

CITY COUNCIL SPECIAL MEETING
Monday, August 6, 2018

OPEN SESSION
4:30 PM

TOUR OF INSPECTION 2:00 P.M.

Item A: Tour of Inspection - Police Department, Junipero Avenue & Fourth Avenue

CLOSED SESSION 3:30 P.M.

Item A: Public Employee Evaluation (G.C. § 54957) City Administrator

No report.

Item B: Conference with Legal Counsel – Existing Litigation Pursuant To Government Code Section 54956.9(D) (1) Name Of Case: David Fink V. City Of Carmel-By-The-Sea, California

The case has been resolved and dismissed.

Item C: Conference with Legal Counsel – Existing Litigation Pursuant To Government Code Section 54956.9(D)(1) Name Of Case: Yolanda Macias V. City Of Carmel-By-The-Sea, California, And Does 1 Through 25, Inclusive, Respondents/ Defendants Monterey County Superior Court Case No.17CV003685

Item D: Conference with Legal Counsel – Existing Litigation Pursuant To Government Code Section 54956.9(D) (1) Name Of Case: Jo-Ann Otlin V. City Of Carmel And Does 1 Through 20, Inclusive, Respondents/ Defendants: Monterey County Superior Court Case No. 18CV001882.

Item E: Conference with Legal Counsel – Existing Litigation Pursuant To Government Code Section 54956.9(D)(1) Name Of Case: Lininger V. City Of Carmel, Respondents/ Defendants.

Item F: Conference with Legal Counsel – Existing Litigation Pursuant To Government Code Section 54956.9(D) (1) Name Of Case: CalPERS V. City Of Carmel, Respondents/ Defendants.

Items C, D, E and F are under negotiation for settlement.

Item G: Conference With Legal Counsel – Anticipated Litigation - Significant Exposure to Litigation Pursuant To § 54956.9(B): (two Cases)

One case was discussed.

OPEN SESSION 4:30 P.M.

CALL TO ORDER AND ROLL CALL

Present: Councilmembers Richards, Hardy, Theis, Reimers, Mayor Dallas
City Administrator Rerig, Ass't. City Administrator Gullo, City Attorney
Mozingo, Public Safety Director Tomasi, Director of Contracts and
Budget Friedrichsen, Community Planning & Building Director Wiener,
Director of Libraries and Community Activities Wright, Public Works
Director Harary, City Clerk Graves

PLEDGE OF ALLEGIANCE

EXTRAORDINARY BUSINESS

Item A: A Proclamation Honoring Jacob's Heart Children's Cancer Support Services.

Family Support therapist Tara Crowell accepted the Proclamation, and introduced the Hinds family.

Item B: Presentation by BMW Of Monterey On Electric Bicycles Donated To The Police Department

Chief Tomasi showed the bike to the City Council and public, and thanked BMW of Monterey for the donation.

Item C: Presentation Of Evan Kort As The New Assistant Planner In Community Planning And Building.

ANNOUNCEMENTS

Councilmember Reimers commended City emergency response teams, and thanked them for a very quick response to a recent 911 call.

Mayor Dallas experienced a similar situation, and commended the response teams as well.

Administrator Rerig commended particularly Director Harary and Environmental Compliance Manager Topp for their work in removing the fuel tanks from the Public Works yard. On another issue, he pointed out that the agenda management system dropped an entire agenda item from the August 6th agenda and had to be moved to the August 7th agenda. Fortunately, there was enough time to stay within the required notification schedule.

PUBLIC APPEARANCES

Mr. Hall questioned whether traffic projects were being managed properly. Mr. Rerig said the project in question was not a Carmel-by-the-Sea project.

Jim Miller asked the Council to consider making more funds for advertising available for other small businesses.

Linda Miller agreed with Jim Miller.

Karen Ferlito spoke with concern about garbage at the bottom of Ocean Avenue. Mr. Rerig described the City's arrangements with GreenWaste and Public Works staff to keep the area neat and tidy.

Cheryl Merritt also asked for more advertising in support of small, local retail businesses.

Chris Mack suggested moveable cameras for stop signs as one way to catch scofflaws who roll through.

CONSENT AGENDA

Administrator Rerig asked that item 3 be continued to the meeting of September, 2018.

Councilmember Richards pulled item 4.

Georgina Armstrong pulled item 12.

Ken White requested that item 4 be continued to the September meeting.

Barbara Livingstone requested that item 4 be continued to the September meeting.

Action:

Councilmember Hardy moved, seconded by Mayor *pro tem* Theis, to approve all of the items on the Consent Agenda, except for items 3, 4, and 12.

AYE: RICHARDS, HARDY, REIMERS, THEIS, DALLAS

NOES: NONE

Mayor Dallas said Items 4 and 12 would be continued to the end of the meeting.

Item 1: Receiving the Monthly Reports for June:

- 1.) City Administrator Contract Log;
- 2.) Community Planning And Building Department Reports;
- 3.) Police, Fire, and Ambulance Reports;
- 4.) Public Records Act Requests, and
- 5.) Forester Report.

Item 2: Approving the June, 2018 Check Register Summary

Item 3: Approving the Minutes of the July 2, 2018 Special City Council Meeting and the Minutes of the July 3, 2018 Regular City Council Meeting.

This item was continued to the September 10, 2018 meeting.

Item 4: Resolution No. 2018-071, Authorizing The Mayor To Execute A Legal Service Agreement With G.R. Mazingo, Esq, Apc (A Professional Corporation) Effective July 1, 2018 And Ending June 30, 2023.

Note: This item was taken out of order and heard after Item 15.

Administrator Rerig noted that the staff report did not change. The resolution only contains one change, changing the Signatory for the City to the Mayor instead of the City Administrator. That is the only change that has been made to this staff report and resolution.

Councilmember Hardy recapped the process, which was to go to outside counsel, in this case the Los Gatos City Attorney, who has a similar contract to Mr. Mozingo. This is intended to be a five-year contract to lock in a reduced rate. The City Council could have made it shorter, but it would have put the City at risk of paying \$330 to \$350 per hour for future legal services, and Councilmember Hardy therefore saw this as a cost-saving measure for the City. Also, each party may terminate this agreement with a ninety-day notice. The retainer has gone to \$30,000/month, and has an annual COLA based upon the area's CPI. Finally, she said it is important to keep in mind that the City Attorney doesn't work for the public. Instead, the City Attorney works for the City Council and his client is the City. The contract secures the services of three City Attorneys.

Councilmember Reimers said this contract is for 154 hours of legal services per month, and does not cover, nor will it include, CalPERS or healthcare. The goal is to reduce costs to the City over the next five years. There is also a built-in annual review process.

SPEAKING FROM THE FLOOR:

Hugo Ferlito said this item is not "routine in nature," and urged the City Council to scrap the contract.

Jeff Baron said he believes this contract harms the City. He urged the City Council to not enter into the contract before the current case that is before the Superior Court is resolved on September 7, 2018.

Karen Ferlito said she was dismayed that this was placed on the Consent Agenda. Further, she said it is insulting to put this item at the end of the City Council meeting. She said the Superior Court lawsuit, due on September 7, 2018, should be resolved first before this contract is finalized.

Mr. Mack said this item should be rescheduled to a future date, and under a public hearing. This contract is too vague, and should be continued to a date after September 7, 2018. He also expressed concern that this item was moved to the end of the meeting.

Barbara Livingstone said she thinks Council does great work, and she appreciates how hard the work is. But she feels this contract should never have been placed on consent, and doesn't understand why this contract would be signed before the lawsuit on September 7, 2018.

Sue McCloud said it's not unusual for her to get calls from residents, but this week's number of calls has been surprising. She shares the thinking that this should not be acted upon today.

Georgina Armstrong said there needs to be more transparency, and reminded Councilmembers that no persons have spoken in favor of this item.

Richard Kreitman said he agreed with the previous speakers, and asked that this item be continued.

Councilmember Hardy said the City is defending its right to keep confidential closed session items that are confidential. She said that KSBW never contacted the City to get its point of view before broadcasting their editorial, and that there is more to this current lawsuit now in Superior Court than meets the eye. The Court will render its decision, and the City will abide by it.

Councilmember Richards said Mr. Mozingo has done great work over the past year on behalf of the City, and Mr. Richards is convinced we need a full-time City Attorney. But he said a retainer at two million dollars is not efficient, and he feels the City should hire a City Attorney who is an employee. He does not support a super majority for termination of the contract, and he can't support a five-year term.

Mayor *pro tem* Theis said she, Mayor Dallas and City Administrator Rerig placed this item on the Consent Agenda because that is how the City does its contract hiring. But anyone can pull it and it becomes a public hearing. This Council hasn't done anything extraordinary with this contract. It was looked at and commented upon by another City Attorney with a similar contract. The public has expressed concerns with the PERS liability the City faces. The Council took that into account by hiring Mr. Mozingo on a contract basis. He has worked hard to get the City on track with short-term rentals and, in fact, a \$12,000 check was just recovered today for such. She said we have an attorney now who is focussed solely on Carmel-by-the-Sea. She also reminded that Mr. Mozingo listed all of his accomplishments recently, and now that list has grown. She said she just disagrees with what the public is saying on this issue.

Councilmember Reimers remarked that the City is making a change, and moving in the direction that other cities have already moved in terms of legal counsel.

Action:

Councilmember Hardy moved, seconded by Mayor *pro tem* Theis, to adopt Resolution 2018-071.

AYES: HARDY, REIMERS, THEIS, DALLAS
NOES: RICHARDS

- Item 5:** Reports From Sunset Cultural Center Inc., On Sunset Center And The Forest Theater.
- Item 6:** Resolution No. 2018 - 072, Authorizing The City Administrator To Execute Amendment No. 1 To The Professional Services Agreement With Native Solutions With A Fee Increase Of \$33,000 for The North Dunes Habitat Restoration Project.
- Item 7:** Resolution 2018-073, Opposing Proposition 6, Which Would Repeal Senate Bill 1, the Road Repair and Accountability Act.
- Item 8:** Resolution No. 2018-074, Authorizing a Street Closure for a Carmel Public Library Foundation Event on September 15, 2018.

- Item 9:** Resolution 2018-075, Adopting the City of Carmel-by-the-Sea's Responses to the 2017-2018 Monterey County Civil Grand Jury Report Entitled "Who's In Charge? Stepping Up Homelessness: The Need For Strategic Leadership And Comprehensive Planning"
- Item 10:** Resolution No. 2018- 077, Supporting The National Carbon Fee And Dividend Program And Authorizing The Mayor To Send Letters Of Support For The Program To Congressman Panetta And The Monterey County Board Of Supervisors
- Item 11:** Resolution 2018-078, Adopting A Resolution Of Intention To Establish The Carmel Restaurant Improvement District
- Item 12:** Resolution No. 2018-086, Adopting The Job Description Of Extra Help Retired Annuitant And Adopting A Salary Schedule For This Classification With An Hourly Rate Range Of \$15.00- \$100.00, Effective July 1, 2018.

This item was pulled by Georgina Armstrong, but her questions have been answered.

Action: Councilmember Hardy moved, seconded by Councilmember Reimers, to adopt Resolution No. 2018-086.

AYES: RICHARDS, HARDY, REIMERS, THEIS, DALLAS
NOES: NONE

ORDERS OF BUSINESS

- Item 13:** Discussion on Update of the City's Residential Zoning Code (Chapter 17.10) and Residential Design Guidelines and Update of the City's Commercial Zoning Code (Chapter 17.14).

Community Planning and Building Director Wiener made the staff presentation.

Councilmember Reimers asked for clarification about what was being asked of the City Council. She said she assumed this was informational for Council tonight, and that Council was being asked for its advice, guidance, and to name Planning Commissioners to sub-committees.

Director Wiener affirmed her sense of the item, and said he would be coming back from time to time as necessary.

Councilmember Richards inquired about the conversion of commercial units to residential units, and asked if it would be necessary to re-write the Code to protect the commercial versus residential zones of the City.

Director Wiener said it may just need a close reading of the Code, or may sometimes require a re-write to protect the zones.

Mayor Dallas inquired if Council wanted at least one member of the public to sit on the various sub-committees as well as members of the Planning Commission.

SPEAKING FROM THE FLOOR:

Barbara Livingston urged the Council to establish some sort of a moratorium on any future condos that are built downtown.

Jeff Baron said he would prefer subcommittees that conduct public hearings so the community can be involved.

Georgina Armstrong supported the idea of a temporary moratorium on converting long-term living spaces downtown to short-term housing.

Sue McCloud suggested the Council may want to invite Nore' Winter back to do another profile of Carmel to see what the City has evolved into.

Ben Beesley said that he would appreciate the Chamber of Commerce being considered for one of the two commercial committees.

Mr. Rerig said that halting development is not as easy as it appears and asked the Council to give direction if that is what Council wants to do. It would have to come back to a future meeting with detailed findings.

Councilmember Reimers said she would be in favor of some mechanism whereby the Council could declare a moratorium on commercial units being converted to short-term rentals. She also said she would like Item 15 continued because she needs more time to study it.

Councilmember Hardy said that the Planning Commission would like their sub-committees to be comprised exclusively of Planning Commissioners. But she would also like for all of the subcommittee meetings to be held so that the public could listen to all discussions. She said that sub-committees would not be subject to the Brown Act because less than a quorum of the Planning Commission would be on each sub-committee, and that the sub-committees would be empaneled for a specific purpose and would be dissolved once its specific purpose was completed.

Councilmember Richards said he would like to see a member of the public on each sub-committee.

Councilmember Reimers said she tended to agree with Councilmember Hardy, as long as the meetings were open to the public.

Mayor *pro tem* Theis endorsed the idea of having the meeting's public and that she would refrain from saying anything more because of her involvement in her hotel.

Action:

Councilmember Hardy moved, seconded by Councilmember Reimers, that the City Council appoint the sub-committees as requested in the staff report, with

one sub-committee for Residential, one for Commercial I and one sub-committee for Commercial II.

AYES: HARDY, REIMERS, THEIS, DALLAS
NOES: RICHARDS

PUBLIC HEARINGS

Item 14: Second Reading Of Ordinance No. 2018-002, Adopting Chapter 18.04 Of The Municipal Code.

Action: Councilmember Reimers moved, seconded by Councilmember Hardy, to approve Ordinance No. 2018-002, adopting Title 18.04 of the Municipal Code.

AYES: RICHARDS, HARDY, REIMERS, THEIS, DALLAS
NOES: NONE

Item 15: First Reading Of Ordinance No. 2018-003, Repealing Carmel Municipal Code (CMC) Chapters 8.32, Fire Code; 8.64, Property Nuisances; And 8.72 Community Floodplain; Amending CMC Chapter 8.56, Noise Regulation; And Amending Title 15 (Buildings And Construction) By Adopting The 2016 Editions Of The California Building, Residential, Energy, Fire, Mechanical, Plumbing, Electrical, And Green Building Standards Codes With Local Amendments; And Adopting New Chapters 15.55, California Fire Code; 15.56, Community Floodplain; And 15.57, Property Nuisances.

Councilmember Reimers asked that this item be continued to the September 11, 2018 City Council meeting for more study.

Mayor *pro tem* Theis said she believed this was a fairly standard issue that comes before the City Council on an annual basis, and asked the City Administrator to explain.

Mr. Rerig agreed with Mayor *pro tem* Theis that this is, indeed, a tune-up, and asked Councilmembers to trust that is is a routine matter. He said there would be ample time between this reading and the second reading for study.

Director Wiener presented the staff report.

Barbara Livingstone thanked the Council for addressing the problem of construction vehicles in driveways. She asked for action on a moratorium on short-term housing in the Downtown Area.

Sue McCloud asked the Council to look into how the Planning and Building process might be accelerated at City Hall.

Mr. Rerig said that when the Council returns with more restrictive actions on short-term rental housing, it's going to be imperative to get the word out to commercial property owners.

Mayor *pro tem* Theis said the staff has more experience dealing with short-term rentals, so she would like to see this number kept at three, but she would take the staff recommendation at this time.

Councilmember Richards said he agreed with Mayor *pro tem* Theis.

Councilmember Hardy said the reason she was proposing two is that the report states, "...having less than two..." short-term rental units, meaning having one unit, "...shall retain their R-1 Classification."

Mayor Dallas called a recess at 6:30 p.m.

The City Council returned at 6:42 p.m.

Director Wiener returned with proposed language that if there is more than one unit in the building, it would require the R-1 Occupancy Classification.

Barbara Livingstone inquired that if these units will now be designated R-1, they can no longer be considered short-term rentals?

Mr. Rerig clarified that if a new unit is built, or if an existing unit is converted with the intention of renting it as a short-term basis, it must be converted to the R-1 Building Standards. By doing this tonight, this makes the threshold much higher.

Action:

Councilmember Hardy moved, seconded by Mayor *pro tem* Theis, that the Council adopt Ordinance No. 2018-003 amending Municipal Code Title 8 and 15 with the amended language for Item 13, Short-term Rental Unit.

AYES: RICHARDS, HARDY, REIMERS, THEIS, DALLAS

NOES: NONE

FUTURE AGENDA ITEMS

Barbara Livingston said she would like to discuss a restriction on the new condos that are being built downtown; specifically to restrict them to residential-only and not short-term rentals.

Councilmember Reimers said she supports the previous speaker's comments, and Councilmembers Richards, Hardy and Theis concurred. Mayor Dallas said since there was unanimous consent on this item it would be brought up at the Thursday agenda review meeting.

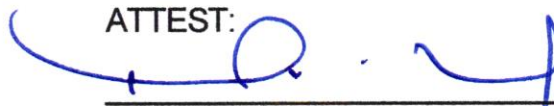
ADJOURNMENT at 7:55 p.m.

APPROVED:



Steve G. Dallas, Mayor

ATTEST:



Thomas A. Graves, MMC
City Clerk