

MINUTES
CITY COUNCIL REGULAR MEETING
CITY OF MONTEREY
Tuesday, December 1, 2020
4:00 PM 7:00 PM
MONTEREY, CALIFORNIA

Councilmembers**Present:** Albert, Haffa, Smith, Williamson, Roberson**Absent:** None**City Staff****Present:** City Manager, Assistant City Manager, City Attorney, Community Development Director, Public Works Director, Police Chief, Finance Director, Parks and Recreation Director, City Clerk, Fire Chief, Interim Recreation and Community Services Manager, Traffic Engineer, Deputy Human Resources Manager, Parking Superintendent, Senior Administrative Analyst, Associate Planner

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this meeting was conducted with telephonic/video participation only by all parties.

*****Afternoon Session Agenda*******CALL TO ORDER**

Mayor Roberson called the meeting to order at 4:02 p.m. Administrative Assistant Salameh explained to the public how to participate in the meeting and provide public comment.

ROLL CALL - 2018-2020 CITY COUNCIL

City Clerk Klein called the roll with all Councilmembers present.

ELECTION CERTIFICATION AND COUNCIL INSTALLATION

1. Adopt a Resolution Declaring Canvass of Returns and Results of the Consolidated General Municipal Election on November 3, 2020 (Not a Project under CEQA per Article 20, Section 15378 and Under General Rule Article 5, Section 15061)

Action: Adopted Resolution No. 20-179 C.S.

Public comment was not received on the matter.

On a motion by Councilmember Williamson, seconded by Councilmember Smith, and carried by the following vote, which was conducted by roll call, the City Council adopted Resolution No. 20-179 C.S. Declaring the Canvass of Returns and Results of the Consolidated General Municipal Election on November 3, 2020:

| | | | |
|----------|---|-----------------|--|
| AYES: | 5 | COUNCILMEMBERS: | Albert, Haffa, Smith, Williamson, Roberson |
| NOES: | 0 | COUNCILMEMBERS: | (None) |
| ABSENT: | 0 | COUNCILMEMBERS: | (None) |
| ABSTAIN: | 0 | COUNCILMEMBERS: | (None) |
| RECUSED: | 0 | COUNCILMEMBERS: | (None) |

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- 2. Installation of 2020-2022 Monterey City Council (Not a Project under CEQA per Article 20, Section 15378 and Under General Rule Article 5, Section 15061)
Action: Mayor Clyde Roberson, Councilmember Dan Albert, and Councilmember Alan Haffa were installed

Councilmembers Albert and Haffa and Mayor Roberson took the Oath of Office. Each made brief remarks. Gratitude was expressed to the voters, committees, family members, friends, members of the community, and City staff.

- 3. Appoint the Vice-Mayor for 2021 (Not a Project under CEQA per Article 20, Section 15378 and Under General Rule Article 5, Section 15061)
Action: Appointed Councilmember Tyller Williamson as Vice-Mayor for 2021

Public comment was not received on the matter.

On a motion by Mayor Roberson, seconded by Councilmember Albert, and carried by the following vote, which was conducted by roll call, the City Council appointed Councilmember Tyller Williamson as Vice-Mayor for 2021:

| | | | |
|----------|---|-----------------|--|
| AYES: | 5 | COUNCILMEMBERS: | Albert, Haffa, Smith, Williamson, Roberson |
| NOES: | 0 | COUNCILMEMBERS: | (None) |
| ABSENT: | 0 | COUNCILMEMBERS: | (None) |
| ABSTAIN: | 0 | COUNCILMEMBERS: | (None) |
| RECUSED: | 0 | COUNCILMEMBERS: | (None) |

PUBLIC COMMENTS

Public comment on non-agendized matters was received from Marta Kraftzeck and Tony Tollner.

CONSENT ITEMS

Public comment on the Consent Items was not received.

On a motion by Councilmember Williamson, seconded by Councilmember Haffa, and carried by the following vote, which was conducted by roll call, the City Council adopted the CONSENT ITEMS except Items 7, 8, and 10:

| | | | |
|----------|---|-----------------|--|
| AYES: | 5 | COUNCILMEMBERS: | Albert, Haffa, Smith, Williamson, Roberson |
| NOES: | 0 | COUNCILMEMBERS: | (None) |
| ABSENT: | 0 | COUNCILMEMBERS: | (None) |
| ABSTAIN: | 0 | COUNCILMEMBERS: | (None) |
| RECUSED: | 0 | COUNCILMEMBERS: | (None) |

Approval of Minutes

- 4. November 17, 2020 (Not a Project Under CEQA per Article 20, Section 15378 and Under General Rule Article 5, Section 15061)
Action: Approved

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Award of Construction Contracts

5. Award Electrical Contractor Job Order Contract 2021 in an Amount Not to Exceed \$1,000,000 to Jensco Inc. dba JM Electric ***CIP/NCIP*** (Not a Project under CEQA per Article 20, Section 15378 and under General Rule Article 5, Section 15061)
Action: Adopted Resolution No. 20-180 C.S.
6. Award Electrical Contractor Job Order Contract 2021 Presidio Municipal Services Agency (PMSA) in an amount not to exceed \$1,000,000 to Jensco Inc. dba JM Electric ***PMSA*** (Not a Project under CEQA per Article 20, Section 15378 and under General Rule Article 5, Section 15061; Excluded from NEPA per Title 32 CFR 651 Appendix B Categorical Exclusion (e) (1))
Action: Adopted Resolution No. 20-181 C.S.

Resolutions

7. Amend Resolution 19-115 to Change the Position Control List, Amend Resolution 20-150 to Change the Full-Time Salary Schedule, and Amend Resolution 16-249 to Change the Part-Time Salary Schedule for Parking Division Reorganization Savings (Not a Project Under CEQA per Article 20, Section 15378 and Under General Rule Article 5, Section 15061)
Action: Pulled from consent; Adopted Resolution No. 20-182 C.S.

Public Works Director Wittry gave the staff presentation and answered Councilmembers' questions.

Public comment was not received on the matter.

On a motion by Councilmember Williamson, seconded by Councilmember Smith, and carried by the following vote, which was conducted by roll call, the City Council adopted Resolution No. 20-182 C.S. to Amend Resolution 19-115 to Change the Position Control List, Amend Resolution 20-150 to Change the Full-Time Salary Schedule, and Amend Resolution 16-249 to Change the Part-Time Salary Schedule for Parking Division Reorganization Savings:

| | | | |
|----------|---|-----------------|--|
| AYES: | 5 | COUNCILMEMBERS: | Albert, Haffa, Smith, Williamson, Roberson |
| NOES: | 0 | COUNCILMEMBERS: | (None) |
| ABSENT: | 0 | COUNCILMEMBERS: | (None) |
| ABSTAIN: | 0 | COUNCILMEMBERS: | (None) |
| RECUSED: | 0 | COUNCILMEMBERS: | (None) |

8. Award a Professional Services Agreement for Design Services to Kimley-Horn and Associates, Inc. for the Del Monte and Casa Verde Recreation Trail Crossing Intersection Improvement Project in the amount of \$173,612.45 ***CIP/NCIP*** (Exempt from CEQA Article 19, Section 15301, Class 1)
Pulled from consent; Adopted Resolution No. 20-183 C.S.

Traffic Engineer Renny shared information from the agenda report and answered Councilmembers' questions.

Public comment was not received on the matter.

On a motion by Councilmember Williamson, seconded by Councilmember Albert, and carried by the following vote, which was conducted by roll call, the City Council adopted Resolution No. 20-183 C.S. to Award a Professional Services Agreement for Design Services to Kimley-Horn and Associates, Inc. for the Del Monte and Casa Verde Recreation Trail Crossing Intersection Improvement Project in the amount of \$173,612.45:

AYES: 5 COUNCILMEMBERS: Albert, Haffa, Smith, Williamson, Roberson
 NOES: 0 COUNCILMEMBERS: (None)
 ABSENT: 0 COUNCILMEMBERS: (None)
 ABSTAIN: 0 COUNCILMEMBERS: (None)
 RECUSED: 0 COUNCILMEMBERS: (None)

9. Adopt a Resolution Amending Resolution 19-007 to Extend the Pre-Commitment of .086 Acre Feet of Water to 704 Foam Street to January 17, 2022 (Not a Project Under CEQA per Article 20, Section 15378 and Under General Rule Article 5, Section 15061)
Action: Adopted Resolution No. 20-184 C.S.

Other

10. Approve the Parks and Recreation Commission's Recommendation to Update the Ballpark Advertising Program Regulations and Specifications, and Authorize the City Manager to Enter into Ballpark Advertising Program Agreements with (1) Monterey Pony Baseball/Softball, Inc. and (2) Save Our Sports (Not a Project under CEQA Article 20, Section 15378, and under General Rule Article 5, Section 15061)
Action: Pulled from consent; Approved as amended to reflect a one year period for signs

Interim Recreation Services Manager Leon and City Manager Uslar answered Councilmembers' questions.

It was suggested by Council to leave signs up for a full year, and that if weatherization of temporary signs were a concern, then perhaps the signs could be more permanent.

Public comment was received from Michael Groves, who spoke in support of using sturdy modern banners for a year-long period.

A motion was introduced by Councilmember Albert, and seconded by Councilmember Smith, to Approve the Parks and Recreation Commission's Recommendation to Update the Ballpark Advertising Program Regulations and Specifications, and Authorize the City Manager to Enter into Ballpark Advertising Program Agreements with (1) Monterey Pony Baseball/Softball, Inc. and (2) Save our Sports, as outlined in the agenda report, but with the time period extended to one year (instead of six months).

An amendment was proposed by Councilmember Williamson to monitor the condition of signs and ensure that they did not deteriorate and affect the environment. In response, it was stated that existing language in the program documentation already covers the scenario in question. The amendment was not incorporated into the motion.

The motion carried by the following vote, which was conducted by roll call:

AYES: 5 COUNCILMEMBERS: Albert, Haffa, Smith, Williamson, Roberson
 NOES: 0 COUNCILMEMBERS: (None)
 ABSENT: 0 COUNCILMEMBERS: (None)
 ABSTAIN: 0 COUNCILMEMBERS: (None)
 RECUSED: 0 COUNCILMEMBERS: (None)

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***** End of Consent Agenda *****

PUBLIC HEARING

- 11. Adopt an Urgency Ordinance Extending Ordinance No. 3626 to Comply with State Law and to Create a Maximum Height Limit of Sixteen Feet for Accessory Dwelling Units (Not a Project Under CEQA per Article 20, Section 15378, California Public Resources Code section 21080.17 and Under General Rule Article 5, Section 15061)
Action: Adopted Ordinance No. 3633 C.S.

Public comment was not received on the matter.

On a motion by Councilmember Albert, seconded by Councilmember Williamson, and carried by the following vote, which was conducted by roll call, the City Council adopted Urgency Ordinance No. 3633 C.S. Extending Ordinance No. 3626 to Comply with State Law and to Create a Maximum Height Limit of Sixteen Feet for Accessory Dwelling Units:

| | | | |
|----------|---|-----------------|--|
| AYES: | 5 | COUNCILMEMBERS: | Albert, Haffa, Smith, Williamson, Roberson |
| NOES: | 0 | COUNCILMEMBERS: | (None) |
| ABSENT: | 0 | COUNCILMEMBERS: | (None) |
| ABSTAIN: | 0 | COUNCILMEMBERS: | (None) |
| RECUSED: | 0 | COUNCILMEMBERS: | (None) |

***** Adjourn to Closed Session (See additional agenda) *****

Public comment was not received for the closed session.

RECESS

Recessed at 5:24 p.m. to closed session

RECONVENE

The Council reconvened at 7:02 p.m.

***** Evening Session Agenda *****

PLEDGE OF ALLEGIANCE

Mayor Roberson led the Pledge.

ROLL CALL - 2020-2022 CITY COUNCIL

City Clerk Klein called the roll with all Councilmembers present. Assistant City Manager Rojanasathira reminded the public how to participate in the meeting and provide public comment.

CONTINUED PUBLIC COMMENTS

Public comment on non-agendized matters was received from Lorna Moffat and Jean Rasch.

ANNOUNCEMENTS FROM CLOSED SESSION

City Clerk Klein announced the following:

cs1. MAHONEY, DANIEL vs. CITY OF MONTEREY, et al. WCAB No.: ADJ4160592: Fwd: Conference with Legal Counsel – Existing Litigation Pursuant to Government Code Section 54956.9(d)(1) Name of Case: MAHONEY, DANIEL vs. CITY OF MONTEREY (Workers' Compensation Appeals Board)

Action: On a unanimous roll call vote, the Council gave confidential direction to their legal counsel

PUBLIC HEARING (EVE)

- 12. 1st Reading by Title Only of an Ordinance Amending the City Code to Create a Definition of Cannabis and Cannabis Products (38-11), Create an Industrial Use Classification of Agricultural Testing Laboratory (Including Cannabis Testing) (38-16), Conditionally Permit Agricultural Testing Laboratory Use in I-R Zoning District (38-40(B)), Create Supplementary Regulations for Cannabis-related Agricultural Testing Laboratories (38-41), and Exempt Licensed Cannabis Testing Laboratories (22-39(a))

Action: Passed ordinance to print as amended

Senior Associate Planner Schmidt gave the staff presentation. City Manager Uslar answered Councilmembers' questions.

Public comment was received from Esther Malkin, who spoke in favor of allowing cannabis testing laboratories in Monterey.

It was suggested by Council to change the language from hours of operations and activities from "shall be" to "should be limited," and that a required period of retention for records should be specified. It was noted by City Attorney Davi that the California Business and Professions Code requires records be kept for a specific amount of time. The Council stated that the details should be in the ordinance, and City Attorney Davi confirmed that the language could be added to the wording about business surveillance. On question, Police Chief Hober said he would be comfortable with one year of retention.

It was noted by the Council that it is confusing and difficult to reconcile the fact that on cannabis related matters, "Federal law is enforceable despite State law."

On a motion by Councilmember Haffa, seconded by Councilmember Williamson, and carried by the following vote, which was conducted by roll call, the City Council passed to print the 1st Reading by Title Only of an Ordinance Amending the City Code to Create a Definition of Cannabis and Cannabis Products (38-11), Create an Industrial Use Classification of Agricultural Testing Laboratory (Including Cannabis Testing) (38-16), Conditionally Permit Agricultural Testing Laboratory Use in I-R Zoning District (38-40(B)), Create Supplementary Regulations for Cannabis-related Agricultural Testing Laboratories (38-41), and Exempt Licensed Cannabis Testing Laboratories (22-39(a)), as presented with an amendment to require one year retention of records:

| | | | |
|----------|---|-----------------|-------------------------------------|
| AYES: | 4 | COUNCILMEMBERS: | Albert, Haffa, Williamson, Roberson |
| NOES: | 1 | COUNCILMEMBERS: | Smith |
| ABSENT: | 0 | COUNCILMEMBERS: | (None) |
| ABSTAIN: | 0 | COUNCILMEMBERS: | (None) |
| RECUSED: | 0 | COUNCILMEMBERS: | (None) |

13. Deny an Appeal (AP-20-0248) and Approve the Personal Wireless Facility Use Permit Amendment UP-20-0171, to Allow Modifications to an Existing Cingular Wireless PCS, LLC (AT&T) Facility on the Rooftop of the Portola Hotel and Spa Building located at 2 Portola Plaza; Applicant: James Phillips, MasTec Network Solutions for New Cingular Wireless PCS, LLC (AT&T); Owner: Custom House Hotel, LP; VAF – Visitor Accommodation Facilities Zoning District; Commercial General Plan Land Use Designation; Exempt from CEQA per Article 19, Section 15303, Class 3
Action: Adopted Resolution No. 20-185 C.S.

Mayor Roberson asked the Council to disclose any ex parte communications, and nothing was disclosed.

Community Development Director Cole gave a brief introduction. Jerry Hittleman, contract planner with Rincon Consultants, gave the staff presentation and answered Councilmembers' questions. City Attorney Davi reported that during a brief period, Mayor Roberson lost the ability to turn on his camera and microphone, but could hear everything being said in the meeting. After this period Mayor Roberson was able to turn his camera and microphone on. Lee Afflerbach, radiofrequency (RF) engineer with CTC Technology & Energy answered technical questions asked by the Council.

It was noted by Council that public safety is a high priority of wireless infrastructure and will benefit from the 4G connectivity thanks to FirstNet.

On question, City Attorney Davi said that judicial remedies could apply if the Council makes a decision that doesn't have substantial evidence to support their findings, with associated cost of time and money.

On question, Community Development Director Cole said that the wireless provider would need to get permission from the City to change the technology used by the antennas, for example from 4G to 5G. City Attorney Davi said that it is important that the Council analyze the application that is before them, which is for 4G connectivity.

The applicant was given 15 minutes to speak. Applicant James Phillips, MasTec Network Solutions, said that the City contracts directly with FirstNet for any monthly services subscribed to by Fire, Police, EMS, and such services. He said that AT&T is a host for equipment at the existing site on behalf of FirstNet. He stated that the application is a 4G application and AT&T has no intention at this time to use the site for 5G technology. He said that multiple small cells would have to be deployed to enable 5G, which he said would be more focused on an intersection. He commented that placing a 5G network on top of the hotel would allow for great connections on the roof of the hotel and not much more.

As part of the applicant presentation, Bettye Saxon, AT&T, clarified that FirstNet is a governmental agency, and said that FirstNet has their own capability to look into a system and see how the network is working. She said that in the case of emergency, FirstNet customers have priority in the network and that their calls will go through first. She listed some of FirstNet's contracts: Cal Fire, Cal OES, CHP, and locally, City of Monterey Police and Fire, Pacific Grove, Del Rey Oaks, and the Monterey Airport, which she said were just a few examples. She said that the network contractually needs to work at its optimum level. She said that this year, the network was tested more than ever before with many people working and schooling from home. She said that AT&T was able to ramp up through wireless technology so that families without wired connections were able to connect successfully to necessary

schooling. She said that the City of Monterey needs to continue to upgrade its network for purposes of FirstNet connectivity as well as education.

On question from Council, Mr. Phillips said that AT&T has feedback from its cellular sites to determine the performance of each site. He said that if the coverage area at a site falls, AT&T is notified and engineers go out to make sure that the site is working properly, and that it is in their best interest to continually monitor to ensure that the directions of the antennas do not change. He said that lots of time is spent in the early stages of construction to verify where the antennas need to be pointed. Bill Hammett, engineer with Hammett & Edison, said that the application conforms with Federal Communications Commission (FCC) limits.

The appellant was given 15 minutes to speak. Appellant Nina Beety said that she may need additional time for her presentation and stated that she is already disadvantaged because the project directly affects her disability. She said that she did not see included in the Council packet the plans, radio frequency (RF) reports, and other information that the Planning Commission used for their decisions. She said this information is critical for the Council to make their decisions instead of just receiving minutes and the staff report. She said that in the recent Montage Health antennas matter, the Council received all of these reports. On question, Community Development Director Cole directed Ms. Beety to the section of the Council packet that included the RF reports in question, which she noted were attached as exhibits "A" through "G" to the Planning Commission resolution.

Ms. Beety continued. She referenced Monterey City Code section 38-211, Authority of Appellate Body, and said that the City Council should consider the record and additional evidence provided, and find whether an error was made. She stated that a substantial error was made in the Planning Commission decision and by staff and the consultant, as well as many irregularities. She said that she has provided ample documentation and evidence, including her most recent letter, in which she said she went through various findings that she said were required to be made by the Wireless Ordinance but were not made, and additional findings that she said were made in error. She said that the Planning Commission members claimed that their hands were tied but provided no evidence about why they believed it. She said that if it was based on input from a formal legal consultant that no longer works for the City, she stated that the firm has come under fire for conflicts of interests. She said that the Planning Commissioners were unfamiliar with ordinance requirements and federal rules. She said that one commissioner said he didn't see how the Planning Commission could deny the project, and that he said the applicant had done everything asked of them and all the boxes were checked, but she stated that all the boxes were not checked. She said that staff had omitted findings required by the Wireless Ordinance from the Planning Commission's resolution.

Ms. Beety continued. She said that the project's roof areas would exceed FCC exposure limits in violation of the Wireless Ordinance. She said that first responders, as she said was noted during the Planning Commission hearing, could be harmed by these rooftop exposures with safety measures that she stated had not been clearly or realistically discussed. She asserted that some rooms and balconies could exceed FCC limits and that the applicant would not discuss changing the angle of the antenna to reduce exposure to the rooms, and she said that the Planning Commission didn't pursue it. She said that CTC said in their August 17 letter that their calculations of exposure levels from 180-degree sector antenna indicate that demonstrating full FCC emission compliance from the site configuration was, at best, borderline. She said that earthquake settling, vibration, corrosion, or other events, could result in the antennae being out of compliance now or in the future. She said that CTC warned about possible exposure violations on a public walkway, and she said that this was not addressed by the Planning Commission and that the walkway was not identified. She said that the public corridor from Del Monte to Custom House Plaza and an interior atrium and exterior courtyard

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below the 180-degree antenna could be exposed to high levels of radiation from the antennas overhead but she stated that this wasn't explored or discussed. She said that no signs will warn people about this.

Ms. Beety continued, stating that hotel guests on balconies could be exposed to the 100% level of radiation. She said that people with pacemakers, insulin pumps, or other devices that could suffer from interference could be affected and that the FCC doesn't take into consideration these populations. She stated that staff members would be exposed daily to high levels of RF as they are cleaning hotel rooms and balconies and using utility rooms, and she referred to a photo that she said showed an open doorway from a utility room with linens looking out to an antenna. She stated that exposure of hotel staff to RF was not discussed. She said that the applicant did not provide estimated exposure numbers other than at the ground level. She said that some RF percentages were provided and that they were averaged instead of using peak exposure numbers possible for each frequency. She said that the penetrative qualities of frequencies were never addressed. She stated that lower frequencies go inside a building much more easily and that this was never addressed. She said that no information was provided about RF emissions from the rear of the antennas toward the hotel. She said that assurances were made that levels would comply, but she said that two national studies found high numbers outside of compliance with FCC limits and stated that the FCC does not police this. She said that this was for the general emissions coming from the face of the towers. She said that once the project is up and running and post-construction assessment is done, exposure levels will be anything the company wants. She said that the RF engineer omitted cumulative exposure, and she said it was misstated that there are no nearby wireless facilities. She said that the same statement was made about the Hyatt Regency despite the location of the Naval Postgraduate School across the street as well as other companies' facilities that she said were on the Hyatt Regency. She said that the Marriott has many antennas and that other wireless emissions exist in and around the Portola Plaza Hotel.

Ms. Beety continued. She said that CTC provided faulty analysis of cumulative emissions and corrected the RF engineer's statement poorly. She said that CTC only talked about cumulative levels at the site at the Portola Plaza Hotel and completely omitted areas adjacent to the Marriott and Pacific Street that she said would be subject to high cumulative exposure from both facilities. She said that she drew a map and drew out different azimuths from these beams, and said that it was frightening to see that these areas were never addressed. She stated that the building directly across from the Marriott would be in the intersection of beams from the Portola and the Marriott. She said that the surrounding few buildings would receive high levels of radiation as well as the buildings above Pacific Street and that these were never addressed. She said that in the photo it only addressed what happens at the site of the Portola Plaza, which she said will not be affected by the Marriott antennas. She said that CTC repeatedly urged, as she said they did tonight, that the City get RF evaluations because of possible high exposure levels before the project becomes fully operational, to ensure that the facility, as installed and maintained, complies with FCC guidelines. She said that the ongoing maintenance portion was dropped in the Planning Commission hearing and cannot be required according to the FCC. She said that it's an issue that they urged should be assessed frequently, and that if compliance cannot be compelled by the City, the City will never know what is coming out of the towers.

Ms. Beety continued. She asked if people would be in the hotel when testing is being done. She stated that tourism impacts were ignored. She stated that there would be impacts to disabled people who come to the City, and to tourists who are EMF sensitive or have medical implants and devices. She said that liability to the City was not adequately addressed. She stated that false names were provided on the application which were only now being somewhat corrected. She stated that the City had been sold a system that is supposed to deal with people who are in danger or sick, and she stated that the system makes per personally sick. She said

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that the existing facility already installed two miles from her house sends frequencies through the walls and windows and that she became sicker on the day it was installed. She said that the Portola Plaza facility is closer and double the power of the existing facility, and would affect her ability to use and enjoy her home and would block her access to downtown Monterey, Pacific Grove, and New Monterey. She said that the antennas appear to have no backup power beyond short term battery backup and would not function in many emergencies. She said that once batteries run out there would be no FirstNet, and she said therefore it is not an emergency system but an expensive, foolish system that she said would not protect the public but would unnecessarily exposes the public to RF radiation. She said that it's redundant, and that the City had a system before this was adopted. She stated that Los Angeles County firefighters opposed the FirstNet system and identified that it would be a public hazard. She referred to firefighters in a pilot study who she said experienced severe neurological impacts from living near a facility that put out a fraction of the emissions that she said the proposed facility would emit. She said that the firefighters received exemptions from two state bills on the basis of health, which she said she had previously provided to the City in an affidavit.

Ms. Beety continued. She said that the City has a symbiotic relationship with FirstNet that she said may add to the City's liability. She said that there had been no public notice, no public hearing, and no due process before the FirstNet contract was adopted. She said that City officials knew there would be residents harmed by increased exposure but failed to adhere to ADA or Fair Housing considerations. She said that there had been no competitive bid for the FirstNet contract even though Verizon also has a system and the City had services previously through an unknown provider. She said this would be an expensive change that would likely necessitate new equipment and pose risk to first responders. She said that it would be a substantial change to the human environment and should have been reviewed under CEQA. She said that it doesn't appear to be regulated under the TCA and that it is not a personal wireless service and therefore the City may have even more latitude to regulate. She said that a letter from the Department of the Interior on FirstNet identified serious harm to birds relating to this new system.

Ms. Beety continued. She said that three Planning Commissioners voted to deny the project due to serious reservations, which she said was admitted in the staff report. She said that Commissioner Brassfield questioned how emergency responders would be protected from high radiation levels on the roof. She said that Commissioner Latasa said that the location of the 180-degree beam wasn't acceptable from a health perspective due to levels in adjoining rooms. She said that the vote ended in a tie and that Commissioner Reed went into a tirade against the three commissioners, telling them to take their jobs seriously, which she said they tried to do by evaluating the evidence. She said that City staff offered the Planning Commission little guidance about next steps on the tie vote. She said that Commissioner Latasa finally announced he was changing his vote under duress, and that Commissioner Dawson silently followed when the roll call was taken, resulting in a 5 to 1 vote approving the project. She said that the Commission was not forced to approve the project if the findings could not be made.

Ms. Beety continued. She said that the public has a right to information, but that the applicant stated that if exposures were lower than 100% of FCC limits, then the carrier has satisfied threshold conditions for preemption, and stated that as a result the applicant did not provide emission levels on different parts of the hotel. She said that compliance is dependent on factors including deflection, resonance, metal surfaces, and asserted that factors that create hot spot conditions for individuals and factors can cause exposures to exceed computer estimations. She said that exposures can cause Interference with medical devices. She stated that the public has the right to know estimates of peak exposure and not get blown off by applicants hiding exposure estimates. She said that the figures came from the applicant, not from an independent third party. She said that CTC is reportedly also a network planner as well

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as a provider of assessment, and she said that it was the firm recommended and/or used by the City's former legal consultant. She said that the City's planning consultant made numerous errors in his analysis that she said was reviewed by staff and the City Attorney. She said that he has made errors in past hearings and stated he has lied about Ms. Beety and the text of laws.

Ms. Beety continued. She alleged that City staff and its consultant continue to deny her her legal rights, and to state that she is not entitled to ADA or Fair Housing protections and that she is not disabled. She said that they refuse to comply with state and federal obligations toward her as a disabled person. She said that this was the latest in serial discrimination by City against her since 2008, which she said had taken place through a series of policies and actions that she stated is effectively taking her home and permitting assault and battery. She said that they had displayed contempt and indifference for her suffering and made a mockery of Monterey's statement about caring for all residents. She said that staff did not include her demand letter from October 27 which she stated she would include in the record for this meeting. She said that this is a continuation of a pattern and practice of disappearing her disability and herself from consideration. She said that the Planning Commission and City Attorney also ignored access requirements under the ADA for the Portola Plaza Hotel as a place of public accommodation under Chapter 126 Section 12182. She said that she has been patient and reasonable to the City for years to no avail, and alleged that City staff have refused to comply with their obligations toward her and have mischaracterized and reworded her words and requests and retaliated against her.

Ms. Beety continued, stating that she would place in the record a portion of the 1996 Telecommunications Act conference report, which she read aloud: "The conference agreement creates a new section 704 which prevents Commission preemption of local and State land use decisions and preserves the authority of State and local governments over zoning and land use matters except in the limited circumstances set forth in the conference agreement. ... Actions taken by State or local governments shall not prohibit or have the effect of prohibiting the placement, construction or modification of personal wireless services. It is the intent of this section that bans or policies that have the effect of banning personal wireless services or facilities not be allowed and that decisions be made on a case-by-case basis." She stated that she was asking the City Council for a decision and that this hearing was on one case. She said that no hands were tied in the Council's ability to make a decision.

Ms. Beety continued, stating that she would share details about issues that she had with the staff report. She said that her house is one and a half miles away from the site, not two miles. She said that her house is two miles from the Hyatt Regency FirstNet antennas and that those antennas are only half the radiated power of the proposed Portola Plaza Hotel antennas. She said that when the Hyatt Regency antennas were activated, she got sicker and that she continues to worsen. She said that the ones that are half a mile closer and approximately double the power will sicken her further. She stated that her access to the City is blocked, stating that downtown will be blanketed and that her access to City streets, City services including City Hall, her bank, the post office, and any downtown events is impossible. She said that traveling on Pacific Street to go to Pacific Grove, or to go to the beach, or drive on Del Monte, will be impossible and her coastal access is being denied.

Ms. Beety continued, stating that the service program and activity being provided by the City is the review and permitting of this proposal for which she stated that the City has been given authority by Congress. She stated that the consultant's arguments are not on point and not grounded in any plain reading of applicable statutes or the concepts explained by the Department of Justice in their Appendix C to Part 35 Title II rules or State Civil Code 54(a) and 54.1(a)(1). She said that ADA regulations are for all disabled people, that disability is defined broadly, and that neither Mr. Hittleman nor City staff defines disability. She said that ADA

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provides examples only. She said that Mr. Hittleman and staff made repeated nonsensical statements about EMF and ADA and challenge the ADA, and she said that they do so to avoid their obligation to comply with ADA and equivalent State rules. She said that the City ignores the Telecommunications Act itself, which she said doesn't supplant other federal and State and local laws, and she referred to and appeared to quote from Section 601 regarding applicability of consent decrees and other law, Section 414 regarding remedies in the Act not being exclusive, the ruling of G. v. Fay School, and Section 255 from the 1934 Communications Act regarding access by persons with disabilities.

A concern was voiced by the Council that the appellant had gone over her time limit by a few minutes. It was stated that Ms. Beety had spoken for about 17 minutes. In the interest of fairness for the pre-established parameters that had been set for the public hearing, Mayor Roberson requested that Ms. Beety bring her comments to a close within no more than two additional minutes, and Ms. Beety agreed.

Ms. Beety said that Mr. Hittleman lied about what she said and about fair housing, and said that he and staff have failed to read ADA and the Amendments Act. She said that people are recognized as disabled, not conditions. She said that staff can't read or is indifferent to what Congress laid out and the Department of Justice codified. She said that she qualifies as disabled because she meets the definition in ADA act. She stated that ADA and ADA define disability and do not have a list of recognized disabilities. She referred again to Part 35 Appendix C. She requested that the Council direct staff to stop challenging ADA. She stated that she is disabled by electromagnetic sensitivity as it is defined, and said that therefore under Fair Housing and the Fair Housing Amendments Act the City cannot discriminate against her in housing. She stated that neither Mr. Hittleman nor staff responded to appeal issue number three or number four, and said that their sole aim seems to be deny her civil rights.

Mayor Roberson asked Ms. Beety to conclude her comments. Ms. Beety said that the situation affects her disability and her ability to live in the City and to live in and use her home. She said that the City is sickening her by its policies and practices. Mayor Roberson gave Ms. Beety one additional minute with which to conclude her verbal presentation.

Ms. Beety said that under CEQA the issue is inappropriate because the facility has a footprint of several miles due to a coherent signal, and she said that it is a very large land use project, not a small structure. She said that this very large facility will cause a substantial change to the human environment and will have an effect on migratory birds and she said that CEQA review would be appropriate. She said that the wireless ordinance requires that facilities comply with FCC guidelines and that the only way this can be ascertained is with a post-construction RF assessment that she said should be conducted. She concluded by saying that the compliance issue is serious, and that the ADA issue and her right to housing are serious, and she asked the City Council that they address all of the identified issues, find that the approval by the Planning Commission was in error, and deny the facility.

Mayor Roberson stated that the City Council had also received the written comments provided by Ms. Beety.

The Council recessed at 8:52 p.m. and reconvened at 9:04 p.m.

Mayor Roberson stated that the emails received from the public on the subject have been read and are in the public record. He opened public comments and set a three-minute time limit. Lorna Moffat, Danielle Gregorio, and Jean Rasch spoke in support of approving the appeal and denying the use permit amendment. With no further requests from the public to speak, Mayor Roberson closed public comments.

The applicant was given the opportunity to provide a rebuttal. Bettye Saxon thanked the City Council for the opportunity to bring the application back to review. She said that AT&T believes they have supplied everything that was required on the application checklist, and that the application is complete and in compliance, and she asked Council to deny the appeal so that AT&T may move forward to provide better wireless coverage for the area, for first responders, citizens, and students. She said that she sat on the task force for the Monterey County Office of Education and that the number one request to carriers was what could be done to improve access to students during the COVID-19 pandemic, and that the carriers were able to accomplish improved access through the use of wireless technology. Bill Hammett, Hammett & Edison, said that studies that his firm did and that CTC conducted were cumulative and considered all potential sources nearby, and stated that the calculations were not done at the ground only but were done at specific locations in the hotel and other buildings nearby. He said that it is not an issue for medical devices, which he said have standards that they meet that provide robust operation at levels equal to the standard, and he said that all levels that such devices would be exposed to at the site would be lower than the standard. Regarding reflecting surfaces, he said that in 35 years his firm had never found a single site where levels exceeded what they had calculated. He said that a 2.56 reflection factor was recommended by the FCC as just one of several conservative factors that he said were included. He said there were no issues with metal roofs or reflections. He said that the issue of FCC compliance was well established, and would be happy to take questions.

The rebuttal continued. Applicant James Phillips, MasTec Network Solutions, said that if Bill Hammett had come to him early in the process and told him that the levels would be exceeded, then it would have been his job to inform AT&T that a redesign would be necessary. He stated that Lee Afflerbach and Bill Hammett are licensed engineers and that it is a small group of RF engineers in the world. He said that if Mr. Hammett says a facility is safe to build, he can build it, and likewise if Mr. Hammett says it's not safe to build, it's not safe. He said that if anyone questions Mr. Hammett's report, he would like to see their resume to compare qualifications. Regarding the Hyatt location, he said that the theoretical study came in at 7%, and a field study with the RF measuring tool came in at less than 0.1%. He said that the numbers in the RF studies were at 100% of the maximum capability of the cell site, and that even if AT&T wanted to they would never be able to turn it up past this level. He stated that AT&T and MasTec have a quality system in place to ensure that technical standards and structural categories are met at installation, and that at every cell installation there is a video audit recorded for the entire installation, with tools on top of the antenna giving a digital read on every direction that the antennas are pointing, and that these are checks and balances to ensure performance and accuracy. He said that building officials and inspectors must sign off on the scope of work and confirm that it was done per plan. He said that demand for cell phone technology has increased exponentially in the last 10 years, and that demand from the public is what requires these upgrades, which he said were a necessity in order to meet obligations so that important services such as 9-1-1 and Google maps would work.

The Council took up discussion of the matter.

On question from Council, Mr. Afflerbach said that there is no place that people can be where the exposure level would be above 100%, and that the only way such exposure could happen would be on the roof or on a ladder in front of the antennas. He said that a fire truck ladder could get that high but it's not a conceivable, practical situation and that anything beyond 95 feet would not be able to exceed FCC levels. He said that CTC does not work for the industry, but strictly for municipal and nonprofit organizations, and that multiple staff members including himself calculated the levels independently. He stated that Bill Hammett did the same on his end, and that the calculations were done with a lot of detail. He said he was very confident that

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in no way would the exposure exceed FCC numbers and he stated that actual measurements made with equipment in the field were well below the calculated values. He recommended, and said that it would behoove all, to complete a proof of performance/proof of construction to confirm that standards are met. He addressed questions about preventing overexposure when people need to go near the site, and said that there are locks people can't get through, areas with warning signs, and disabling methodology in place. He said that when repairs are done, the equipment is either turned off or down. On the same subject, Bill Hammett said that there are signs present including identification of the carrier and a site designator, with a 24-hour number to call to arrange for site shutdown. He said that part of the lease arrangement should codify that procedure. Bettye Saxon said that AT&T has protocols such that any time there is maintenance or an issue with the sites, they are turned down, and the workers who are authorized to work at the sites know exactly when to enter into the area. Regarding intruders, she stated that there is a warning system. She said those systems are tied to the network and that AT&T would receive a warning and investigate and know to shut it off. She said that a regular person would not be up on the roof.

The Council posed questions about the appeal, including whether the City can ignore the FCC and what the consequences would be of doing so, and what findings, if any, would support denying the project. City Attorney Davi stated that the legal job before the City Council was to look at the City Code and ensure that the applicant has met all of the standards required by the City Code, and that if it doesn't meet those standards, there would be a basis for the denial and the Council would need to pinpoint the deficiencies it sees and why. She said that the Council does not have the authority to deny an application based on health effects as long as it complies with FCC emission standards.

It was commented by Council that State and federal mandates are a cause of frustration and that the City can only do what it can do legally. It was stated that the court costs would be high if the Council were to be taken to court for their decision. It was stated that the Council did not want to expose anyone to something that is detrimental to their health. It was stated by Council that they did not find justified findings to deny the project.

A motion was introduced by Councilmember Williamson, and seconded by Councilmember Haffa, to adopt Resolution No. 20-185 C.S. to Deny an Appeal (AP-20-0248) and Approve the Personal Wireless Facility Use Permit Amendment UP-20-0171, to Allow Modifications to an Existing Cingular Wireless PCS, LLC (AT&T) Facility on the Rooftop of the Portola Hotel and Spa Building located at 2 Portola Plaza; Applicant: James Phillips, MasTec Network Solutions for New Cingular Wireless PCS, LLC (AT&T); Owner: Custom House Hotel, LP; VAF – Visitor Accommodation Facilities Zoning District; Commercial General Plan Land Use Designation.

The Council continued to discuss the matter. In support of the motion it was stated that there were no aesthetic impacts and no historical impacts associated with the application and no grounds on which to deny the project. Appreciation was expressed for significant public participation received. It was stated that the Council is not in favor of corporate overreach, and that the community members' work reading carefully through the reports was appreciated. It was stated that the appellant's position relates to health and other arguments. It was stated that the application complies with City Code, California Public Utilities Commission regulations, Federal Communications Commission, siting and radiofrequency regulations, development standards, noise, security, compatibility, RF compliance, and was consistent with the City's General Plan and was compliant with all specific conditions. It was stated that, given reports showing that the facility will at most affect someone in a public space at a level of 72%, the Council was not seeing the health impacts.

It was stated that the Council has heard many of these appeals and each time starts with a clean slate with regard to the decision, but their understanding of the terminology improves over time. It was stated that particular attention was paid to three locations on the site and how they are pointed, and that the validation of alignment and the technical nature of the work was intriguing. It was stated that there is a standard that the FCC requires and that the evidence demonstrated that the RF would be well below the ceiling for exposure levels. It was stated that the Council went through all of the appellant's points and could not find evidence that the community would be placed at risk. It was stated that there was no evidence, cause, or reason to lawfully find the authority to support denial of the use permit amendment. It was stated that the applicants and staff report did an adequate job of addressing the 20 points of the appeal.

The Council stated that local control keeps being taken away and will have to be won back through Congress or the FCC. It was stated that it will remain to be seen whether the new administration will be more permissive.

The motion carried by the following vote, which was conducted by roll call:

| | | | |
|----------|---|-----------------|--|
| AYES: | 5 | COUNCILMEMBERS: | Albert, Haffa, Smith, Williamson, Roberson |
| NOES: | 0 | COUNCILMEMBERS: | (None) |
| ABSENT: | 0 | COUNCILMEMBERS: | (None) |
| ABSTAIN: | 0 | COUNCILMEMBERS: | (None) |
| RECUSED: | 0 | COUNCILMEMBERS: | (None) |

PUBLIC APPEARANCE (EVE)

14. Receive Update and Provide Feedback on the City's Commercial Cannabis Roadmap (Not a Project under CEQA Article 20, Section 15378 and under General Rule Article 5, Section 15061)

Action: Received presentation, discussed, and provided feedback

City Manager Uslar gave the staff presentation and answered Councilmembers' questions.

Public comment was received from Tom Rowley and Sal Palma, who spoke in favor of the planned approach. Concern was expressed by Tom Rowley and Esther Malkin that it will be difficult to gather community input from residents who are not online.

The Council discussed the matter.

On the subject of outreach, it was noted that stakeholders contacted will need to include military and education communities. On question, City Manager Uslar shared details of his vision for town hall meetings. It was requested by Council that the City send postal mail notices letting people know the meetings will take place. It was stated that the public should be engaged in other ways than only neighborhood associations. Concern was stated about how to get full public input due to COVID-19 limitations, and it was requested that staff inform Council if they have a difficult time achieving engagement.

On the subject of timing, it was stated that the proposed timeline is good, and the hope was expressed that the Council would have a clear idea of the community's stance by July or August of 2021. It was questioned how City departments will work together simultaneously on the subject. It was stated that the matter should be decided one way or another sooner than later, because it has serious implications for the budget.

It was stated that discussing cannabis zoning will be an important discussion. Concern was stated that rent prices may be driven up by cannabis businesses and local businesses can suffer as a result. It was stated that Monterey is in a unique situation with a lot of visitors, and it would be good to find the right locations.

On the subject of public opinion, it was stated that the public has moved further and further in the direction of cannabis legalization. Statistics were cited regarding majority votes from both Monterey County and City of Monterey voters on Proposition 64 in the 2016 election. On the other hand, it was stated that people may have voted to legalize cannabis but may not want it in their community, so it will be important to receive community input.

It was stated that the Council has not yet made a decision to get in this business, but has made a decision to ask the community what they think. It was suggested not to start talking about modeling for revenue, or prioritizing how to spend the money, but to listen to the community. A current advisory from the community is more valuable than the Prop. 64 vote from 2016.

It was stated that if there were questions regarding support for cannabis, it would be best to direct staff to hire an independent agency to conduct a survey as the City did for past ballot measures. It was stated that the maximum public input would be achieved through an advisory vote of the people.

It was stated that the Council wants to hear from residents, not the cannabis industry or advocates. It was stated that there are concerns about administration and law enforcement impacts. It was stated that lives have been destroyed by cannabis use.

REQUESTS FROM COUNCILMEMBERS TO AGENDIZE NEW MATTERS

15. Councilmember Williamson and Vice Mayor Haffa's Request to Agendize a Discussion about Rent Stabilization Measures (Not a Project under CEQA Article 20, Section 15378, and under General Rule Article 5, Section 15061)

Action: Directed staff to bring an extension of the eviction moratorium before the Council within two months, prior to State's eviction moratorium ending, and directed staff to dedicate a study session in 2021 to the issue of renter protections

Councilmembers Williamson introduced his personal intern, Jenna Tobin, who presented the staff report. Councilmember Haffa cited evidence that people are suffering due to the economy that has been impacted by COVID-19 and said he is concerned there will be a massive eviction wave as soon as the State moratorium ends, which would have a detrimental effect on the community. Councilmember Williamson clarified that an urgency ordinance for rent increases was requested for the next Council meeting, and a study session was requested for 2021 for further discussion and research on topics and policies that could protect Monterey's renters.

The Council discussed the matter. It was suggested that the State would be likely to extend their moratorium on COVID evictions, and that the City's rental assistance program might help address that issue, which was described as immediate.

On the issue of broader renter protections, it was stated that Proposition 21 lost in California. It was stated that the immediate priority was to restore the economy and the City and that the Council would be hesitant to have staff spend a great deal of time and money on another initiative. Concern was expressed about the cost of monitoring and creating lease registries. It was stated that the City must get back on its fiscal footing. It was stated that property owners are being careful with tenants and there is not currently urgency to evict tenants.

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The City staff's workload was acknowledged. It was noted that the Council had prioritized housing as its number two priority.

Public comment was received from Esther Malkin, who spoke in favor of protection for renters, and from Scott Dick, Monterey County Association of Realtors, who spoke against rent control.

The Council spoke favorably about agendizing an urgency ordinance for COVID-19 related evictions if the State does not extend theirs.

Comments were made by Council against agendizing a study session on broader renter protections, with reasons cited including the need for COVID-19 relief, restrictions on local actions, premature timing, lack of support for rent control, the demand on staff, and consideration of other items already in the works. It was stated that before the Council would be willing to agendize the proposed study session, data would be needed on how many property owners are raising rents at this time. It was stated that evidence was needed and that the Council must be judicious.

In favor of agendizing the study session, it was stated that the renter community will not be satisfied by the Council not being willing to have a conversation. It was stated that people of color, people in poverty, women, and households with children are being disproportionately negatively affected by current conditions. It was stated that there is no independent, verified information on whether rents are being raised, and that would be one of the benefits of a rental registry paid for by landlords at a certain level. It was suggested to have staff come back to Council with information about what would be involved in a rental registry.

On a motion by Councilmember Haffa, seconded by Councilmember Williamson, and carried by the following vote, which was conducted by roll call, the City Council directed staff to agendize:

- prior to State's eviction moratorium ending, in the next two months, extension of an eviction moratorium, and
- a study session dedicated to the issue of renter protections in 2021:

| | | | |
|----------|---|-----------------|--|
| AYES: | 5 | COUNCILMEMBERS: | Albert, Haffa, Smith, Williamson, Roberson |
| NOES: | 0 | COUNCILMEMBERS: | (None) |
| ABSENT: | 0 | COUNCILMEMBERS: | (None) |
| ABSTAIN: | 0 | COUNCILMEMBERS: | (None) |
| RECUSED: | 0 | COUNCILMEMBERS: | (None) |

COUNCIL COMMENTS

Councilmember Albert thanked City Clerk Klein for her work on the election.

Councilmember Smith referred to the City's 250th anniversary, reminding all of the history that the City has been through and stating that the best years are yet to come. He thanked the community and congratulated the newly reelected Mayor and City Council.

CITY MANAGER REPORTS


City Manager Uslar reported that \$415,000 has been spent on rental assistance that has benefited 150 participants.

ADJOURNMENT

The Council adjourned at 11:23 p.m.

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Respectfully Submitted,

DocuSigned by:

ED8453A4F62G4AA...

Clementine Bonner Klein
City Clerk

Approved,

DocuSigned by:

FA1984217DEE4FB...

Clyde Roberson
Mayor