



**CITY OF PACIFICA
CITY COUNCIL MINUTES**

**Council Chambers
2212 Beach Blvd
Pacifica, CA 94044**

Mayor Sue Digre
Mayor Pro Tem Mike O'Neill
Councilmember Karen Ervin
Councilmember Mary Ann Nihart
Councilmember John Keener

**July 25, 2016 (MONDAY)
www.cityofpacifica.org**

Mayor Sue Digre called the meeting to order on July 25, 2016 at 7:04 PM

CLOSED SESSION - NONE.

7:00 PM OPEN SESSION

Mayor Digre called the meeting to order at 7:04 p.m.

Call to Order

Attendee Name	Title	Status	Arrived
Sue Digre	Mayor	Present	
Mike O'Neill	Mayor Pro Tem	Present	
Karen Ervin	Councilmember	Present	
Mary Ann Nihart	Councilmember	Present	
John Keener	Councilmember	Present	

Staff Present: Lorie Tinfow, City Manager; Michelle Kenyon, City Attorney; Lorenzo Hines, Asst. City Manager; Van Ocampo, Public Works Director; Tina Wehrmeister, Planning Director; Christian Murdock, Assoc. Planner; Joe Spanheimer, Police Captain; Rich Johnson, Deputy Fire Chief; Kathy O'Connell, City Clerk.

Salute to the Flag led by Mayor Digre

Closed Session Report

SPECIAL PRESENTATIONS

CONSENT CALENDAR

Mayor Digre stated that they need to pull Item #9 because Councilmember Nihart cannot be in the room when they vote on that.

City Attorney Kenyon stated that the mayor needs to read the letter that is part of the vote.

Mayor Digre stated that it was on Item #8, and she read the letter that she will sign and send to the FAA, adding that our congresswoman has also sent a letter incorporating what was in this

letter. She thanked the residents for their input and assured them that they were keeping tabs on everything.

Councilmember Nihart also thanked her for the By Right letter to the governor.

Councilmember Ervin thanked her for her efforts in bringing the meetings together and ensuring that all our citizens are heard and doing her best. She also thanked Jackie Speier for her efforts.

Mayor Digre stated that she could not have done the work without the help of residents.

5-0

Item #9

Councilmember Nihart recused herself.

1-O'Neill

2 - Ervin

4-0

Councilmember Nihart returned to the dias.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Mike O'Neill, Mayor Pro Tem
SECONDER:	Karen Ervin, Councilmember
AYES:	Digre, O'Neill, Ervin, Nihart, Keener

1. Approval of Disbursements for 07/01/16 through 07/13/16
PROPOSED ACTION: Move to approve attached list of disbursements for 07/01/16 through 07/13/16.
2. Approval of Minutes
PROPOSED ACTION: Move to approve the minutes of the regular City Council meeting held on July 11, 2016.
3. Proclamation Confirming Existence of Local Emergency of the Pacifica Coastline from Westline Drive to the End of Beach Boulevard.
PROPOSED ACTION: Accept current photos as of July 20, 2016 (Attachment 2) and move to continue proclamation confirming the existence of local emergency.
4. Authorization to Sell Surplus Vehicles and Equipment
PROPOSED ACTION: Authorize the sale of the surplus vehicles and equipment.
5. Authorize the Senior Services Division to Submit Applications to San Mateo County Area Agency on Aging for Older American Act (OAA) Grant Funding, State Nutrition Funding and San Mateo County General Fund Support for Fiscal Year 2016-2017.
PROPOSED ACTION: Authorize staff to prepare documents and the City Manager to sign contractual agreements and any amendments with the County of San Mateo Area

Agency on Aging for Congregate Nutrition, Transportation, Home Delivered Meals and Supplemental Home Delivered Meals programs for the fiscal year 2016-2017. Authorize staff to pursue future one-time only funds, State funds or County support if they become available during fiscal year 2016-2017.

6. Cancellation of August 22, 2016 City Council Meeting
PROPOSED ACTION: Move to approve cancellation of the August 22, 2016 regular City Council meeting.
7. Letter of Opposition to Governor Brown's "By Right" Housing Proposal
PROPOSED ACTION: Move direct the City Manager to sign and send the attached letter as addressed.
8. Letter Requesting the Federal Aviation Administration and the Airline Industry to Reduce Noise Over Pacifica
PROPOSED ACTION: Authorize the Mayor to sign the attached letter as addressed and direct staff to send the letter.
9. Adoption of an Ordinance Calling a Special Election and Ordering the Submission of a Proposition Incurring Bonded Debt for the Purpose of the Construction of a New Public Library at the General Election to be Held on November 8, 2016 (Second Reading)
PROPOSED ACTION: Move to adopt the ordinance entitled "An Ordinance Calling a Special Election and Ordering the Submission of a Proposition Incurring Bonded Debt for the Purpose of the Construction of a New Public Library at the General Election to be Held on November 8, 2016"

ORAL COMMUNICATIONS

Kelly Bogdanov, Pacifica, stated she was a resident of Sharp Park. She commented that the previous meetings on the library issue have underscored how important the sea wall was to the neighborhood and anyone enjoying the promenade. She stated that they have confirmation from one of the leading coastal civil engineering firms, if not the leading firm, Moffett and Nichol, that the wall along the north side of Beach Blvd., was a retaining wall and not a properly constructed sea wall. She thanked staff and everyone involved in commissioning the study which was neutral, objective and data driven. She pointed out that the sea wall was a fiscal issue, questioning whether we want Pacificans to be responsible for the financial liabilities associated with the ongoing upkeep of a retaining wall that was not designed to withstand Pacific Ocean waves or respond to overtures from federal and state agencies to build a new, properly constructed, sturdy sea wall that can last for decades. She acknowledged the third option, managed retreat, and she presumed that it would be the costliest option of all, for the residents and businesses of West Sharp Park and those who enjoy the promenade and pier but also detrimental for Pacifica finances. She stated that she has heard Council speak thoughtfully about city finances, but she stated that we have the opportunity of eliminating upkeep liability of the retaining wall by seeking federal and state grants to build a new wall that would not require the same upkeep. She asked that they place the sea wall on an upcoming agenda to begin exploring how to preserve West Sharp Park's coastal areas.

Mike Bell, Pacifica, thanked Council for defending Pacifican's right to vote, adding that they need to revisit their recusal policy. He stated that using a person's home address to remove 20% of the Council to rule on items important to the entire city was too simple minded. He felt it invites political shenanigans and the possible delivery of grossly unfair rulings. He thanked the City Manager and staff for defending our city and working hard to make Pacifica a much better place for everyone to live, and for wisely enlisting the engineering firm of Moffett and Nichol to bring objective reasoning and science to the discussion of sea level rise and practical management of our coastline. He stated that their scientists and engineers specialize in the planning and design of urban waterfronts, ocean fronts, ports, harbors, marinas, inland bays and river fronts based on a scientific understanding of sea level rise and sedimentary migration. He stated that the findings they presented last Thursday quantified the reality of sea level rise and the information they presented contradicted the semi-factual and wildly presumptive claims of coastal inundation being fed to citizens by a group of Pacificans whose real motive should be questioned. He pointed out some of their findings, i.e., inundation of Sharp Park was a possibility if sea level rise continues at its current pace and a 9.0 earthquake that generates a giant tsunami during a 9-foot high tide which they concluded had a 1/1000 probability and this was supported by FEMA and US Geological Services in conjunction with their scientific research and map overlays; biggest threat to West Sharp Park was flooding beginning at the south end of Sharp Park Beach which would occur if the berms west of the golf course were not properly maintained; the wall north of the pier along Beach Blvd., is a retaining wall, not a seal wall and is at risk of catastrophic failure if it is not vigilantly and constantly maintained or replaced with a real sea wall. He stated that these findings are totally at odds with Councilmember Keener and his supporters' pseudoscientific plan to initiate managed retreat by abandoning all maintenance, every project and every person living and working in West Sharp Park. He asked Council to put an immediate end to this reckless agenda. He suggested that the Mayor write a nice letter to Jackie Speier about this issue which they would appreciate.

COUNCIL COMMUNICATIONS

Councilmember Keener stated that on Wednesday at the Sharp Park Library, Peninsula Clean Energy will have a workshop for Pacificans and he invited everyone to attend.

Councilmember Nihart stated that this was the month when most large committees in the county take a break, but it will start next week. She thanked everyone who attended Relay for Life. She stated that it was an amazing event, and it really brings people together around a very important issue that has taken too many lives. She thanked those who contributed and participated, including the volunteers.

Councilmember Ervin stated that she attended an Economic Development meeting. The budget was presented, and she appreciated that they talked about their vision of what economic development in Pacifica means, and what they have to do, including the Beach Blvd. Project, library, etc., and they felt motivated to move the projects forward. She thanked the members of the committee as they push our community forward to enhance the quality of life for our community. She stated that on Wednesday she will be attending her first Library Advisory Committee. She appreciated that they joined the committee to make this a reality.

City Manager Tinfow added that it was at the community center at 6:00 p.m.

Councilmember Ervin also extended her appreciation for those who formed and worked on the Relay for Life event. She stated that it was so inspiring.

Mayor pro Tem O'Neill stated that they got a card from Brent Ritz on a consent item which they just received, and that is past.

Mayor Digre felt the Relay for Life was quite an event. She stated that it wasn't easy to organize and was a moral support for all residents and family who have or are suffering from cancer. She stated that the organizers were extremely hard workers. She felt it was a great support for those suffering, adding that it was an upbeat event. She stated that the Economic Development Committee has been meeting in different venues, such as the Sanchez Art Center and Florey's Book Store. She wasn't sure where the next meeting was scheduled. She stated that the Devil's Slide Ride was a cycling event and run and was held with people from the Netherlands and Scotland participating as well. She stated that they found out about it by googling and wanted to do it. She stated that the run was from San Pedro Valley Park and it was for special needs kids. She stated that they had an easier one. She mentioned that they commented that Pacifica was beautiful but also everyone was very friendly.

STAFF COMMUNICATIONS

None.

PUBLIC HEARINGS

CONSIDERATION

10. Consideration of Elections Code Section 9212 Report Analyzing Potential Impacts from the "Pacifica Initiative Amending Ordinance No. 391-C.S. to Authorize a Future Rezone of the Quarry Which Could Include Residential Development, Under Certain Conditions"; and Action to Either Adopt the Ordinance Within 10 Days or Adopt a Resolution Submitting the Initiative Petition to the Voters at the Regular Municipal Election to be Consolidated with the Statewide General Election on November 8, 2016.

PROPOSED ACTION: Consider and file the 9212 Report; and adopt the attached resolution ordering submission of the "Pacifica Initiative Amending Ordinance No. 391-C.S. To Authorize a Future Rezone of the Quarry Which Could Include Residential Development, under Certain Conditions", without alteration, to the voters at the Regular Municipal Election to be consolidated with the Statewide General Election on November 8, 2016.

Planning Director Wehrmeister presented the staff report. She then introduced consultants, Karen Majors and Libby Siefel, who will review their methodology for the report preparation and were available for questions.

Karen Majors stated she was part of the team putting together the 9212 report, along with Asst. City Attorney Visick and Libby Siefel. She gave a brief report.

Libby Siefel then presented a brief report.

Councilmember Nihart asked a procedural question as to whether they want to take questions on the separate parts of the report or can they intermingle the questions.

Mayor Digre concluded that they just need to clarify if they are asking about the report or the ballot question.

Councilmember Nihart referred to the ballot issue and stated that she understood that the initiative measure was printed entirely and the sub pieces are in there.

City Attorney Kenyon responded that the entire text of the initiative was designated and printed in the ballot materials.

Councilmember Nihart asked confirmation that the reason this was on the ballot was because of the residential units.

City Attorney Kenyon stated that the initiative measure would forego the need for a future vote of the people if a project is brought through and approved and meets all of the conditions set forth in the initiative.

Councilmember Nihart concluded that she meant that, because we don't have a project, we are putting to the vote of the people up to 206 housing units that can be approved through the Council process if the voters approve and anything above that, according to the questions, would have to go back to the voters.

City Attorney Kenyon agreed, but stated that she would try to make it simpler. She stated that all this initiative does is eliminate a vote of the people requirement that we have, based on the 1983 ordinance. It then goes on to say, the only way that voting requirement is eliminated is if a project meets all of the conditions in the initiative. It would not have to just meet the 2006 multifamily unit requirement, but would have to meet all the other conditions that are set forth in the initiative.

Councilmember Nihart acknowledged the explanation, adding if she understood that she was confused by the ballot statement. She wondered why they can't put the 206 multifamily units under the other identified conditions.

City Attorney Kenyon stated that she would explain why she drafted it in that manner. She stated that there is a requirement limiting the ballot question to 75 words, the ballot question must be a condensed summary of the ballot entitled summary. She stated that it means that it is a condensed summary of the entire initiative which is the legal requirements for the ballot question. She had received suggestions on how to revise the ballot question, including inserting language about 206 multifamily units. She thought about it as it seems to make sense. She has a problem, and was alluding to that problem earlier. She stated that was not the only condition in the initiative. There are other conditions in the initiative, not just the open space, but retail, hotel, and multifamily requirements including 20% affordable housing. She found it difficult to pick out just one of those conditions and was why she worded the ballot question as she did. She stated that she didn't disagree with that language. She stated that it was up to the Council as they are adopting the ballot question. That was her suggestion and she explained her reasoning, but if a majority feel that addition would be more clear to the voters, that would be acceptable.

Councilmember Nihart concluded that they could change the language of the ballot.

City Attorney Kenyon responded affirmatively.

Councilmember Nihart acknowledged that there was not a project, but they did a lot of financial analysis on the maximum build out, and she knows one thing Pacificans will be quite concerned about is the traffic along with the impacts, along the Highway 1 corridor. She stated that they

sort of address it in the question part, but basically it mentioned there had to be a traffic survey. She gets that, but she asked if there was anything they can give the public to address the issue of the traffic impacts in that area if they build all this out.

Planning Director Wehrmeister stated that it would be very difficult to do that without hiring a traffic consultant and getting the study completed. She thought they would need a traffic consultant to help with the trip generation estimates without getting into the impacts but estimating how many trips it would create.

Councilmember Nihart stated that was one of her big things that was sort of missing but sort of there but not spelled out. She also asked if she had read it correctly that affordable would come to 37 units out of the 200. She stated that they were talking across the spectrum to medium, moderate income versus low.

Karen Majors responded that, as they understand the proposal, the affordable units will only be in the multifamily but not in the live-work, and that was where the number gets down to 37. She stated that it would be based upon the current document and it would be across the different levels.

Councilmember Keener referred to the fiscal analysis, stating that he had no issue with most of it, in particular the TOT tax. He thought that would be the major revenue generator for the city if the hotel were built. He understood that it was not required. He stated that he did have an issue in the property tax versus the fiscal cost as he heard that cities basically pay out in fiscal costs whatever they take in with property taxes. He asked if that was true, partially true or not true.

Libby Siefel stated that it varies a lot from city to city. She stated that she would call Pacifica a high property tax share city. She stated that some cities in California only get 5 cents on every dollar and Pacifica gets about 24 cents on every dollar of property tax Pacifica takes in and generates quite a bit of property tax for all the new development value that would occur. She stated that the fiscal effect of new development, based on property tax, varies from city to city because of the share property tax and the new values that could get created. She stated that, if there is higher value property that comes in, the new properties are going to be worth more than existing properties and the city will get more of a fiscal benefit. On the whole, because it was an ocean front location and because of what was being proposed and the nature of the development, it was likely that the assessed values will be higher than another hotel in town. Because it will be new construction, it will have higher value. She stated that, in terms of the cost in the general fund it would be equal to the property tax revenues she projected. She guessed that the fiscal cost would exceed the property tax revenue generation on itself, but if you add the property tax and the VLF and add some kind of ratio for the extra spending that new residents or new employees would bring, the city would probably be getting a lot closer. When you get to the TOT, you go to the real positive. She asked if she answered his question.

Councilmember Keener responded that she did and he would summarize that. In the big picture, she was saying that the property tax, sales tax and VLF would probably get taken up as fiscal costs of the city to provide services to the new residents, but the TOT tax would likely be free and clear and above that. He commented that she must appreciate the copy and paste system of a word processor. He then referred to 146 on packet page 179, stating that it asked what substantially consistent means with respect to the map in Exhibit A. They stated that the initiative doesn't define the term, with which he agrees. He wondered if there was a case law that gets to this or is there a way to predict what the landscape will look like.

City Attorney Kenyon stated that there was not a case that defines what substantially consistent means. She then said that most jurisdictions have somewhere in their zoning code a requirement that it be substantially consistent. That term has been analyzed a lot. She stated that the issue was that it was a fact specific determination and something that, at the time a project would be submitted through the process, it was going to be up to the Council or possibly the Planning Commission, to determine whether or not, in total, the project is substantially consistent with whatever it is supposed to be consistent with, and it was something with the legal standard being whatever they determine whether it was substantially consistent or not, that decision cannot be arbitrary, unreasonable or capricious and they must have valid bases for determining that it is or is not substantially consistent.

Councilmember Keener wasn't sure whether that helped or not.

City Attorney Kenyon stated that it was an amorphous term.

Councilmember Keener referred to the roads on the map, and they said the initiative didn't address streets, roads or parking in the same fashion that it addresses the location of the quarry village or other elements. He asked if that meant that the elements of the quarry village, which was residential, retail and office space, were fixed geographically.

City Attorney Kenyon stated that the uses are fixed.

Councilmember Keener added that where they are located is fixed.

City Attorney Kenyon responded affirmatively.

Councilmember Keener thought it was also true of the hotel and the bungalows.

City Attorney Kenyon responded affirmatively.

Councilmember Keener asked if that was the case because they were mentioned specifically.

City Attorney Kenyon stated that their location was specifically addressed in the map that was attached to the initiative and those uses must be substantially consistent with the location that was depicted in the map.

Councilmember Keener stated that the initiative did not address streets, roads or parking in the same fashion and it requires the applicant to complete a traffic study. He asked if that includes the road shown on the map. He wanted to separate things on the maps from things that are not shown on the map that will be decided in the future by the traffic study.

City Attorney Kenyon stated that Planning may have a different view and she wants to be sure that they get their opinion as well. She thinks the issue he was raising was whether they were committed to a certain configuration for the road. She stated that her problem in saying that they are committed to a certain configuration was because she believed the map seems to be addressing the location of the uses as opposed to the location of accessory infrastructure. She thought that an argument can be made that the configuration of the road was actually a configuration of the use but, hypothetically, she can say that the configuration that was on the application was substantially consistent with this and is tied to that configuration but if, following traffic studies and CEQA and other analyses, it was determined that the configuration is not

environmentally sound for any particular reason, she wasn't sure they could make the finding that it was not substantially consistent because, in the applicant, it was substantially consistent but our mitigation measures required them to move it.

Councilmember Keener thought he understood that and he saw nods in the audience that say they understood that, as well as a couple of Councilmembers.

City Attorney Kenyon stated, for the record, this was a "we" as in we answered the questions, not just her.

Councilmember Nihart asked, for clarification, if she was saying that, when the process comes forward, there will be mitigation that happens and that may or may not move the roads as they exist.

City Attorney Kenyon stated that it would not be able to move the location of the uses, as she was certain of that. Because the roads do not appear to be clearly identified as being required to be consistent with the map, she was less certain about the applicability of their configuration. She stated that it was a different analysis.

Councilmember Ervin stated that they were great questions for clarity and it was amazing they had so many additional questions when so many have been asked previously. She wanted to comment on the common themes, such as nothing is required to be built. This defines the maximum buildout of hotel rooms, residential, etc., of what potentially will be there but nothing is required to be built or no combination thereof.

City Attorney Kenyon believed that was correct, clarifying that this initiative does not mandate that anything be developed and it also does not mandate that there be phases of the project developed in any order, so she was correct.

Councilmember Ervin asked, with that phasing question, if it passed, can the phasing be part of the Planning Commission's role, and require as conditions of approval any type of phasing.

Planning Director Wehrmeister stated that they would not be able to require a particular phasing, but the applicant may voluntarily submit a particular phasing plan as part of the application.

City Attorney Kenyon added that we don't have regulations in our zoning code that address phasing requirements. She then said that many developments come through, at least in other jurisdictions, where developers have agreed or requested phasing. She felt that was what we would need in this instance to condition the project with phasing.

Councilmember Ervin felt that one of the big concerns people have is that we will approve this and potentially all we will get out of it is residential housing which potentially has the ability not to garner any profit.

City Attorney Kenyon stated that there was no guarantee that it would not happen.

Councilmember Ervin asked if that was something we could address during the planning process, such as can the Planning Commission not approve a project because it was not a project that would not benefit Pacifica.

Planning Director Wehrmeister stated that, as the City Attorney mentioned, we don't have an ordinance that addresses phasing.

City Attorney Kenyon added that the short answer was no.

Councilmember Ervin thought open space was a requirement. She was confused by something on page 126, where it states that the map includes commercial development on at least 50% of the develop able area.

Mayor Digre asked which question that was.

Councilmember Ervin stated that it was packet page 126, No. 9, the bottom paragraph.

Councilmember Keener stated that it wasn't a question.

City Attorney Kenyon stated that it was the report itself.

Councilmember Ervin agreed, but stated that she was confused. It mentions that open space was 75% of the area, and the map includes commercial development on at least 50% of the develop able area and she asked if that meant 50% of the remaining 25% that was not open space.

City Attorney Kenyon stated that she would ask Karen Majors to respond to that.

Ms. Majors stated that it was a bit confusing because that was going back to the Rockaway Specific Plan as well as the General Plan. Those two documents required that, of the develop able area, 50% needed to be commercially developed, but not the entire site. She stated that the calculation she tried to make was that it appeared visually and in terms of the numbers of square feet that they had hit that 50% threshold of the area that could be developed. She stated that the 75% had nothing to do with that calculation, but only of the develop able area.

City Attorney Kenyon asked Ms. Majors if she was saying that the note at the bottom of page 9 was not intended.

Ms. Majors asked if it was page 9 of the actual document.

City Attorney Kenyon responded affirmatively, referring to the last paragraph.

Councilmember Nihart stated that it was taken from the General Plan source above.

City Attorney Kenyon asked confirmation that it was not supposed to be a description of a further analysis of the 75% open space requirement.

Ms. Majors responded affirmatively, as it was comparing the two documents, General Plan and Specific Plan, to the develop able area.

Councilmember Ervin got most questions answered, and appreciated knowing some of the concerns that people have will go through the general review process that we have for every project.

Planning Director Wehrmeister stated that this initiative does not approve a project and it would go through the normal approval process. In this case, because of legislative actions involved, it would involve, not only the Planning Commission but also approval of the City Council.

Mayor pro Tem O'Neill referred to the City Attorney's concern about putting that additional phrasing in the ballot statement was because it picked out one requirement. He stated that the letter they got from a citizen said we were still 30 words under the ballot statement, and he asked if they could add other points.

City Attorney Kenyon agreed that they could, but she was trying to balance the need to make the question as simple as possible while still trying to provide as much explanation as she could as to what the initiative was. She agreed that they could add more language but she thought the question for Council was will adding more language make the ballot question more understandable or not. She accepted the fact that it was her opinion. She went through many different drafts with 10 ballot questions and this was the one she settled on because in trying to include everything in there and you read the ballot question it was almost unintelligible. She tried to make it as simple as possible.

Mayor pro Tem O'Neill then referred to phasing, and asked if she said there was no Municipal Code section that says the city can require phasing.

Planning Director Wehrmeister responded affirmatively.

Mayor pro Tem O'Neill assumed we can put in conditions but he concluded we cannot put in a phasing condition.

Planning Director Wehrmeister responded that you could not.

Mayor pro Tem O'Neill stated that once they get the entitlements, they can sell the property and those same conditions on it would fall to the buyer of the property.

Planning Director Wehrmeister agreed, explaining that conditions of approval run with the land.

Mayor pro Tem O'Neill asked if they have packet page 235.

Councilmember Nihart stated that she had to print them out and kill a tree.

Mayor pro Tem O'Neill thought it might be on pages 232 or 234.

Councilmember Nihart asked if he meant in the actual ballot.

Mayor pro Tem O'Neill responded that it was in the actual ballot argument. He then read from page 233 regarding permitting 206 units of multifamily housing, no more than 181 residential apartment units, 20% must be designated as affordable, no fewer than 25 units designated residential live/work units. He stated that he was taking that to read 206 plus 25.

City Attorney Kenyon stated that was not correct, and directed him to 5B of the initiative language itself which is the overall restriction for multifamily was no more than 206 units and of those 206 units, it breaks down to 20% affordable and 25 live/work.

Mayor pro Tem O'Neill stated that, in her analysis, the live/work was included in the residential.

Councilmember Ervin asked if the initiative could have been described or written in more detail to guarantee commercial, hotel, retail, with the residential to give more assurances to the public in regard to what the actual project was going to look like, or because they were strictly voting on having residential, were they limited to just asking about the residential.

City Attorney Kenyon stated that there was no limitation on how the proponents wanted to draft this initiative.

Mayor Digre asked her to repeat it.

City Attorney Kenyon reiterated that there was no restriction and no limitation on the wording of the initiative. They could have put something.

Mayor Digre concluded that it was a done deal at this point.

City Attorney Kenyon responded affirmatively.

Councilmember Keener referred to the conditions that the initiative places on any development that can take place, and asked if it was true that, of those conditions, only the residential development actually requires a vote and all the others could be accomplished without the vote but with the normal permitting process.

City Attorney Kenyon responded affirmatively.

Councilmember Keener stated that was an argument for the insertion of language that would address up to 206 residential in the ballot question because that was the only thing that actually requires a vote whereas all the other conditions mentioned do not require a vote and could be accomplished during the normal permitting process.

City Attorney Kenyon responded affirmatively, adding that she was sharing what she thought when she tried to draft that. She asked, with respect to including more information on the multifamily residential portion, where you stop including the other conditions on the multifamily, which is that they must be limited to the quarry village on the map, can include 181 residential apartment units of which 20% must be designated as low and moderate. She asked what portion of the restrictions you want to include. She stated that she answered his question that he was correct.

Councilmember Keener stated that she asked him a question and he stated he would answer it. He would include only the 206 multifamily units and the other stuff is important but not as important as the 206 multifamily units. He agreed that it was a matter of opinion.

City Attorney Kenyon stated that she will not tell him that by inserting that language you don't meet the election code requirements. It was her decision in drafting.

Councilmember Nihart stated that she was still on you can include it as 206 and certain specific requirements in the initiative.

City Attorney Kenyon responded affirmatively.

Councilmember Nihart agreed with Councilmember Keener on the cut and paste function but she understands why. She then stated that there was a recurring statement that she wanted to clarify, and she read that it said, if the city approves such a project, it would be the obligation of the applicant, and not the city, to mitigate the traffic impacts caused by the project. She asked if there were any limitations on that.

City Attorney Kenyon explained that the impacts we are requiring the developer to build or pay for must be directly related to the burden that their project was imposing. She stated that there must be a nexus requirement.

Planning Director Wehrmeister clarified that it was a functionality requirement.

City Attorney Kenyon concluded that was the restriction.

Planning Director Wehrmeister added that it was a proportionality requirement.

Councilmember Nihart understood that was why it was so difficult without specifics, although they do have maximums and they can make some assumptions about 80% occupancy in the hotel, etc.

City Attorney Kenyon stated that the problem with the traffic is that you need a specific project in front of you to analyze the impacts, because you will need a traffic study and then need it analyzed by the traffic consultants and that analysis will then be analyzed by the CEQA consultants and then analyzed by planning, city attorney, city manager, which includes a lot of steps to go through.

Councilmember Nihart stated that she had a lot of questions, knowing that, if this goes forward, we've got lots of questions that the public will be generating with lots of supposition and lots of fill in the blanks, so it would be nice to have some sense of it, but she understands. She asked, because the successor agency is terminating, if anything they are doing impacts that in anyway.

City Attorney Kenyon responded that it did not.

City Manager Tinfow stated that they asked themselves that same question.

Councilmember Nihart concluded that the map goes with the land if it was sold because it was part of the initiative.

City Attorney Kenyon responded affirmatively.

Mayor Digre felt the questions were very helpful and she had no problem with that. When she reads it, and she decides to approve the ballot, she asked what are the consequences. She thought it was not clear to her that no commercial is mandated, but we were approving that they can have residential, but there is nothing in the initiative that insists that commercial also has to happen and the TOT.

City Attorney Kenyon agreed, adding that nothing requires that it be built. The only requirement is that the project that was approved must contain all of those elements that are in the initiative.

Mayor Digre stated that was her question and she asked that it be repeated.

City Attorney Kenyon reiterated that the initiative requires that any project that is ultimately approved contain all of the elements contained in the initiative. If they don't, the project would require another vote of the people. She stated that all the initiative requires is that an approved project have those elements, but there is no lever the city has that forces development. She stated that, once they get a project approved, the city cannot force them to construct nor can they force them to construct in any certain order. She stated that the earlier question was whether, if this initiative was approved, and they get a project that is approved with all of those elements, hotel, retail, office, open space and residential, there was a possibility that the only thing they will build is the residential.

Mayor Digre stated that she understood what she said, but didn't understand why, if you apply for a project, that isn't the project.

City Attorney Kenyon stated that they cannot force the developer to construct the project. She stated that the only authority they have is to approve a project.

Mayor Digre concluded that, if they submit a project and all the components have to be there, they can apply for the project and decide not to do it, and that means they don't do anything, not just pieces.

City Attorney Kenyon stated that they can do pieces.

Mayor Digre states that, if she is for this and she votes yes thinking they will get commercial and residential, but it was not.

City Attorney Kenyon stated that there is no guarantee that you will get all of the elements of the project. She stated that the only thing they can guarantee is that, if they do construct the residential component, it must meet all of the requirements in the initiative and the project approvals.

Mayor Digre concluded that they would have to have the commercial as well.

City Attorney Kenyon stated no, because that was all they are building. They have a project approval for a hotel that is compliant with the initiative, but they are not forced to construct it. She stated that was true for any project and is not specific to this initiative.

Mayor Digre asked if she was wrong in thinking it would be helpful to say that it does not mandate the building of any of the components, and add that to the language in the ballot.

City Attorney Kenyon stated that she would have a problem with that, because that is not part of the initiative. That was not written in the language of the initiative, and the ballot question can only be a condensed version of the initiative. She stated that the mayor is referring to an effect but not something written in the initiative, and she would have concerns about adding that to the ballot question.

Mayor Digre concluded that, when someone asks what this is all about, it simply means that the city is allowing residential and once they get that permission, they do not have to come to the public anymore and they can build it or not.

City Attorney Kenyon reminded her that what the initiative was doing was eliminating the voting requirement.

Councilmember Nihart clarified that it was for housing up to 206.

City Attorney Kenyon agreed, and stated that the project would have to go through the process and be approved, just like any other project.

Mayor Digre stated that she was trying to make clear consequences, but she has concluded that she is not allowed to do that.

City Attorney Kenyon stated that the issue she has with inserting that language is that it applies not just to the initiative but every project. She stated that there is nothing unique about this initiative related to that issue that they were discussing.

Mayor Digre thought it was unique in that a change was being requested. She thought she got the answer that, if the initiative is passed, it would not affect or take away the HPD overlay.

City Manager Tinfow responded affirmatively.

Mayor pro Tem O'Neill thought they were talking about something similar to the Holiday Inn Express where there was a continuation of their permit, and that was what could potentially happen here.

City Attorney Kenyon stated that she would have Planning answer because she was not familiar with that application.

Mayor pro Tem O'Neill thought that could happen here. They have an approved project, they don't build it, and they could keep getting approved and renewed permits.

Planning Director Wehrmeister stated that you could renew your permits but the permits could also expire, but there was no requirement that they submit a building permit and actually construct the project.

Mayor pro Tem O'Neill asked, if they did a traffic study and phasing for themselves, would each phase have their own traffic study rather than one traffic study for the entire project.

Planning Director Wehrmeister asked if he was asking if the applicant came in and proposing phasing.

Mayor pro Tem O'Neill stated that, if the applicant on their own initiative, builds the apartments, and that has a traffic study and a year down the road, they apply for the hotel, he asked if the hotel would have their own traffic study.

Planning Director Wehrmeister thought what would likely happen was that the entire project would potentially come in and get approval or the legislative actions would be there and the entire project would be studied and analyzed in the traffic analysis.

Mayor pro Tem O'Neill asked if he doesn't apply for all projects at once.

Planning Director Wehrmeister stated that there was typically a way to "cess out" which impacts are associated with which portion of the development and then mandate that those traffic mitigation measures be implemented.

Mayor pro Tem O'Neill asks if she said "cess out."

Planning Director Wehrmeister responded affirmatively.

Mayor pro Tem O'Neill asked if that means to yank what you want out of it.

City Manager Tinfow asked the Planning Director to walk the Council through what happens with a project like this. The application comes in, staff analyzes the full application and does a traffic study for the full application.

Planning Director Wehrmeister responded affirmatively.

City Manager Tinfow stated that it then goes through the process and gets approved, the owner can choose to build part of it.

Planning Director Wehrmeister responded affirmatively.

City Manager Tinfow stated that was after the application has been approved and the full application would have the traffic study done for it and they would see that.

Mayor pro Tem O'Neill stated that the developer does not necessarily have to make an application for the entire development.

City Manager Tinfow stated that he does.

Mayor pro Tem O'Neill stated that the developer would have to come in and in their application apply for the apartments, hotel, quarry village all at once.

City Attorney Kenyon stated that all of those restrictions that are included in the initiative must be included in their application, otherwise the city would be saying fine, we take them through the process but at the end, they will have to take it to a vote of the people.

Planning Director Wehrmeister clarified the difference between the entitlement permits and the building permits, stating that with the entitlement permits they would need to process the entire application. When talking about that they may not build it all, at the building permit stage, they may only pull the residential or the hotel. She stated that, at the entitlement stage was where they do the traffic analysis.

Mayor pro Tem O'Neill concluded that, if they apply just for residential, the traffic study would have to encompass the entire elements proposed in the initiative.

City Attorney Kenyon responded affirmatively.

City Manager Tinfow stated that their application has to include all of the elements.

Mayor Digre opened public comments.

Scott Birkey, San Francisco, stated that he was a land use partner with the law firm, Cox, Castle & Nicholson in San Francisco. He stated that he represents the developer of the quarry project. He expressed, on behalf of the entire project team, their appreciation for all the time

and effort by city staff and city attorney's office to prepare what he thought was a very well written, comprehensive and objective 9212 report for the initiative. He stated that they agree with the report's understanding that the initiative itself does not approve any development or actual project on the quarry site nor does it rezone the quarry. It gives the Council the ability to consider a project that includes some amount of residential development so long as that project conforms to the land use restrictions identified in the initiative. He stated that several of the restrictions in some sense were thought of as project components, such as the open space requirement. He stated it was for that reason, regarding some of the back and forth relative to modifying the ballot summary, they would suggest that it not take place and not amend it to include an up to 206 residential unit count, because that was only one piece of the larger project. They were probably going to be submitting a planned development permit which is the integrated concept in land use planning where all the different pieces have an integrated and combined effect. He thought to single out residential was not the intent of the project that the developer is contemplating. He also pointed out that built into the initiative was a safeguard that requires that any project with a residential component that does not meet the land use restrictions that they have been talking about must go back to the voters before that project can be approved. He stated that it was important to keep in mind that development on the quarry will still require city land use approvals and entitlements after and if the initiative passes. He stated that the 9212 report identifies key approvals that are required for the project but none of those can be granted by virtue of the initiative alone. He stated that those approvals can happen only after the initiative has been put on the ballot and approved by the voters in November, not as part of the initiative itself. He stated that, because of the nature of these approvals, the city will and must evaluate the environmental effects of the project pursuant to CEQA which was required by law and the initiative also references CEQA. He stated that the CEQA review will happen as part of the entitlement process and means that the environmental impacts must be evaluated and any mitigation to offset those impacts must be identified before Council approves the project and the public will have multiple opportunities to comment on the project as it moves its way through the entitlement process. That process comes later and placing the initiative on the ballot at this meeting does not approve any of those entitlements or preordain the result of the project's environmental review. This is not a rubber stamp for any form of development on the site but only to give Council the ability to consider a project that includes a residential component and subject to land use restrictions that they think benefit both the community and the environment. They look forward to a continued dialogue with the Council, staff and Pacificans on the quarry.

Nancy Morrison, Pacifica, urged Council to include the 206 residential units in the ballot. She felt people need to be clear that they were voting on that, adding that they don't need to vote on a hotel or the other commercial development, and she felt with the current wording that was not clear.

Peter Loeb, Pacifica, thanked them for the 9212 report, recognizing the time, effort and expertise that went into making it. He remembered Libby Siefel from redevelopment days. He stated that they have his letter, and he was hearing comments, questions, clarifications and they were doing his work. He was present to ask that they include the up to 206 multifamily units of residential development as that is the reason they are having a ballot measure. He stated that the gentleman representing the developer used the phrase about singling out the residential piece, but he felt that was why they were here. Without the residential piece, they would not have spent the last hour or two talking about this. He reiterated that the only reason there was a vote was because there was a residential component and it needs to be clear to the voters that the decision they are making is regarding the residential. He acknowledges that the vote is not approving the project but authorizing the Council to approve a rezoning that includes 206

multifamily residential units. He stated that he would push the envelope to include the phrase of up to four stories in height. He stated that the language was in the ballot title and summary prepared by the city attorney which says 206 multifamily residential units and he didn't see why it can't be included in the ballot wording so people are clear about the decision they are making when they vote. They are not voting on a hotel or the other pieces of the project, only voting because of the residential component of 206 units being proposed. He asked that they include that in the ballot wording.

Chris Skinnell, San Francisco, stated that he was the election law counsel for the proponent of the measure. He stated that his firm does initiative law and he wanted to address the issue of the 206 units in the ballot label and suggests that it was not appropriate to include that and ignore the other components. He stated that there is extensive case law that talks about what the ballot title was supposed to say. He stated that it was supposed to be impartial and not pick and choose bits and pieces that may influence voters one way or the other. He stated that, contrary to the statements made, this was not a vote on 206 residential units, but a vote on 206 residential units, provided that 75% of the property is devoted to open space with a certain amount of hotel capped at a certain level and a certain amount of commercial space are included in the project. He stated that, if they ignore all those restrictions and limit it, they are actually misleading the voters as to what they are voting on. He stated that they are giving them the impression that it is a blank check for 206 units and that is it. He suggested that the appropriate thing to do is to stick with the current neutral language and the city attorney has the opportunity and obligation to prepare an impartial title and summary and analysis of the measure that can list all the full details so voters can understand the residential piece, hotel and open space piece of it. He stated that the developer can't just walk in and ask for 206 units and ignore the requirement that there be open space. He stated that there are a lot of restrictions placed on the development and requirement of the project and if they focus on the 206 units, they ignore and actively mislead the voter as to what the ballot measure is intended and designed to do. He asked that they maintain the ballot language as it currently exists.

Brent Ritz, Pacifica, stated he supports the public right to vote, and they should have the opportunity to have their say if this project should go forward. He stated that most have had the opportunity to say. He stated that he would give a few questions and his analysis of the report. He stated that there were some flaws in it. He stated that one thing in favor of the project was that it was a new project and the yields on the tax base will yield much more on this project relative to property under Proposition 13 and built 30 years ago and the money entering the community would have positive benefit. He stated that he has yet to see a project with affordable housing mixed in with a high end hotel. If they show him one with an analysis and he will give his opinion on it. He stated that the hotel rates were quoted at maximum and he stated that we went through an 8-year expansion cycle. He knows the owners of the high end hotels in Pacifica, and they have been running 30-40% occupancy. He stated that, because we are going through a vacation period, some of them are now at 100% occupancy. He stated that there were a lot of skewed information in the numbers. He then mentioned that the traffic was a sore issue with possible widening of Highway 1. He stated that hotels didn't work in linear fashion, and he thought it will look like a zoo some days and other days it will look wonderful. He thought there will be positive benefits to Pacifica for some sort of project, but he has no idea what that would be. He did think it should go to the voters and he thought they already have opinions on the matter and they will see what happens.

Mayor Digre closed public comments.

Mayor pro Tem O'Neill asked if the affordable housing units were units for sale.

Planning Director Wehrmeister stated that they were all for rent.

Mayor pro Tem O'Neill stated that the ordinance says they are below market rate, and he asked if we have an ordinance for apartments below market rate.

Planning Director Wehrmeister asked if he was talking about the inclusionary housing ordinance.

Mayor pro Tem O'Neill stated that in the staff report there was a section of cities below market rate ordinance.

Planning Director Wehrmeister thought they were talking about the definitions.

Mayor pro Tem O'Neill asked what the deed restrictions were that they will remain affordable. He asked if they can put deed restrictions on a rental, affordable housing units.

City Attorney Kenyon responded affirmatively.

Planning Director Wehrmeister also responded affirmatively.

Mayor pro Tem O'Neill asked what would happen if they tried to convert the non-market rate units to condos, as he didn't know if they had a conversion ordinance.

Planning Director Wehrmeister stated that they do have a condo conversion ordinance. She stated that there was a way to make for sale housing restricted affordable.

Mayor pro Tem O'Neill stated that he was talking about the market rate. He stated that the people were voting on the issue for 206 multifamily units which shows apartments, but if they convert to condos.

City Attorney Kenyon understood the question, but that was not one of the questions they answered. If she answered that, she would say that it would not be consistent with the initiative and they would need a new vote of the people to convert to condos.

Councilmember Nihart stated that she was struggling with the ballot language. She understands the point by the ballot attorney. She didn't want to do anything that biases anything, but she did think it was critical that we put it in there in 1983 to vote on because we wanted and needed commercial in Pacifica, and if we were going to use it for something else, like residential, we would have to put it to the vote of the people. She sees that they are authorizing residential but only to a point. In this case, it is 206 multifamily units. She mentioned the comments of authorizing 206, but she didn't think we were authorizing 206 but authorizing up to 206 which is the ceiling at which point it would have to go to another vote to go above.

City Attorney Kenyon responded affirmatively.

Councilmember Nihart stated that she gets the issue of the other specifics included and she wonders if there was a way to meet everyone's issues to say up to 206 multifamily units only under specific conditions identified in the initiative.

City Attorney Kenyon stated that the language was in there.

Councilmember Nihart acknowledged that she had “under certain conditions” and she added “only” to it.

City Attorney Kenyon stated that they could add “only” under certain conditions.

Councilmember Nihart stated that she wants to make sure they know the other conditions because that was a valid point. She stated that the other valid point was that 206 was the ceiling. She asked to know the issues with that, if there are issues.

City Attorney Kenyon reiterated that she explained her reasoning for why she drafted it in the manner that she did, and for a lot of the reasons mentioned by Mr. Skinnell. However, she also stated that she understood the concern that the Council has with focusing on the fact that this deals with eliminating a vote requirement for residential development.

Councilmember Nihart added up to 206.

City Attorney Kenyon agreed, and added that she believed, if the Council wanted to amend the language to say to authorize up to 206 multifamily units of residential development at the Rockaway Quarry only under certain conditions specified in the initiative measure, that would still meet the requirements of the election law. She was not concerned with those specific amendments. She heard other proposed amendments and she was not comfortable with those. With this particular amendment, she was not concerned with the legality of it.

Councilmember Nihart stated that she was trying to thread that needle of being fair on all sides but the reason they have to do this is because of the residential units and she thought, if they aren't clear about what they were authorizing up to by voting yes on this, she feels they are also equally deceptive to the public. She stated that it does have a package and all the other things, such as the footprint, have to go along with it, which was why she used “only” under those conditions in the initiative, hinting that they read the initiative.

City Attorney Kenyon stated that it will be part of the ballot materials and it normally isn't. She mentioned that the Council was taking the extra step to actually include the language of the initiative so that voters can and should read the initiative.

Councilmember Nihart stated that she gets both issues, but they aren't authorizing past that point.

Councilmember Ervin agreed completely, adding that she had made great points. She agreed that they want to be impartial and provide a non-biased ballot language. She referred to the clause providing 75% to open space, and she asked if that leaves out too many other items.

City Attorney Kenyon stated that she would explain why she was comfortable with the “up to 206” multifamily units. She said it was because they are talking about residential development and further clarifying residential development. She stated that they would go on to say only under certain conditions. If they want to talk about open space, there are other conditions that they are not talking about. She stated that, unless they had enough words left to include all of the conditions, she would not do just one.

Mayor pro Tem O'Neill referred to the affordable housing part, and stated that they have BMR ordinance and the one presented was for owner occupied. He asked how they will manage that the 20% of the units that are BMR really are below the BMR as our ordinance also states that there is a maximum income but, if someone moves out, how will they manage that the person moving in meets the requirements.

City Attorney Kenyon stated that there are methods jurisdictions can use to assure that. She acknowledged that it does take more administrative work on the part of staff, but they would most likely impose conditions to the best of our ability to assure that those units remain below market. She stated that one way was to have the applicant designate which units will be below market. Staff would require that, if a tenant were to move or relocate, any new tenant would have to submit documentation to assure that they are below market. She stated that another tool was that staff could conduct unannounced site visits to insure that the units designated below market are, in fact, still occupied by the tenants that have been deemed to fit within the qualifications for below market rents.

Mayor pro Tem O'Neill asked if the property manager fixing leak faucets, etc., would be the responsibility of the owner, but if there is a tenant vacancy, do they submit their application to rent it to the city or to the owner.

Planning Director Wehrmeister stated that the way the program typically works is that the owner/property manager is responsible for complying with the below market rate requirement and they submit reports to the city. They either do it inhouse or consultants are available to assist the city in reviewing those reports. They typically do an audit every so often to verify that the tenants are indeed meeting the requirements. She acknowledged that it was more administration, but the city will not become the property managers.

Mayor pro Tem O'Neill didn't think they would be the property managers. He asked about Section 8 which would bring in a tenant that is lower income but the landlord gets full freight.

Planning Director Wehrmeister thought the way Section 8 works is that it is a voucher and they may go into any unit.

Mayor pro Tem O'Neill stated that they would not count towards the afford ability but just there.

City Attorney Kenyon guessed that they would designate, in the conditions of approval, units that will be below market rate so that they would know that particular unit is always going to be below market rate.

Mayor pro Tem O'Neill concluded that "Unit 54" is always below market rate.

City Attorney Kenyon stated that was the easiest way.

Planning Director Wehrmeister stated that a Section 8 tenant would not count towards that if they took another unit.

Mayor pro Tem O'Neill thought there were about 400 vouchers a month that are being used for Section 8, and there are about 300-400 for veterans also. He referred to the condition for the 20% BMR and stated that it goes on in perpetuity, and if they sell the apartment, that would go to the new owner.

City Attorney Kenyon agreed, adding that there would be a deed restriction.

Mayor pro Tem O'Neill understood.

City Attorney Kenyon stated that was what they would condition.

Mayor pro Tem O'Neill asked if they can do a deed restriction in terms of conversion from an apartment to market rate condos.

City Attorney Kenyon stated that it would require another vote of the people and they would not have the authority to do that unilaterally as that would run counter to the initiative.

Mayor pro Tem O'Neill understood that the conversion would require a vote of the people, and there would be no need for a deed restriction.

City Attorney Kenyon responded affirmatively.

Mayor pro Tem O'Neill stated that they would have to go through Planning to do the conversion and that was how the city would know.

Councilmember Keener referred to the specific language for residential development versus all of the other conditions or features that are required by the initiative, and stated that the residential requirement needs a vote of the people, and all the other requirements do not need a vote of the people in order to go through the normal permitting process which was the distinction. That was why he favors the language that Councilmember Nihart favors that says to authorize up to 206 multifamily units of residential development at the Rockaway Quarry, and adding the word "only" under certain conditions specified.

City Attorney Kenyon stated that they need them to adopt the resolution with the ballot question language amended. She asked if they wanted her to read it.

Councilmember Nihart moved to adopt the "Pacifica Initiative Amending Ordinance No. 391-C.S. to authorize up to 206 multifamily units of residential development at the Rockaway Quarry only under certain conditions specified in the initiative measure, entitled Pacifica Initiative Amending Ordinance; seconded by Mayor pro Tem O'Neill.

Mayor pro Tem O'Neill asked if the City Attorney was okay with the amendment from a legal point of view.

Mr. Skinnell asked if they might reopen the public hearing to address this again. He thinks that this is a cause for concern.

Mayor Digre stated that they have already closed the public hearing and he is out of order. She asked the City Attorney if they were on legal grounds.

City Attorney Kenyon stated that they were closed.

Councilmember Nihart stated that the only reason they were here was about the residential otherwise it would go through the normal process. She stated that with the "up to" piece, they were not approving above that so people cannot get additional money. She stated that they can't go back and forth but she felt compelled to explain that.

RESULT:	ADOPTED AS AMENDED [UNANIMOUS]
MOVER:	Mary Ann Nihart, Councilmember
SECONDER:	Mike O'Neill, Mayor Pro Tem
AYES:	Digre, O'Neill, Ervin, Nihart, Keener

11. Pacifica Police Department Report on Illegal Fireworks Activity and Recommended Strategies to Reduce Use
PROPOSED ACTION: Accept the Pacifica Police Department report on illegal fireworks activity and direct staff to implement the proposed solutions related to enforcement and community engagement outlined in the report.

Police Capt. Spanheimer presented the staff report.

Councilmember Nihart stated that she helped promoting the social host ordinance, and it made a difference and she was interested in this concept but she wanted to ask a couple of questions. She knows they have to get into doing the ordinance and they have some examples. She asked if it has to be just the officer or could people potentially upload videos with identifying information. She asked if that would help, adding that everyone has a cell phone.

Police Capt. Spanheimer agreed that everyone has a cell phone and he understood that there was also an app available that people could use, but now, as he understands it, it was up to an officer or designated city employee to be able to issue that administrative citation. He stated that he knew one city has language in their municipal code about deputizing certain city employees to do that function, but as of now, it is only a city employee or a law enforcement officer.

Councilmember Nihart thought they could be the only ones to issue the citation, but she wondered if video evidence might help.

City Attorney Kenyon stated that it was available now for the police to use that. Ultimately, it was within their discretion. She stated that they can use that, but she thought the question was how soon can they upload it and view it and then get to the location where the house is. She stated one thing that she would like the Council to talk about because of being an issue for drafting an ordinance, which was that they recommend that there be strict liability for the property owner. She asked if it was going to be strict liability for an absent owner or only owners present at the time that the illegal fireworks are taking place. She would like the Council to have a discussion on that, in terms of who they want to be subject to it.

Councilmember Nihart proposes for clarification, stating that she is absent and she has a big back yard. The kids pop over the fence and use her yard to shoot off fireworks. She asked if that was what she was talking about as opposed to her giving someone permission to use her house for a party.

City Attorney Kenyon stated that those were all issues that can be addressed in the ordinance and she thought they need some direction about who they want to hold responsible for the illegal fireworks.

Councilmember Nihart stated that she asked about the video because people are taking videos of folks who are shooting off fireworks at the time. She stated that the officers were saying that they couldn't use it. She asked if that was correct with our current ordinance because they have to physically see it.

City Attorney Kenyon responded affirmatively.

Councilmember Nihart asked if that could potentially change.

City Attorney Kenyon thought they need a citing officer to prove in some manner that the illegal fireworks were conducted at the site. She stated that she had concerns with receiving a video the day after and then having an officer cite someone for that.

Councilmember Nihart got that, but there are apps and people have them at the scene. She felt they could think about it. She then asked if it was possible to increase the fine and still be administrative.

City Manager Tinfow stated that they can do that and bring it back to them.

City Attorney Kenyon stated that it will all be brought back to them when they bring back a draft of an ordinance.

Councilmember Ervin asked how many citations they actually issued this past 4th of July.

Police Capt. Spanheimer had not mentioned it but this last 4th of July they issued seven administrative citations.

Councilmember Ervin stated that it was out of 103 calls.

Police Capt. Spanheimer stated that the total amount of fireworks related calls on the 4th of July was 113 and the previous year, they had 9 administrative citations and the year before that 14 and the year before that 17. He stated that unfortunately people are getting wiser in that aspect.

Councilmember Ervin added that we were tying their hands because it was so difficult.

Police Capt. Spanheimer stated that it was because people are using different techniques, and watching out for the police and notifying each other. He stated that it seems like a cultural issue of sorts. He stated that, as far as the video, it would be useful, but it was a matter of the timeliness of its submission. He stated that they can collect it and use it for evidence nuisance abatement of some sort, using other municipal codes, but that was a longer term project with much more time involved.

Councilmember Ervin referred to the liability issue and to whom to issue the ticket. She stated that there were long term rental owners and people who have airbnb and she asked if there were legal issues with ticketing someone who was renting a place for a weekend. She thought they could do whatever they choose.

City Attorney Kenyon stated that it was a policy question.

Mayor pro Tem O'Neill stated that, under the social ordinance, they would be changing the policy from the officer having to see the fireworks being lit to seeing it is at 123 Palmetto and they can go to the house and cite the owner. He asked if that was correct.

Police Capt. Spanheimer responded affirmatively, explaining that, instead of identifying an individual using illegal fireworks, they would be identifying the property from which it came.

Mayor pro Tem O'Neill stated that if they were putting it on a public street, they would have to do that, but he asked if safe and sane would still be allowed.

Police Capt. Spanheimer responded affirmatively.

Mayor pro Tem O'Neill asked if they can do a higher fine for the second and third offense.

City Attorney Kenyon responded affirmatively.

Mayor pro Tem O'Neill stated that they carried it over, so in 2016 they issue a fine of \$1,000 and, in 2017, it goes up to \$2,000 because of the one in 2016, and he asked if there was a limit as to how far back they can go.

City Attorney Kenyon stated not if you are citing an individual. With regard to the property, we are still citing an individual, but it was the owner of the property. She was not aware of any time limits on how far back you can go. With the first occurrence it is a set fine, the second double, third triple.

Mayor pro Tem O'Neill understood and asked if it can go year to year because this is an annual event.

City Attorney Kenyon responded affirmatively.

Mayor pro Tem O'Neill stated that they mentioned expenses for the extra personnel. He recalled that they broke even from the 8% surcharge.

City Manager Tinfow stated that it was consistent with her memory.

Councilmember Keener stated that he noticed that the current ordinance was possession of up to 25 pounds of illegal fireworks. He asked what happens if you get someone who has more than 25 pounds. He was sure people do have more.

Police Capt. Spanheimer responded that it depended on the nature of the fireworks. He stated that a lot of the larger M80s, 1000s, 100s, large motor rounds that go up in the sky with brilliant displays and they qualify as felonies in criminal law, and we might choose to pursue a felony arrest versus the \$1,000 administrative citation based on the circumstances and what they find in someone's possession.

Councilmember Keener asked if it was state code.

Police Capt. Spanheimer stated that it was the California penal code or health and safety code. He stated that they would book them into the county jail. Fireworks of that size are turned over immediately to the bomb department for bomb disposing in the county.

Councilmember Keener asked if they search their house to look for more illegal fireworks.

Police Capt. Spanheimer stated that the way they can search their house with their consent permission. He stated that, if there is some sort of exigency to allow them to search because of

some dangerous circumstance. In general, to search a house, they have to get a search warrant.

Councilmember Keener stated that the citation they hand out is not enough to allow them to search.

Police Capt. Spanheimer responded that it was not.

Councilmember Keener stated that he had seen on the blogs that people say police officers have told them that they have to actually see a person lighting the fireworks and he didn't think it made any sense because it was a possession offense. He asked, if they have to see them possess the fireworks, what that actually means, such as holding it in their hand, nearby.

Police Capt. Spanheimer stated that it needs to be more than just nearby. He stated that someone could walk up and look at it, but that is not constructive possession. If they reach down and pick it up, that is enough, or on their clothing, their person, their pockets, would be possession.

Councilmember Keener referred to the social host ordinance, and he thought there were owners and tenants as an equivalent class to owners.

City Manager Tinfow stated that she made notes of the different groups they have all talked about and they will come back with recommendations.

Councilmember Keener stated that several people have told him that block parties are part of the problem. He asked if there was any information relating to that.

Police Capt. Spanheimer stated that he didn't have specific information but could understand how, if you barricade one end of the block and the other it may slow law enforcement response into the area and give people more time to hide illegal fireworks, but he didn't have any data to back that assumption up.

Mayor pro Tem O'Neill stated that he thought this was the first year they had several fires, possibly one in 2015, and he asked if there was any workable way to think of to have a higher fine if the fireworks causes an incident, or was it useless to put it in an ordinance.

Police Capt. Spanheimer stated that, if they have a firework that goes off, causes a fire, instead of handling it administratively and the fine, they might go with a standard arson, reckless burn or some criminal aspect of it. They would have to determine who had the firework, where it came from, and he didn't know if people would readily admit that their firecracker caused the hillside to burn down.

Mayor pro Tem O'Neill concluded that it was probably not workable.

Police Capt. Spanheimer stated that they would have to look at it, but there may be remedies in place with the penal code as far as arson. He stated that it would take an investigation to figure out the originator.

Councilmember Nihart stated that she was stuck on the videos as they are easy and around all the time. She asked if they could consider them if they are given to the officers at the time. She thought there were 1,000 ways to do that. She thought you should be able to use what was available and she would love to hear more about that. She mentioned that she had her niece

here and she hadn't seen all of this. Driving down Linda Mar Blvd., at the height of it was a real experience that everyone should try sometime. She stated that the bottle rocket that went across the front of her car had nothing to do with block parties. She thought there has to be a way for them to bring this down. She stated that, when you go to the top of the hill, you see them all over the peninsula. She knows that other communities struggle with this, but we have to figure out something that was constructive. She thought this ordinance gives them more latitude.

Police Capt. Spanheimer thought it would be a great help and start, although it wouldn't solve the problem overnight and would take a few years but eventually the culture would change. Once a few homeowners were cited, word would spread and the problem would decrease. He referred to her mention of video, stating that it was out there and was a great tool. He didn't know how useful it was just yet, as they need to generate records through dispatch so they have the log of calls and the timeliness. He stated that it was something they have to work on and something they definitely have to look at as video is the way of the future as it is in their cars, on their bodies shortly.

Councilmember Nihart stated that, to stay ahead, she would add empty lots to that discussion.

Councilmember Keener referred to the social host ordinance, and asked if they would be able to search a property that they have determined has violations then. He stated that it would have to be written into the ordinance. He was thinking about the fact that several people commented that there must be a few individuals around that have garages full of this stuff and are really endangering their neighbors. If it caught fire, it would be a tremendous explosion. He would like to try and get at that.

Police Capt. Spanheimer stated, in general, if he was invited into someone's living room, he was giving them the administrative citation because a bottle rocket went off in their backyard. If he was there, he has a lawful right to be there because he was invited in, and if he sees something illegal, he can seize it at that point in time, but he can't continue on without further invitation, permission, search warrant, or some other exigency, such as he hears an explosion in the back of the house or a scream for help. He stated that having the power to do a social host citation to the property owner does not give him carte blanche to search a house as there are still the protections.

City Attorney Kenyon referred to his question as to whether they could draft provisions into a social host ordinance, and she felt they have a lot of latitude but they cannot give police officers the authority to search that doesn't already exist under their 4th amendment rights. She stated that in terms of creating a social host ordinance that will solve some of the issues, she believes they can do that.

Councilmember Keener thought something that has been available for past years was how much groups selling the safe and sane fireworks actually make and how much is sold from each fireworks stand. He thought those would be good figures to bring into the discussion.

Councilmember Nihart stated that they get those.

City Manager Tinfow stated that she has seen those for past years, but she didn't remember what they were.

Police Capt. Spanheimer stated that later on, Chief Steidle will be giving a full 4th of July report which will include that data as well.

Mayor pro Tem O'Neill asked, if they do a social ordinance, if they would have to define illegal or is illegal anything going in the air or M80s.

Police Capt. Spanheimer believes it is already defined in the municipal code as it exists. They would just be expanding the social host portion and even the social host ordinance addressing under age drinking does define responsible person, however, this would be a little different. In 2014, Pacifica may have been the first city to do it, if we went forward, but now other cities have it and we can research the language they use. He stated that it should be easier to come up with something workable for us.

Councilmember Keener stated that one email they all got was an officer of TNT safe and sane fireworks had sample ordinances from six different cities and he was sure he knew about them.

Mayor Digre thought she saw a sign in San Bruno that says their fine was \$5,000. She didn't know if anyone checked on that.

Police Capt. Spanheimer stated that he was not aware of it and couldn't speak to that.

Mayor Digre would like to know the neighboring fines, because if our fine is lower than someone else's, they will still come here. She stated that the cultural thing bothers her that there is a perception that there is a culture in Pacifica that the community and city is okay with this. She wants to offset that. She asked if there was a way to find out the point of sale of illegal fireworks so those doing the selling would also have to pay.

Police Capt. Spanheimer stated that San Francisco Police Department does operations in Chinatown where a lot of illegal fireworks do originate. He stated that it would take a lot of staff time to work with them and follow the trail if it led to Pacifica at all. He stated that it can be done, but it would be labor intensive.

Mayor Digre thought anything they do is going to involve outreach to the community at large to enable the community to participate, and they had the 8% from the companies that sell safe and sane fireworks. When they were first talking about this with them years ago, the cost of policing was part of that conversation, and they would cover both outreach, education and also staff time. She asked if we have revisited how much they participate as that might be a way to look at that.

City Manager Tinfow stated that the 8% referenced earlier was designed to cover those costs, and they did look at that in 2014 and 2015. They are covering it within a couple of thousand dollars, as mentioned by Mayor pro tem O'Neill. She stated that, if it requires bringing in officers from other agencies to assist with some of the work, that could increase the cost and perhaps they would like to revisit that. Currently, they were covering the cost, for the most part.

Mayor Digre stated that the city was helping them with their business, and the city was not in the business for other people, but in the business of protecting our own people.

Mayor pro Tem O'Neill stated that, when he was on the fire works task force, one thing they negotiated with TNT and Phantom was that one bought the ATV for the police department to use and they are paying for extra dumpsters for Recology at Linda Mar Beach and Rockaway and they printed up the posters and signs at every place where they were sold. He didn't saying they were paying enough.

Mayor Digre asked what the signs say.

Mayor pro Tem O'Neill stated that it was illegal to do fireworks, there is a \$1,000 fine, don't be a litter bug, etc., and they were putting some money in now. He was sure they make a lot of money. He thought it was interesting about the little green balls that blow up as they were a pain because the balls stay intact. If you give them a year's notice, you can eliminate the specific firework from the packets. He stated that the packets were made up over in China and if you tell them no green balls or cactus, they won't put cactus in that, and you can put that in the ordinance.

Mayor Digre opened public comments.

Peter Loeb, Pacifica, stated that he stuck around for this because he has history with the subject. He stated that fireworks in Pacifica was a third rail of politics. He thinks the social host ordinance idea is something that everybody can probably get behind, except the people shooting illegal fireworks, but they aren't going to come out and argue against it. He thought it was essentially a safe and sane proposal, and there should be a minimum of political fireworks. He was in support of the idea of a social host ordinance as it was a wonderful thing and they ought to try it. He acknowledged that there were a lot of issues to work out about what would be in the ordinance, but he thought it would be wonderful to see what happens and think of it as an experiment. If it went well and you get a lot of fines revenue, it could be a very good thing. He supports it and he asked that they do it.

Erin Macias, Pacifica, stated that this issue was very important to her. She stated that block parties are currently promoted as a solution to the beach fireworks issue as resolved in 2013. She stated that they have been partially effective in deterring the out of towners from trashing our beaches and abating pollution issues stemming from the 4th. As we now know, the solution has shifted fireworks from the beach into the residential neighborhoods and increasing the risk of fire and injury. She stated that the frequency of use of illegal fireworks in residential neighborhoods is in plain sight in the middle of the street and fully documented on YouTube and fully documented on social media. She stated that in two days, except for the last night when they got a break, they have had 30 consecutive nights of illegal fireworks in Linda Mar. She stated that, in an effort to support positive two-way dialogue, she would like all the stakeholders to be involved, and they respectfully request a reinstatement of the fireworks task force. They feel that the issue is multifaceted and not something that should occupy all of Council's time but something that needs to be discussed extensively by all of the stakeholders involved, which includes the fundraising, TNT, the environmentalists, Council, police department as it is a complicate issue. She stated that a task force can address many issues, such as adoption of a social host ordinance, legal disclosure, civil rights, etc. and she asked them to reinstate the task force.

Diana Seger, Pacifica, stated that she was present to support Erin in everything she stated, as well as Toni who will speak next. She felt it was time for the community to come into the 21st century and do things differently.

Toni Boykin, Pacifica, stated that she was addressing it as a dangerous explosive issue rather than a fireworks issue. She stated that the deadly explosives which are also toxic, criminal activity, quantity present could involve trafficking in Pacifica. She felt that, if we do not address it seriously, we could be vulnerable to lawsuits. She stated that, if she were a buyer of property near one of the homes and it was not revealed to her, she would consider it non-disclosure.

She stated that it is not only an enforcement issue but a community problem and a quality of life issue. She stated that calling it a culture was incorrect because it was a criminal element. She stated that it is not a 4th of July issue. She referred to the mention that every night since the 4th of July there has been something going on and whenever there is a sports victory, New Year's and other occasions. She stated that her main concern was that there are dangerous explosives with the power of a quarter to a half a stick of dynamite stored in large quantities in their neighborhoods. She stated that it was obvious from the evasive tactics including the walkie-talkies to relay law enforcement presence, that the violators are well aware that this is illegal activity. They admit it, flaunt the activity on social media and taunt anyone who objects in any way. She stated there has also been retaliation after enforcement against people who were in the vicinity but not responsible for reporting the activity. She stated that this deters people from reporting even if their anonymity is protected. She stated that a social host ordinance was desirable and exploring the option to extent that to block parties could be effective. She also thought the fines were not high enough to be a deterrent when the gatherings are large and the fines are divided among the participants. She stated that they were encouraged at the last meeting by a positive step in the direction of reinstating a task force but tonight's agenda includes only one option, and she mentioned what she felt was needed to have an effective task force to ensure future protection.

Angela Falcone, Pacifica, stated that she requested the formation of a task force to explore the dangers and implications of illegal and explosive fireworks. She thanked the mayor for pointing out that their job was to protect the citizens and not promote other businesses.

Melina Gold, Pacifica, thanked them for putting this on the agenda and the police department for addressing this issue. She felt it reaffirms that it was a very serious issue and she was glad it was being addressed. She stated that she was a local realtor and talks to clients every day and this issue is brought up three out of five times by local residents. She stated that one family told her they consider it a society cancer in our community, growing every year and becoming more painful. She promised her clients that she will speak up and bring up the issue and they request that they take consideration with serious action.

Mayor Digre closed public comments.

Councilmember Nihart underscored what they talked about at the last meeting. She thanked Toni Boykin for pointing out the piece of the task force. She thought, when listening to Erin Macias mentioning the details, you get a lot of knowledge in terms of what is going on. She stated that the task force was really effective in bringing groups together with the problem. She stated that it was more work for our staff, but she thought it wasn't a bad idea in terms of a component. She also wants to go ahead with the social host ordinance and look at the fines before they get too far down the road. She wouldn't mind doing the two paths simultaneously.

City Attorney Kenyon stated that forming a task force was not on the agenda at this time, and in terms of action, Council can give direction to staff on the social host ordinance and ask staff to bring back another agenda item for them to consider a task force.

Councilmember Nihart stated that they will have to bring back a social host ordinance and the whole group of things including community engagement. She was recommending that they bring back a task force.

City Attorney Kenyon stated that it can be at the same time, which won't be at the next meeting or even two meetings.

Councilmember Nihart agreed.

Councilmember Ervin thanked everyone who came to speak about this as it was a difficult issue that they have been dealing with for many years. She appreciated the comment regarding block party ordinance and she thought it was a good idea. One of her concerns was whether a social host ordinance would drive people out of their house and are they going to be safer to do it in the middle of the block versus a house. She asked if they can explore an element of a block party ordinance.

City Manager Tinfow asked if she meant a social host ordinance for block parties. Councilmember Ervin responded affirmatively.

Councilmember Nihart also mentioned another condition.

Councilmember Ervin just asked if there was anything they can do.

City Attorney Kenyon stated that one of the issues was who was going to be cited and for what.

City Manager Tinfow stated whoever sponsors the block party.

City Attorney Kenyon recalled having this discussion before and the issues they got stuck on was who was responsible, such as the question regarding a social host ordinance. She stated that the same questions have to be answered for the block parties. They will look into that, but she was not as certain that the answers for a block party ordinance are going to be as easily identified as they can with the social host ordinance.

Councilmember Ervin thought it was the same as multiple people on a lease, who gets ticketed. She thought there were a lot of tricky things to figure out.

Mayor pro Tem O'Neill stated that he had asked staff at the last meeting to come back with a report that discussed a fire works task force and the virtues of what a Council meeting, study session and a task force were so they can go over it.

City Manager Tinfow remembered that comment and she thought this addressed what the request was and she apologized if she missed the translation.

Mayor pro Tem O'Neill stated that he would be supportive of a task force also. He chaired the last one and he would be happy to chair this one also.

Councilmember Keener stated he would also be supportive of a task force and efforts to come up with a social host ordinance. He didn't know if they would weave it in with a task force but if they don't, he suggested that they solicit public input, from concerned residents who have shown here and sat here through thick and thin to finally get their three minutes. He also knows that Chief Steidle was developing a tradition of doing that, reaching out to members of the public who identify themselves as interested in one ordinance or another.

City Manager Tinfow stated that he has been checking in with stakeholders.

Mayor pro Tem O'Neill stated that he would like to explore a social host ordinance.

Mayor Digre would also support that as well as stakeholders who would be those who are the nonprofits who sell the fireworks. She also thought they should consider a letter to the nonprofit organizations indicating that, if they don't have residents and visitors containing themselves, by using illegal fireworks, we may have to revisit our safe and sane fireworks. She stated that they once thought of a citywide presentation of fireworks for the community and she didn't remember where it went, but it might be another good time to consider that as well. She thought the notion that this culture was an AOK thing in Pacifica was misunderstood and misrepresented this community and safety was our focus and mission. She stated that looking at storage and the amount of money they can charge for different categories of fines with storage being one of them with more dangerous type of fireworks. She asked if it was possible to add that to the next conversation.

City Manager Tinfow stated that it was to explore what the options were for fines.

Councilmember Nihart stated that a good place to start was that they had a very balanced task force of all the stakeholders and she agreed that they have people very interested here and with considerable knowledge but having that balance was effective. They came up with a lot of really good resolutions for basic problems. She asked if they need a formal action or did they get enough direction.

City Manager Tinfow stated that she was clear on what the Council was asking.

Councilmember Nihart had one thing to add to storage. She stated that one of the things that she thinks has happened was people running around with them in car trunks and that was not on the property and she suggested that they throw that into the mix. She thought that creates a whole other nightmare for people.

Mayor Digre referred to apps and she stated that, with the airplane noise situation, there are a couple of very clever people creating apps and that gives you all the metrics of horizontal and vertical to pinpoint where it is.

Mayor pro Tem O'Neill referred to her comment regarding looking at whether we want to continue permitting safe and sane, and he stated that the voters in Pacifica have twice voted to have fireworks and, if they want to go down that road, he thought it was more of a ballot, let the people vote.

Mayor Digre stated that what she was getting at was that those who find the sale of safe fireworks so essential need to understand that it isn't just the sale of safe and sound and that was very valuable but they need to also help the city out with their thought and input. She was not against the vote thing.

Mayor pro Tem O'Neill stated that they were there at the table last year, even TNT and Phantom. The environmental police were there.

RESULT:	NO VOTE REQUIRED
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12. Designation of Voting Delegate for League of California Cities Annual Conference
PROPOSED ACTION: Designate a voting delegate and an alternate who will be present at the business meeting.

City Clerk O'Connell explained that a representative was needed.

Councilmember Nihart asked if the mayor was going.

Mayor Digre stated that it was early and she didn't know how October was going. She would like to know what things they were voting on. She stated that her son may be graduating from NOAS in October and she didn't know when that will be.

Mayor pro Tem O'Neill stated that he was waiting to see what the agenda was for the conference but he was thinking of going.

Mayor Digre thought they need to create a document and, if one of them cannot go, the City Manager or City Attorney know how to do all that stuff.

City Manager Tinfow asked if they could have a motion to appoint Mayor pro Tem O'Neill to be the voting delegate, that would be good.

Councilmember Nihart moved to designate Mayor pro Tem O'Neill as the voting delegate at the business meeting; seconded by Councilmember Ervin.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Mary Ann Nihart, Councilmember
SECONDER:	Karen Ervin, Councilmember
AYES:	Digre, O'Neill, Ervin, Nihart, Keener

ADJOURN

Mayor Digre adjourned the meeting at 10:33 p.m.

Transcribed by Barbara Medina, Public Meeting Stenographer.

Respectfully submitted,

Kathy O'Connell, City Clerk

APPROVED: 5-0; 8/8/16

Sue Digre, Mayor