



AGENDA REPORT

Consent

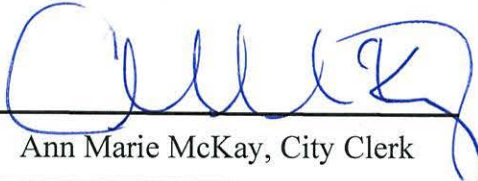
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Meeting Date
December 12, 2023

SUBJECT: MINUTES OF THE CITY COUNCIL MEETINGS

RECOMMENDATION: It is recommended by the City Clerk that the City Council approve the Minutes of the Regular Meeting of the City Council of November 21, 2023.

Appropriation: _____ **Fund Name:** _____

Submitted By: 
Ann Marie McKay, City Clerk

Approved for Placement on the Agenda By:


Sean Joyce, Interim City Manager

SUMMARY OF THE MATTER

Approve the Minutes of the Regular Meeting of the City Council of November 21, 2023.

FINANCIAL ANALYSIS

The recommended action has no financial impact on the budget.

ENVIRONMENTAL ANALYSIS

The recommended action has no environmental impact.

ATTACHMENTS

1. Minutes 11/21/2023 (Pgs. 2-12)

Report Prepared By:

Ann Marie McKay, City Clerk

Coordinated With:

MINUTES
LAGUNA BEACH CITY COUNCIL
HYBRID VIRTUAL/IN-PERSON REGULAR MEETING
November 21, 2023, 2023

A Regular Hybrid Virtual/In-Person Meeting of the City Council of the City of Laguna Beach was called to order on Tuesday, November 21, 2023, 2023, in the City Hall, 505 Forest Avenue, Laguna Beach, California, Mayor Whalen presiding.

ROLL CALL

PRESENT: COUNCILMEMBERS: Orgill, Rounaghi, Weiss, Kempf, Whalen
PARTICIPATING REMOTELY: COUNCILMEMBERS: None
ABSENT: COUNCILMEMBERS: None

Mayor Pro Tem Sue Kempf led the Pledge of Allegiance.

CLOSED SESSION

1. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Pursuant to Government Code Section 54956.9(d)(2) and 54956.9(e)(2)

Number of Potential Cases: One (1)

Pursuant to the provisions of Government Code Section 54956.9(a), based on advice from legal counsel, the City Council holds this closed session to confer with its legal counsel regarding pending (anticipated) litigation because a discussion in open session will prejudice the position of the City. Pursuant to Government Code Sections 54956.9(d)(2) and (e)(2), there is significant exposure to litigation against the City based on the following existing facts and circumstances, which are known to a potential plaintiff (i.e., a nonprofit interest group named Foundation for Individual Rights and Expression (“FIRE”)): on August 14, 2023, FIRE transmitted correspondence to the City alleging that Laguna Beach Municipal Code § 11.60.040, entitled “Special Regulations for the Forest Avenue Promenade,” is an unconstitutional restriction on speech under the First Amendment. FIRE’s correspondence is attached to the agenda and on file with the City Clerk’s Office for review. (attached to Closed Session agenda)

2. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Pursuant to Government Code Section 54956.9(d)(1)

Number of Cases: One (1)

Name of Case: *Patrick Lustig v. City of Laguna Beach*, United States District Court, Central District of California, Case No. 8:22-cv-01945-DOC-ADS.

Pursuant to the provisions of Government Code Section 54956.9(a), based on advice from legal counsel, the City Council holds this closed session to confer with its legal counsel regarding pending (existing) litigation because a discussion in open session will prejudice the position of the City.

City Attorney Megan Garibaldi reported that all Councilmembers were present and participated in the discussions, and there was no reportable action.

EXTRAORDINARY BUSINESS

1. PROCLAMATION DECLARING NOVEMBER AS FAMILY COURT AWARENESS MONTH IN LAGUNA BEACH

Adopted the Proclamation declaring November as Family Court Awareness Month in Laguna Beach.

PUBLIC COMMUNICATIONS

Mike Beanan, Laguna Bluebelt Coalition, and John Thomas provided presentations requesting support of the proposed MPA (Marine Protected Area) adjustment. Mayor Bob Whalen advised that a letter is being drafted.

Roger Butow, Clean Water Now, introduced himself.

Edward Bayuk provided a packet for the City Attorney regarding a civil lawsuit related to his former residence on El Camino Del Mar.

Gary Kasik, Sensible Laguna, reported on the recent Laguna Beach Unified School District (LBUSD) meeting regarding the LBUSD's Facilities Master Plan.

Pat Gallis requested an update on the CEQA-related lawsuits.

Ted Reckas and Chris Catsimanes spoke against the use of Roundup® on public land.

MJ Abraham reiterated her request that the topic of term limits for the City Council be placed on a future City Council agenda. She also stated that though she supports City Attorney staff attending Planning Commission and Design Review Board meetings, information on the associated costs should be available to the public.

Gene Felder expressed concerns regarding Caltrans responsibility of a land parcel near the intersection of El Toro Road and Laguna Canyon Road that is an animal corridor.

Ruben Flores suggested that the public art piece currently under the arbor by the Sawdust Art Festival be moved to another location and a new art piece be placed in that location.

COUNCIL AND STAFF REPORTS

City Clerk Ann Marie McKay advised that new coats and jackets for kids and teens for Orange County Supervisor Katrina Foley's New Coats for Kids Drive can be dropped off at Laguna Beach City Hall, the Boys & Girls Club on Laguna Canyon Road, and the Laguna Beach Library through December 18.

City Treasurer Laura Parisi reported that she completed continuing education on debt management disclosure requirements, attended the California Municipal Treasurers Association board meeting, and received approval of her slide deck for her presentation for the California Debt and Investment Advisory Commission training session on the daily investment of public funds.

City Attorney Megan Garibaldi provided an update on the CEQA-related lawsuits. Regarding the Kirby property, she advised that they are awaiting conclusion of the Supreme Court review process. Regarding the Ray property, Garibaldi reported that the court ordered issuance of a writ to set aside approval of the negative declaration but not require the City to complete an Environmental Impact Report (EIR), and denied the petitioners' request for declaratory relief. Regarding the Historic Preservation Ordinance update, Garibaldi advised that though an early 2024 court date was set as a placeholder, that date will likely be extended out.

Councilmember George Weiss reported on attending Orange County Supervisor Katrina Foley's annual Veterans of the Year awards ceremony where Laguna Beach veteran Arnie Silverman was awarded 5th District Veteran of the Year. Councilmember Weiss also reported on the City's Veteran's Day event.

Councilmember Mark Orgill expressed condolences to Tatum Goodwin's family, and congratulated the Police Department on its investigative work. Regarding Felder's concerns about the animal corridor land, Councilmember Orgill stated that he will look into it, and as a minimum, explore the possibility of fencing to protect the corridor. Councilmember Orgill introduced the trailer by Visit Laguna for its "From Radical Origins" series, and Rachel O'Neill-Cusey, Visit Laguna, and John Zegowitz, Chief Creative Officer of Schiefer Chopshop, explained the intent of having the community involved in telling Laguna Beach's tourism story.

Councilmember Alex Rounaghi thanked the Police Department for all its efforts.

Mayor Pro Tem Sue Kempf stated that she was impressed by the Laguna Beach Police Department, and thanked the Department for its investigation that led to the conviction of a child molester. Mayor Pro Tem Kempf also reported on the dedication of the public art by Beau Stanton on the bridge connecting Laguna Canyon Road and Laguna Frontage Road.

Mayor Bob Whalen recognized Councilmember George Weiss and City Clerk Ann Marie McKay for their military service, and the Police Department for its extraordinary work.

CONSENT CALENDAR

Moved by Mayor Pro Tem Sue Kempf, seconded by Councilmember Mark Orgill , and carried unanimously 5/0 to approve items 1-7.

2. MINUTES OF THE CITY COUNCIL MEETING

Approved the Minutes of the Regular Meeting of the City Council of November 7, 2023.

3. WARRANT LISTING

Warrants:	<u>\$3,078,225.04</u>	10/27/2023
Payroll #9	<u>\$1,623,760.16</u>	11/03/2023
Total	<u>\$4,701,985.20</u>	

Approved the general warrants and payroll disbursements.

4. AWARD OF SERVICE PROVIDER AGREEMENT FOR CITY FUEL DELIVERY SERVICES

Awarded and authorized the City Manager to execute four-year **agreement 23-172** with Mansfield Oil Company of Gainesville, Inc. for diesel and unleaded gasoline fuel, not to exceed 147,000 gallons annually.

5. 2024 CULTURAL ARTS LIVE PERFORMANCE SCHEDULE

- (1) Approved the 2024 performance schedule for City-sponsored live performances;
- (2) Approved the use of amplified sound during the performances; and
- (3) Authorized the City Manager to approve any revisions to the location or dates of the performances, if required.

6. APPROVAL OF 2023 MILLS ACT CONTRACTS FOR TEN PROPERTIES

- (1) Adopted the Resolutions approving Mills Act Preservation Agreements for 11 La Senda Place (#23.067), 400 Los Robles (#23.068), 389 Oak Street (#23.069), 638 Seaview Street (#23.070), 141 Crescent Bay Drive (#23.071), 21 North La Senda Drive (#23.072), 489 Graceland Drive (#23.073), 615 Seaview Street (#23.074), 665 Lombardy Lane (#23.075), and 498 El Camino Del Mar (#23.076);
- (2) Determined that approving the Mills Act Preservation Agreements is categorically exempt from the California Environmental Quality Act pursuant to State CEQA Guidelines section 15331; and
- (3) Authorized the City Manager to sign the contract agreements with the owners of the subject properties.

7. ART IN PUBLIC PLACES (1369 NORTH COAST HIGHWAY)

- (1) Approved the installation of a wall mounted sculpture titled "Sea Breeze Symphony" by Rahul Jobalia to satisfy the Art in Public Places requirement for the new commercial development located at 1369 North Coast Highway;
- (2) Determined that no further environmental review is required pursuant to State CEQA Guidelines section 15162; and
- (3) Directed staff to file and post a Notice of Determination consistent with the above-stated CEQA findings within five days of this approval.

REGULAR ORDER

8. REVISIONS TO UNDERGROUND UTILITY ASSESSMENT DEFERMENT LOAN PROGRAM

Staff Report: Senior Project Manager Pierre Sawaya gave a presentation updating the City Council on the revisions to the Underground Utility Assessment Deferment Loan program.

Questions of Staff: Mayor Pro Tem Sue Kempf asked about the deferment program process. Senior Project Manager Pierre Sawaya described the application process for the deferment program.

Mayor Pro Tem Sue Kempf confirmed that the Planning Commission had approved the design of the program.

Councilmember Alex Rounaghi asked about the proposed changes in the deferment program as it related to inheritance and the transfer of property. City Attorney Megan Garibaldi stated that the prior language had been unclear as to the sale or transfer of a property in the case of a death or divorce. She added that in the event the homeowner passed away and the home transferred to a family member, the family member would be exempt from paying the utility undergrounding tax assessment until another triggering event, such as sale of the property, occurred.

Councilmember Alex Rounaghi confirmed with the City Attorney that the City Council could make a condition that the inherited home would need to be the primary residence of a family member to be allowed the exemption.

Senior Project Manager Pierre Sawaya stated that a homeowner that met the income criteria for the deferment program could opt to defer all or a portion of the assessment until a triggering event.

Councilmember Alex Rounaghi asked about the justification for the proposed age reduction criteria. Senior Project Manager Pierre Sawaya explained that the age criteria were modified from 62 to 55 because some individuals retire at age 55.

Staff responded to Councilmember George Weiss that there had been a dozen inquiries into the program to date.

Councilmember Mark Orgill asked about the disabilities criteria. Senior Project Manager Pierre Sawaya stated that if a resident did not meet the age requirement, a disability was a consideration for eligibility into the program.

Councilmember Alex Rounaghi commented that the program would be assessed annually.

Public Testimony: Karen Klammer thanked the City Council for providing the financial

assistance to encourage residents to participate in the special assessment.

Tom Gibbs discussed the importance of undergrounding utilities for public safety purposes. He said he supported the city's attempt to lessen the impact on residents that may have financial difficulties. He voiced concerns about the first-come, first-serve condition and added that the program should be made available to all residents that meet the qualifications. Matt Lawson supported the program and he stated that he agreed with Gibbs' comments.

Councilmember Comments: Mayor Bob Whalen confirmed that this program applied to all special assessments going forward. He discussed the sale and transfer of the property in the case of the homeowner's death, and he suggested that a family member that inherited the property be required to requalify for the loan program for income purposes.

Councilmember Alex Rounaghi listed solutions to solve the inheritance issue and a discussion ensued. He suggested eliminating the cash value of insurance policies from the application criteria, removing the first-come, first-serve, and to solicit application submissions immediately after the Woods Cove Underground Utility Assessment District formation vote, assuming it passed. Councilmember Rounaghi proposed an income-based repayment plan, and he explained.

Councilmember Mark Orgill confirmed with staff that the applicant would be informed of the loan costs. He asked about the interest on the bonds. Senior Project Manager Pierre Sawaya responded that the conservative estimate would be 5.8%.

Moved by Councilmember Alex Rounaghi, seconded by Mayor Pro Tem Sue Kempf, and carried unanimously 5/0:

- (1) Approve lowering the age limit for property owners to qualify for the loan deferment program from age 62 to age 55;
- (2) Increase the household income requirements to 20% above the Orange County Moderate Income Limit, as determined by the Department of Housing and Urban Development, for the year in which they apply;
- (3) Clarify for the transfer exemption related to inherited property that if the recipient does not qualify for the income limit after the transfer, the loan must be repaid within five years of the transfer;
- (4) Remove the cash value of insurance policies from the applicant criteria;
- (5) Reduce the Fiscal Year 2023-24 transfer from the Street Lighting and Utility Fund to the Wildfire Mitigation and Fire Safety Fund by \$500,000 and reappropriate this amount for the Assessment Deferment Loan Program, thereby increasing the total program budget to \$700,000;

- (6) Remove the “First Come, First Served Basis” and direct staff to solicit application submissions immediately after the Woods Cove Underground Utility Assessment District Formation Vote if it passes, and provide the City Council with an update in January; and
- (7) Direct staff to return to City Council with a revised set of Program Guidelines and Tasks as a consent calendar item.

COUNCILMEMBER ITEMS

9. REQUEST FOR CITY COUNCIL RECONSIDERATION OF OCTOBER 24, 2023, APPROVAL TO REMOVE LEMON-SCENTED GUM TREE LOCATED AT 387 EL CAMINO DEL MAR (WHALEN)

Mayor Bob Whalen commented that the purpose of this item was to gather more data on the tree at 387 El Camino Del Mar, specifically as it pertained to the level three risk assessment and root radar, and the tree’s need to be removed.

Questions of Staff: Mayor Pro Tem Sue Kempf asked if the City Arborist had ever conducted ground-penetrating radar studies. City Arborist Matthew Barker hat he was well-educated on ground-penetrating radar; however, he said he had never personally performed the analysis.

Public Testimony: Edward Bayuk, Ann Christoph, Bob Borthwick, Anne Caenn and Ruben Flores stated that trees were an asset to the community, and they appreciated investigating all the data to determine if the tree should be removed or not.

Pat Gallis voiced concerns about trees that fell in town, the liability to the city, and the cost of the additional study of this tree.

Councilmember Comments: Mayor Bob Whalen commented that given the nature of this tree, its history, and its location in town, he supported gathering more data to determine if the tree should be removed. He asked that if more information were to be collected, he requested that it be performed quickly.

Councilmember Mark Orgill said he was supportive of the action, and he suggested initiating a policy to utilize the three-tier analysis in the tree removal procedure.

Councilmember Alex Rounaghi clarified that Councilmember Orgill’s suggestion would include that once the three-tier analysis had been conducted, the City Arborist could make the decision to keep or remove the tree and it would not be appealed to the City Council. He asked if this policy could be applied in this instance. City Attorney Megan Garibaldi commented that the existing policy deferred to the City Council for a decision; however, she added that the City Council could include in its motion to direct staff to make a specific action and bring back policy that would be consistent with that decision.

Mayor Pro Tem Sue Kempf said she agreed with Councilmember Orgill. She stated that she wanted the City Arborist to be involved in the tier-three analysis and she suggested the evaluation of another tree in the area. Mayor Pro Tem Kempf said that it would be important to perform the analysis in a reasonable timeframe. She commented that she supported a streamlined tree removal policy.

Councilmember Mark Orgill said that if it was determined that the tree was healthy, he suggested that the tree undergo further pruning.

Councilmember George Weiss stated that there was a need for further assessment, and he supported seeking a level-three study.

Councilmember Alex Rounaghi commented that although he agreed with the public comments about the importance of trees, he said he was not supportive of this item because of public safety concerns.

Interim City Manager Sean Joyce said he had confirmed with staff that the tier-three analysis could be conducted swiftly.

Moved by Mayor Bob Whalen, seconded by Councilmember Mark Orgill, and carried 4/1 (Councilmember Alex Rounaghi dissented) to solicit, under the direction of the City Manager or his designee, a Level III Risk Assessment of the tree by a third-party certified arborist, in the presence of the City Arborist, to include ground-penetrating radar root mapping to determine the tree's underlying root structure, performance of a static pull test and any recommendations for tree pruning to provide the City Council additional information, and the community, an even more comprehensive understanding of the relative health and viability of the tree.

10. RECOMMENDATION TO EVALUATE JOINING THE NATURAL COMMUNITIES COALITION (ORGILL/WEISS)

Councilmember Mark Orgill stated that this item was a request for the city to join the Natural Communities Coalition. He briefly outlined the memorandum submitted by Councilmembers Orgill and Weiss.

Public Testimony: Jacky Cordero, Laguna Canyon Foundation, said that she supported the proposed action and she explained. She thanked Councilmembers Orgill and Weiss for bringing this item forward. Penelope Milne, Canyon Alliance of Neighborhoods Defense Organization (CANDO), commented how joining the coalition could benefit the city. Mary Fegraus commented that joining the coalition would add an extra layer of protection to the city's open space. She urged the City Council to approve the item.

Councilmember Comments: Councilmember George Weiss commented that the coalition benefited the city and he supported staff investigating the pluses and minuses of joining the Natural Communities Coalition.

Mayor Bob Whalen said he was supportive of moving ahead and he agreed with Councilmembers Orgill and Weiss.

Moved by Councilmember Mark Orgill, seconded by Councilmember George Weiss, and carried unanimously 5/0 to authorize staff to determine operational benefits and implications of joining the Natural Communities Coalition (NCC) and for the City Attorney to review legal ramifications of the same before returning to the City Council with information necessary to consider seeking City membership in the Coalition.

11. PARKING SOLUTIONS FOR CITY STAFF AND USERS OF LAGUNA BEACH COMMUNITY AND RECREATION CENTER (WHALEN)

Mayor Bob Whalen commented that the prior St. Catherine's Catholic School property had been owned and operated by the city for nearly a year as the Community and Recreation Center, and in order to properly utilize the entire property, parking needs should be assessed. He said currently there were only 42 spaces, and it was important for staff to begin to evaluate all of the potential options for parking solutions.

Public Testimony: Chris Catsimanes stated that he agreed with the proposed action; however, he did not support spending money on a third-party analysis, and he hoped staff could conduct the initial study.

Councilmember Comments: Councilmember Alex Rounaghi commented that he supported the recommended action.

Moved by Mayor Pro Tem Sue Kempf, seconded by Councilmember George Weiss, and carried unanimously 5/0 to direct staff to explore parking solutions for City staff and users of the Laguna Beach Community and Recreation Center (LBCRC).

12. POLICY FOR ROTATING MAYOR AND MAYOR PRO TEM ASSIGNMENTS (WEISS)

Councilmember George Weiss stated that he had brought this item forward because the positions of Mayor and Mayor Pro Tem were ceremonial roles that should not be determined by the majority of the City Council.

Public Testimony: Bob Borthwick, MJ Abraham, Michele Monda, David Dyrnaes, Edward Bayuk, Tom Osborne, Ginger Osborne, Chris Catsimanes, Jerome Pudwill, Lorene Laguna, Gene Felder, and Anne Caenn stated that they supported the recommended policy change, and they listed their reasons.

Chris Quilter, Pat Gallis, Jorg Dubin, and Ed Steinfeld commented that they did not support any policy change, and they explained.

Councilmember Comments: Councilmember George Weiss stated that he appreciated the public comments, and rotating the positions was the right thing to do.

Councilmember Alex Rounaghi asked the City Attorney about the city's code and the selection of the mayor process. City Attorney Megan Garibaldi responded that the Laguna Beach municipal code did not speak to the selection of Mayor; however, she said state law obligated the city to select a mayor and a mayor pro tem.

Councilmember Alex Rounaghi commented on the research he had conducted regarding Laguna Beach's historic selection of Mayor and Mayor Pro Tem, asserting that the historic practice was in the best interest of the city due to the role of the mayor. Councilmember Rounaghi stated that the voters elected councilmembers to make difficult decisions and one of those was to select the mayor. He said he did not support changing the policy to rotate the Mayor and Mayor Pro Tem assignments.

Mayor Pro Tem Sue Kempf listed the components that were important as the Mayor of Laguna Beach, and for those reasons, she stated that she would not support the proposed action.

Councilmember Mark Orgill stated that stability was important, and it was the City Council's responsibility to set the city up to perform at its best. He said that taking the selection of mayor away from the City Council would create more contention in the community and therefore, he said he could not support the proposed item.

Mayor Bob Whalen commented that the rotation of the mayor assignments was important; however, he said that this decision should remain at the discretion of the City Council and he did not support a change in the policy.

No action was taken.

ADJOURNMENT

There being no further business, Mayor Whalen at 7:59 p.m., Tuesday November 21, 2023, adjourned to the Closed Session at 4:00 p.m. and to the hybrid virtual/in-person Regular City Council Meeting at 5:00 p.m. on Tuesday, December 12, 2023, at City Hall, 505 Forest Avenue, Laguna Beach California.

Approved: December 12, 2023

Bob Whalen, Mayor

Ann Marie McKay, City Clerk

Note: All components of minutes shall be for the primary purpose of memorializing decisions made

by the legislative body. Any minute component that does not serve this primary purpose will be minimized or eliminated; this includes comments made by individual body members and members of the public. Discussions that occurred during the meeting can be viewed in archived video recordings on the city's website. Public submittals on items received prior to adjournment of the meeting are retained in the administrative record and can be viewed in the city clerk's repository.