30 p.m., Mayor Farrer moved adjourned the meeting.

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

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KAREN FARRER, Mayor

ATTEST:

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HEATHER GLASER, City Clerk  
(seal)