



MINUTES

Thursday, September 5, 2019

5:30 P.M. Open Session

**SPECIAL MEETING
CITY COUNCIL, AIRPORT COMMISSION,
MARINA ABRAMS B NON-PROFIT CORPORATION, PRESTON PARK SUSTAINABLE
COMMUNITY NON-PROFIT CORPORATION, SUCCESSOR AGENCY OF THE FORMER
MARINA REDEVELOPMENT AGENCY AND MARINA GROUNDWATER SUSTAINABILITY
AGENCY**

Council Chambers
211 Hillcrest Avenue
Marina, California

TELECONFERENCE LOCATIONS: ¹

799 Birch Court
Louisville, CO

¹ Note: Pursuant to Government Code Section 54953(b), this meeting will include teleconference participation by Council Member Frank O'Connell from the address above. This Notice and Agenda will be posted at the teleconference location

1. CALL TO ORDER
2. ROLL CALL & ESTABLISHMENT OF QUORUM: (City Council, Airport Commissioners, Marina Abrams B Non-Profit Corporation, and Successor Agency of the Former Redevelopment Agency Members)

MEMBERS PRESENT: Lisa Berkley, Adam Urrutia, Mayor Pro-Tem/Vice Chair, Gail Morton, Mayor/Chair Bruce C. Delgado

MEMBERS ABSENT: Frank O'Connell (Excused)
3. CLOSED SESSION: *As permitted by Government Code Section 54956 et seq., the (City Council, Airport Commissioners, Marina Abrams B Non-Profit Corporation, and Redevelopment Agency Members) may adjourn to a Closed or Executive Session to consider specific matters dealing with litigation, certain personnel matters, property negotiations or to confer with the City's Meyers-Milias-Brown Act representative.*
4. MOMENT OF SILENCE & PLEDGE OF ALLEGIANCE (Please stand)

Adjourned Meeting of September 4, 2019 – Agenda Item: 11a and 11b

- 11a. City Council consider adopting Resolution No. 2019-, declaring the City of Marina's intent to transition from at-large to district-based elections; and, receive a staff report, give direction to staff regarding the specific steps to be undertaken to facilitate the transition and approve a tentative timeline. *Continued from September 4, 2019*

Deborah Mall, Assistant City Attorney – The action before you tonight is to adopt a resolution of intention to transition from an At-Large District Based Council Member Election. This would start you on a schedule for a series of meetings. September 17th, we hear from the public; October 1st, we hear from the public; November 5th, the map would be drafted and then two more meetings on the map and then on December 4th, you could either agree to transition to district elections or to remain At-Large.

The other way that you could proceed is at this point would be, we have an attorney from Santa Barbara that filed a claim, which was not valid, I rejected it and he has since then, 2-day s ago he filed an amended complaint to replace the claim that he previously filed and he is offering a settlement where upon hiring a demographer now we could pay him his \$30,000 in fees instead of paying a demographer \$30,000 in fees, which is what he offered today in an email to me.

You can pay him, and he would not sue unless you did not initiate district elections until after the Census.

What is maybe a little attractive about that is as far as I know there are three cases in the court of appeals right now where they are challenging their forced district elections on the basis that they discriminate against the people their supposed to protect. That is transitioning to district election does not help the under represented voter vote people from under represented into office. Sometimes it divides those groups into places where then they have less of an influence on the voters.

You would be able to at least wait until the court of appeals heard those and came down with a decision whether to invalidate the California Voter Rights Act or not. Court of Appeals for Santa Monica said they would come forward with decision in November 2020. That's the soonest we would hear about that, otherwise we have to proceed now as if the California Voter Rights Acts is the law of the land, which it is.

The third option is to do nothing and be sued and, in that case, as far as we know nobody has ever been successful in defending against a lawsuit that somebody brought to transition to district elections.

Council Questions: if at any point we take that option as out lines we can modify or truncate the process? We could modify or terminate this? Do we owe anything at this point? What is the best course if we were to act today and get started on this process, what's the lowest cost to us in the best case? So, then it's true that option 1 is to proceed tonight and probably pay the lease amount of fees or pay \$30,000 wait and see; or do nothing and take our chances in court that we may never have to do anything? Does adopting this resolution today necessarily lock us into proceeding with district elections in 2020 or is there a that we adopt this resolution today and without entering into a settlement with the attorney still have the option to wait until we receive the 2020 Census information and go to district election in 2022? If we enter in to a settlement with the attorney what's to stop someone else later from suing five minutes later? In order to demonstrate that moving to district elections would harm or help the protected classes in our city wouldn't we need to hire a demographer anyway to prove that? Does the plaintiff have to be a resident of Marina? Have we validated that this is the case in this situation? When would the demographer come on board? Would he start prior to September 17th or after? Are the demographer tasks necessary for the September 17th meeting? Can we be sued after going to district elections?

Delgado/Urrutia: that we proceed with Option #1 and try to save as much money as we can and go down this road with an eye toward modification or termination should that become the most reasonable approach.

Substitute Motion

MORTON/DELGADO: THAT WE ADOPT RESOLUTION NO. 2019-96, WITH THE FOLLOWING MODIFICATIONS:

1. **PARAGRAPH 6TH WHEREAS, WOULD READ: “*WHEREAS THE CITY COUNCIL HAS DIRECTED STAFF TO INITIATE A PROCESS FOR COUNCIL TO CONSIDER MOVING TO DISTRICT ELECTIONS*” TO AVOID COSTS ASSOCIATED WITH POTENTIAL LAWSUITS BASED ON THE CVRA TO WHICH THE CITY IS VULNERABLE BECAUSE THE CITY HAS AT-LARGE ELECTIONS; AND**
2. **ELIMINATE THE 7TH WHEREAS AS WE’RE NOT MAKING ANY FINDINGS**
3. **8TH WHEREAS; CHANGE THE WORD “REQUIRES” TO “*STATES*”**
4. **NOW, THEREFORE BE IT RESOLVED, SECTION 1, CHANGE “RESOLVES” TO “*ACKNOWLEDGES*”**
5. **SECTION 4, INSERT THE WORDING: “*IN ORDER TO ASSIST THE CITY COUNCIL IN ITS CONSIDERATION ON THE ACCEPTANCE OR REJECTION OF THE PROPOSED ORDINANCE*” AT THE BEGINNING**

Public Comment:

- Paula Pelot – Curious about both resolutions that are tagged to 2020. If this process takes longer than we think its going to is there still an allowance for us to do this and implement the districts in the 2022 after the Census? We’re reaching fatigue on the pressures of all the things we have to get done in the city and served on redistricting and districting committees before and there’s no mention in the staff report about appointing such a committee. Thinks that’s very helpful to demographers and to the city to have representatives work on those things together.

- 11b.** City Council consider adopting **Resolution No. 2019-97**, authorizing the City Manager to execute a contract with National Demographics Corporation, Inc. in an amount not to exceed \$36,625 to provide professional demographer services to assist the City in establishing four new City electoral districts, subject to final review and approval by the City Attorney; and authorizing Finance Director to make appropriate accounting and budgetary entries. *Continued from September 4, 2019*

Council Questions: What are the protected classes? Is this happening to our surrounding cities? What is the amount for appearing at city council meetings? What meetings are the consultant actually appearing at? If in fact this is statutorily laid out in both the federal and California state law as to what we need to identify, why do we need this consultant to come tells us that as opposed to a demographer whose job is to analyze data? Why do I need them to come and stand in front of council to say our job is analyzing data? What are the factors that need to be considered? Why isn’t our city attorney giving us the education of what’s in the voting act, what the law is, what is the determination about our demographics, what do we have that we can rely on reasonably as the starting point to give this demographer? Does the demographer have expertise in interpreting this process and answering the public questions? Is the demographer a lawyer? Is the demographer a voter rights expert? Can we explore teleconferencing as a means of saving money? Does the resolution before us for this demographer need to change in any way to be consistent with the one, we changed and approved?

DELGADO/URRUTIA: TO APPROVE RESOLUTION NO. 2019-97, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH NATIONAL DEMOGRAPHICS CORPORATION, INC. IN AN AMOUNT NOT TO EXCEED \$36,625 TO PROVIDE PROFESSIONAL DEMOGRAPHER SERVICES TO ASSIST THE CITY IN ESTABLISHING FOUR NEW CITY ELECTORAL DISTRICTS, SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY; AND AUTHORIZING FINANCE DIRECTOR TO MAKE APPROPRIATE ACCOUNTING AND BUDGETARY ENTRIES; AND THAT WE PURCHASE THE VOTER FILES FROM THE ELECTION DEPARTMENT AND USE SOCIAL MEDIA OUTLETS, CHURCHES AND SCHOOLS TO GET THE WORD OUT TO THE PUBLIC. 4-0-1(O'Connell)-0 Motion Passes.

Public Comments:

- Paula Pelot – It is important that the demographer make these presentations either via teleconference or in person because the public need to understand what kind a data is going to be collected, what the sources are so that they can, and you can trust the process going forward.
- Grace Silva-Santella – Confused, are the 17th and October 1st the exact same presentation or are they two separate presentations? Concerned that it's not a conducive interactive experience sitting down here having someone giving a presentation and if this is really important and critical to pulling our community together to support this, if this is the direction that we may ultimately end up having to go in I don't know if this is the right setting. Really think you have to think this out a little bit because if we really want to get people engaged in this and you have a tight timeframe maybe you could explain how the 17th and the 1st work relative of the demographer's presentation.

Adjourned Meeting of September 4, 2019 concluded at 6:43 PM

Special Meeting/Study Session started at 6:45 pm

5. **STUDY SESSION:**

- a City Council receiving MMC Chapter 17.45 Affordable Housing and the 2008 Below Market Rate (BMR) Program Administrative Policies and Procedures and provide staff direction regarding updates to the document.

Council Questions on MMC Chapter 17.45 Affordable Housing: Are you saying Abrams and Preston Park are at 20%? Is the Dunes at 20% by law? What percentage is Sea Haven at? When Seahaven is built out it will have 51 moderate income homes which do count in this, correct? The 108 affordable apartments at the Dunes, those are the only ones that fit this inclusionary concept? Was the 40% put into this program? How did we get to 40%? With regard to both Preston Park and Abrams Park's 20% inclusionary housing percentage that we're currently maintaining, is the project able to financially sustain itself? If you did comply with a percentage higher than 22% all the way to 40% would this project fail financially? Why aren't we counting those Preston and Abrams units that are in the moderate category, because they are part of the 40% inclusionary? Do we have rents that fall above the very-low and low but within the moderate range? Will the numbers increase when Marina Heights is brought online? If we increase the number of affordable or below market rates homes are, we going to be able to absorb the cost in not depending on those funds? In-Lieu Fees – How does this work in the real world? How does the in-lieu fee work? Would the collection of in-lieu fees help towards meeting our RHNA needs? Is the In-lieu Fee strictly for units for sale or is it also for rentals? Is it advisable from a legal standpoint that the option the city retain an option to consider in-lieu fees at its sole discretion? Is it illegal to have in-perpetuity?

Public Comments:

- Paula Pelot – Was not suggesting that we recalibrate rents for moderate income category out at Preston and Abrams. I was suggesting that we collect the data to see how close if we had income data for the residents out there, we are to the 40%. If you look at that sheet, if you roll it back to 20% that it is in the rest of the inclusionary ordinance, we've already pretty much hit that mark and exceeded it. As far as the In-lieu Fee, I have some difficulties as has been expressed because as you know there was a lawsuit and we got a \$1.75 million settlement from that and created the Ingraham Housing Fund with the Action Counsel and we spent \$1.35 million as loaning and helping Junsay Oaks get built, \$100,000 in rental assistance and spent \$250,000 to help Rockrose get started. But the problem was when we tried to create a housing fund for first time home buyers even with the assistance, we were going to offer the homes were so expensive that people could not afford them even if they had that extra lift. When you set up these in-lieu funds they're never going to be enough. It's always better to require the developer, which we did not do with Marina Heights and yes you did vote against it. It's never going to get there and so it's not going to do anything to create a fund to help people purchase homes that they're not going to be able to purchase. When I was talking about 110% I wasn't saying that we needed to recalibrate all the rents out there, I was just saying that I think we probably are close to that because there about 70-100 units that are probably in that category that we've never counted in this and that would give us probably close to the 40%. I still think you need to get us released from that 40% and lower it and make it the same as what we have for the rest of the city. There is a very big difference between Preston and Abrams. You're talking about it under this one inclusionary ordinance as though it's the same. Abrams is the one that's most difficult because it's more burdened by this requirement and regulatory agreements and the problem they have is not necessarily paying off the bond it's in maintaining the property. We're always scrounging and piecing it out year after year to try to get work done out there. Preston is not really the problem. That inclusionary ordinance unfortunately covers both properties.

Council Questions on 2008 Below Market Rate (BMR) Program Administrative Policies and Procedures:

If this is for future BMR For Sale Units, how many do we currently have planned to exist? Why can we say on page 3 that we have preferences if you work in Marina, if you're a resident of Marina but we couldn't say if you're an employee of public safety in Marina, that we have to say Monterey County there, why is that? So, if A & E regard workers and residents in Marina, is that more acceptable because we have B, C & D which are broader? Do B, C & D make A & E more acceptable because of the full package? Can we have G & H that are for public safety departments employees in Marina or can we give Marina Public Safety applicants 2 points and Monterey County outside of Marina 1 point? Can we add or change this to give a benefit to teachers and police in Marina? Could we use working for the prevention of climate change and environmental sustainability as a reason to keep it to Marina locals, they are going to have less of a carbon impact? CSUMB Housing, if annexed in will that housing program at CSUMB have preference over anything that we do here? How are the affordable properties assessed in valuation? Are they assessed at \$600,000 or \$400,000? What opportunity do we have to allow equity-sharing but make us whole when it's done so that we can keep the unit affordable or take enough money to make another unit affordable? Is the 39%-61% allocation discretionary or is that set by law or by some pre-existing agreement?

- Level of Affordability could be feasible
- In-lieu Fee as appropriate "flexible"
- In Perpetuity
- Work in Marina 35 hours a week

- Lives in Marina

Public Comments:

- Paula Pelot – you don't have a definition of what student household is here. When people are students, I believe the University has a responsibility to try and house them. When you're talking about students graduating and wanting to stay here, they're not a student household anymore, they're a regular household. In Abrams, Preston 2-3bedrooms where Abrams you have your 3-4bedrooms, those are families and so I think you're looking to leave opportunities for that. Once you're graduating and you want to stay here, you're not a student household so I don't even know if we have a definition in our policy that says what is a student household.

Council Member Berkley stated that she would like to reconsider her vote on the September 4, 2019 City Council meeting where she voted in the affirmative of the Short-Term Rental Motion.

BERKLEY/URRUTIA: TO RECONSIDER STR RESOLUTION FROM YESTERDAY. 3-1(Morton)-1(O'Connell)-0 Motion Passes

- Paula Pelot – Surprised at this reconsideration. Disappointed in the outcome for a number of reasons. There were a couple of items that were really missed that probably should be re-looked at and if this allows for that to happen the Supports the motion. Those two things has to do with hosted versus non-hosted and what that means; and the density requirements that the Planning Commission put forward.

6. ADJOURNMENT: The meeting adjourned at 9:20 PM

Anita Sharp, Deputy City Clerk

ATTEST:

Bruce C. Delgado, Mayor