

MINUTES
JOINT SAND CITY COUNCIL AND SUCCESSOR AGENCY
OF THE REDEVELOPMENT AGENCY

Regular Meeting – January 21, 2020
5:30 P.M.
CITY COUNCIL CHAMBERS

Mayor Carbone opened the meeting at 5:30 p.m.

The invocation was led by Reverend Robert Hellam

The Pledge of Allegiance was led by Police Chief Brian Ferrante.

Present: Mayor Mary Ann Carbone
Vice Mayor Blackwelder
Council Member Hawthorne
Council Member Sofer
Council Member Cruz

Staff: Aaron Blair, City Manager
Vibeke Norgaard, City Attorney
Brian Ferrante, Police Chief
Charles Pooler, City Planner
Connie Horca, Deputy City Clerk

AGENDA ITEM 4, ANNOUNCEMENTS BY MAYOR, CITY ATTORNEY, AND CITY STAFF

Mayor Carbone announced that her report of the Women's Mayors Conference was distributed along with the Police Department's Statistical Report. Item 8A, Presentation of Certificates to the West End participants will be continued to the next Council meeting and that a Council Member conflict exists for Agenda items 9A & 11C.

Police Chief Ferrante provided a report on the Statistical Comparison of Crimes by City from 2014 to 2018 and noted that Sand City had a reduction 35% of crimes committed within the City. He further explained the changes in legislation that changed misdemeanors to felonies, and the need for rehabilitation programs for drug offenders.

Council Member Hawthorne suggested that the statistics be placed on the City's website so the public is aware of how well the department is performing their job.

City Manager Blair reported that the West Bay Street repair project is moving forward, that a mid-year budget review is scheduled for the first week of February, and that Staff is looking into a code enforcement bid for service.

AGENDA ITEM 5, PUBLIC COMMENT

5:44 P.M. Floor opened for Public Comment.

There were no comments from the Public.

5:44 P.M. Floor closed to Public Comment.

AGENDA ITEM 6, CONSENT CALENDAR

- A. There was no discussion of the December 10, 2019 Special City Council Meeting Minutes.
- B. There was no discussion of the December 17, 2019 Sand City Council Meeting Minutes.
- C. There was no discussion of the City **Resolution** making Re-Appointments to the Design Review Committee (Paul Davis & Elizabeth Sofer).
- D. There was no discussion of the City **Resolution** making New Appointment of Chris Barlow to the Sand City Design Review Committee until January 2022.
- E. There was no discussion of the City/Successor Agency Monthly Financial Report, September 2019.
- F. There was no discussion of the City **Resolution** Updating the Appointments to Various Local and Regional Agencies and Boards effective, January 21, 2020.
- G. There was no discussion of the City **Resolution** Honoring Gregory Hawthorne as the 2020 Champion of the Arts Lifetime Achievement Awards Recipient.
- H. There was no discussion of the City **Resolution** Confirming Members of the Sand City Arts Committee.

Motion to approve the Consent Calendar items was made by Council Member Blackwelder, seconded by Council Member Hawthorne. AYES: Council Members Blackwelder, Carbone, Cruz, Hawthorne, Sofer. NOES: None. ABSENT: None. ABSTAIN: None. Motion carried.

AGENDA ITEM 7, CONSIDERATION OF ITEMS PULLED FROM CONSENT CALENDAR

There were no items pulled from the Consent Calendar.

AGENDA ITEM 8, PRESENTATION

A. **Presentation of Certificates by Mayor Mary Ann Carbone and Stephen Vagnini to Volunteers/Supporters of the 2019 West End Celebration**

Mayor Carbone commented that this item will be continued until the Tuesday, February 4, 2020 Council meeting.

AGENDA ITEM 9, PUBLIC HEARING

{Council Member Cruz stepped down from the dais due to a possible conflict of interest by residing within 500' of the subject property}

A. **Consideration of City RESOLUTION Disapproving a Time Extension of CUP 594 for Max Kammerer at 836 Afton Avenue within the South of Tioga Area and Allowing Said Permit to Expire**

City Planner Pooler reported that Conditional Use Permit 594 ("CUP 594") was approved by the City Council on July 21, 2015 and issued to Max Kammerer of Ornamental Iron to establish and operate an ornamental metal fabrication workshop at 836 Afton Avenue. The Property is located within the designated South of Tioga Planning District intended for new development. CUP 594 specified a one (1) year time limit to July 31, 2016 with the option of 90-day time extensions thereafter. The intent was for interim uses. CUP 594 was repeatedly extended in 90-day increments by the City until January of 2019; whereby, CUP 594 was not continued past April 30, 2019. There was no further action by the City to renew CUP 594, or any other interim permits within the South of Tioga area. The subject property was owned by Cathy Gomez at the time of issuing CUP 594 in 2015 and was purchased by the Developer in 2019. Mr. Kammerer continues to operate the business at the property.

CUP 594 is being brought before the City Council at a noticed public hearing to make a final determination as to the status of this permit and whether to deny any further time extension(s).

Mr. Kammerer manufactures items that include, but not necessarily limited to, gates, hand railings, balcony rails, and other functional and decorative metal items. Activities on-site include welding, grinding, sanding, cutting, hole punching, drilling, hammering, and rolling steel

CUP 594 contained multiple conditions and references to Mr. Kammerer's operation being an interim use until the South of Tioga Project was ready to proceed. Those conditions are reviewed as follows:

Condition #2: states that "*Conditional Use Permit (CUP) 594 is for the express purpose of authorizing a limited scale ornamental metal fabrication workshop within an approximate 2,000 square foot area of an existing*

commercial building as an interim use of property at 836 Afton Avenue...subject to the terms and conditions specified in CUP 594..". Therefore, CUP 594 established that this use was authorized as an "interim" use.

Condition #3: establishes the time limit of CUP 594 with an expiration of July 31, 2016, "*.... subject to City Council discretionary 90-day time extensions thereafter.*".

Condition #4: (titled "Temporary Use Acknowledgment") states "*The applicant's signature of acceptance to the conditions and terms of CUP 594 shall signify the applicant's understanding and acknowledgment that 1) the subject property is within the General Plan designated South of Tioga land use district, 2) that use on this site may be terminated by development of the property, and 3) the applicant shall waive any right or claim to relocation assistance as they are entering this site of their own volition after being informed that this use is temporary until new development of the site and/or surrounding area commences.*"

Furthermore, one of the findings of approval states that "*the subject property is located within the South of Tioga Planning District intended for new development as discussed in the City's General Plan, of which the applicant has been informed that his use is being considered only as an interim use until such time as new cohesive development of the South of Tioga area proceeds;...*".

The permit was signed by Mr. Kammerer on August 5, 2015 in acceptance of the terms and conditions.

The Environmental Impact Report (the "EIR"), the Vesting Tentative Map, and the Mitigation Monitoring Program were all approved by the City for the South of Tioga project on June 5, 2018. Land entitlement permits for the hotel segment of the project were approved in December of 2018. The architectural review public hearing for one of the multi-family residential pads was held in April of 2019 with City Council action pending future public hearing. The Developer has acquired his Incidental Take Permit (the "ITP") from California Fish and Wildlife Service in December of 2019, and the ITP from US Fish and Wildlife Service is forthcoming. The Developer has also been working with the Monterey County Health Department and the Monterey Bay Air Resources District in regard to hazardous material mitigation.

Phase I public improvement plans have been under review since early 2019, and are close to being approved for demolition, grading, and construction of public improvements.

Pacific Gas and Electric (PG&E) has been working with the Developer and the City regarding the removal of existing gas and electric; however, that

effort has been delayed, in part due to the need of continuing utility services to the applicant.

CUP 594 was explicitly clear in that the permit and use were intended to be temporary, as an interim use until the South of Tioga project was ready to proceed. Mr. Kammerer has had at least four years (2015 - 2019) use of the site. In order for utility removal and demolition activities to commence, the entire area needs to be vacated. Redevelopment and revitalization of the area is essential to the City in meeting State mandated affordable housing goals, the removal of blighted conditions, improvement of utility services, and providing economic diversification and growth; therefore, Staff recommends the City Council adopt the attached draft resolution to disapprove a time extension for CUP 594 and allow that permit to expire.

5:56 P.M. Floor opened for Public Comment.

On behalf of Max Kammerer, Debra Kammerer commented that Mr. Orosco stopped by to speak with Max and that they came to a verbal agreement to have Max vacate the property. She said Mr. Orosco reneged on the agreement. The business has suffered financially and Max has requested that the City consider extending the use permit.

Debra Kammerer requested that she would like the City to extend the use permit. When Mr. Orosco purchased the property, he was agreeable to buy out the remainder of the lease which is until 2023. They then received a 3-day notice to quit. Ms. Kammerer went to City Hall on October 23, 2020 to confirm whether the CUP was active in which Staff confirmed that it was. Once Mr. Orosco approved the deal, Max began packing and turned down business. She further explained the circumstance regarding the amount offered to them, which was significantly lower. They knew that the project was moving forward but still signed the lease and is aware that the lease is between Kathy Gomez, Max, and the real estate agent.

Legal Counsel Steven Andre representing Max Kammerer commented that the Council needs to understand that the use permit expired and was not renewed. Ms. Kammerer went to the City regarding the use permit. The disapproval of the use permit would punish Mr. Kammerer and take away his livelihood. They are good tenants and pay their rent on time. He referred to conditions of the use permit that stated that the use permit ends when development commences, and that development projects still take time to move forward.

Council Member Sofer interjected that since Mr. Kammerer knew that the area was going to be developed she finds it difficult to understand why the Kammerer's were not proactive as other businesses to secure another location.

There was discussion regarding the request of the applicant for another time

extension to the use permit, the use permit's language that states the permits termination when the project moves forward/proceeds, and that the lease agreement has nothing to do with the City and is between the property owner and tenant.

City Attorney Norgaard clarified that Council is here to decide whether they will grant an extension of the use permit. Hypothetically, if it were renewed on continuous 90-day intervals, the latest extension would end January 2020. City Planner Pooler added that when a tenant signs a lease, the City is not obligated to approve a use permit for the property.

Don Orosco of DBO Development addressed the Council regarding inaccurate misstatements. He is aware that the lease is between the tenant and landlord and their legal counsel. He asked Mr. Kammerer to send a letter to him as he was willing to assist Max in moving, and did not realize until reading the letter thoroughly that Mr. Kammerer was requesting \$1.7 million for expenses, not \$1,700. Mr. Kammerer knew that all the other businesses were moving. The South of Tioga project was announced on the news and local media. He was further unaware that Mr. Kammerer signed a lease with the former property owner for another 4 years which was something that may not have been divulged to him when he closed escrow. He clarified that the current lease expires in 2023 and that Mr. Kammerer was fully informed of what was happening at the project area.

Attorney Andrew Kreft representing DBO Development pointed out that to suggest that a deal was breached by Mr. Orosco is ridiculous, as the permit obviously states in Condition #4 that the use may be terminated once the project moves forward. He is not aware of any statute that invalidates the termination of the permit.

Sand City resident Kristen Tagami commented that the business never bothered her should the permit be reinstated.

6:41 p.m. Floor closed to Public Comment.

Council Members provided additional comments and discussed the use permit, and lease agreement.

Motion to approve the City **Resolution** disapproving a Time Extension of CUP 594 for Max Kammerer at 836 Afton Avenue within the South of Tioga Area and Allowing Said Permit to Expire was made by Council Member Sofer, seconded by Council Member Blackwelder AYES: Council Members Blackwelder, Carbone, Hawthorne, Sofer. NOES: None. ABSENT: None. ABSTAIN: Council Member Cruz. Motion carried.

{Council Member Cruz returned to the dais}

AGENDA ITEM 10, OLD BUSINESS

A. Consideration and Discussion of Revised and Updated Capital Improvement Plan (CIP)

City Manager Blair commented that Staff presented a draft five-year Capital Improvement Plan (CIP) to the Council in July 2019. Staff held a workshop on December 10, 2019 to discuss, review, and prioritize items within the proposed CIP to select those items deemed as a priority for fiscal year 2019-2020. The items highlighted in yellow were the items the Council wanted to prioritize. Staff recommends that the five-year Capital Improvement Plan (CIP), and allocation of funding for the 2019-2020 CIP be placed on the February 4, 2020 agenda for consideration of approval. The 2019-2020 CIP funding is proposed at \$496,100.

Council Member Blackwelder commented on why a Public Safety/Public Works meeting has not been held in several months and would like to have these meetings occur again.

There was discussion regarding the repair to be performed at Bay Avenue, and Council Member Cruz received clarification that the items listed on the CIP are not necessarily ranked by importance.

There was Consensus of the Council to place the CIP on the February 4, 2020 agenda for consideration and approval.

AGENDA ITEM 11, NEW BUSINESS

A. Consideration of City RESOLUTION Authorizing the City Manager to Execute an Agreement with EMC Planning Group in Preparing a Sustainable Transportation Plan in an amount not to exceed \$185,000

City Planner Pooler provided the background regarding the Sustainable Transportation Plan and reported that the California Department of Transportation provides grant funding opportunities to strengthen the economy, promote equity, and protect the environment. The objective of the Sustainable Communities Grant is to encourage local and regional multimodal transportation and land use planning that furthers the region's Regional Transportation Plan (RTP) that contributes to the State's greenhouse gas reduction targets and other State goals. The City submitted an application for the fiscal year 2019-2020 for the Cal-trans Sustainable Communities Grant and in May of 2019, the City was awarded \$163,779 in grant funding with a city match of \$21,221. In November, the City received written notice from Cal-Trans that the City has met the conditions of grant acceptance and that work on the Sustainable Transportation Plan can commence. The grant will be used to prepare a Sand City Sustainable Transportation Plan that will address bicycle and pedestrian infrastructure, connectivity deficiencies, and develop a solution to close bicycle and

pedestrian gaps. This plan will provide important information that can be incorporated into the future General Plan update. A new agreement to expand the current EMC service agreement is needed for preparation of the 'Sustainable Transportation Plan' in an amount not to exceed \$185,000, consisting of the Cal-Trans grant and the City's budgeted matching funds. Staff recommends approval of the attached resolution.

In response to Council Member Blackwelder's inquiry regarding a 'Technical Advisory Committee', City Planner Pooler commented that EMC will need to put together the Technical Advisory Committee as part of the grant.

Motion to approve the City **Resolution** authorizing the City Manager to Execute an Agreement with EMC Planning Group in Preparing a Sustainable Transportation Plan in an amount not to exceed \$185,000 was made by Council Member Hawthorne, seconded by Council Member Sofer. AYES: Council Members Blackwelder, Carbone, Cruz, Hawthorne, Sofer. NOES: None. ABSENT: None. ABSTAIN: None. Motion carried.

B. Consideration of City RESOLUTION Amending the 2019-2020 Fiscal Year Budget and Authorizing the City Manager to Execute an Agreement with EMC Planning Group Incorporated to Prepare a Parking Plan in an amount not to exceed \$37,000 (CIP Item)

City Planner Pooler reported that at the October 1, 2019 City Council meeting, staff presented a rough outline on preparing a comprehensive parking study and plan that would propose locations, designs, and methods for creating and managing additional public parking, and to evaluate and overhaul the City's parking standards/requirements of the Zoning Code. Staff had EMC Planning Group prepare a scope of work and budget proposal included in the packet. The parking plan will address and answer, where and how additional public parking can be provided, evaluate and update Municipal Code Chapter 18.64 regarding parking requirements, parking management strategies, and parking in-lieu fees. Establishing the end product as a "Plan" does require CEQA review. This will entail an environmental initial study, which staff currently anticipates would lead to a 'negative declaration' action. The budget expense proposed by EMC is \$36,625. This amount is to include the CEQA review. Staff recommends the budget cap be rounded up to \$37,000 as part of the draft capital improvement plan currently being developed. Staff recommends approval of the attached resolution and budget amendment.

Mayor Carbone commented that the City has been waiting for the preparation of a parking plan to come to fruition and it should address the City's parking issues.

In response to Council Member Sofer's question of whether the parking plan addresses code enforcement, City Planner Pooler responded that code

enforcement should be part of the management aspect of the parking plan. He further clarified that there is no time limit set on the parking plan and would also address parking requirements for retail uses.

There was discussion regarding the rail lines and bike trails which are not necessarily tied to parking requirements, and the fact that this parking study is long overdue.

Motion to approve the City **Resolution** amending the 2019-2020 Fiscal Year Budget and authorizing the City Manager to Execute an Agreement with EMC Planning Group Incorporated to Prepare a Parking Plan in an amount not to exceed \$37,000 was made by Council Member Hawthorne, seconded by Council Member Blackwelder. AYES: Council Members Blackwelder, Carbone, Cruz, Hawthorne, Sofer. NOES: None. ABSENT: None. ABSTAIN: None. Motion carried.

{Council Member Cruz stepped down from the dais due to a possible conflict of interest by residing within 500' of the subject property}

C. Consideration and Discussion regarding the South of Tioga Park Dedication/In-lieu Fee Requirement

City Planner Pooler commented that the Park Dedication In-Lieu Fee/Quimby Act requirement is being brought to the City Council for discussion and determination regarding the inclusion of on-site private public recreation as a credit to the in-lieu fee. The Sand City Municipal Code states that *"Planned development and real estate developments....shall be eligible to receive a credit, as determined by the City, against the amount of land required to be dedicated or the amount of the fee imposed....for the value of private open space within the development which is usable for active recreational uses."* Both residential development pads provide private courtyards for their residents that meet the definition of "private open space" usable for "active recreation". The ordinance is thus phrased that gives the City discretion in determining whether or not to allow 'private open space' as a credit. The municipal code is clear that the park easements and the parklet improvements (or any other public recreational improvement paid for by the developer) are automatic credits. Mr. Pooler summarized the recreational onsite areas/amenities for Parcel R2 that include a courtyard for both buildings, 2 clubhouses and a Skydeck and there overall square footage. Parcel R1 is still conceptual in design and detailed but it will include a clubhouse and private courtyard.

The Municipal Code specifically states that the in-lieu fees are *"...to be based on current market value of land and development costs in areas where park facilities are planned."* Earlier this year, the City Planner reached out to an appraiser for assistance. The Appraiser agreed that staff's best ability to calculate the in-lieu fee is to base it on an average of the most recent appraisals. Mr. Pooler provided a slide with appraised values of other

properties in the subject area. Based on recent street appraisals the average cost per square foot is \$31.95, resulting in an in-lieu fee of \$3,356,028.00 before credit deductions. Any improvements made by the Developer to the dedicated park easements would automatically be credited. If the courtyards of both Parcels R1 and R2 are considered a credit, it would result in a credit of \$1,078,887.60 using the \$31.95/sq.ft. valuations. These estimates only include the 1,5000 square foot clubhouse. The total fees due from the developer would be \$2,889,115.40 minus the deductions of the land value of dedicated improvements.

Planning staff supports the private courtyards as a credit towards the overall in-lieu fee. These are usable open recreational spaces that will serve that segment of the City's future residents of Parcels R1 and R2, and the \$31.95/sq.ft. valuation for calculating the in-lieu fee based solely upon the street right-of-way averaged appraisal values. These are the most recent appraisals of undeveloped land that would be most comparable to vacant unimproved parkland. The Developer provided a letter asking for additional credits to the fee contained in page 163 of the packet, and asks that additional recreational areas be included, that an easement for the entry sign be included, and that the habitat area be included. The Developer also makes a case for not including affordable housing units. Mr. Pooler presented slides that depicted the developer's spreadsheet and affordable housing credit. This agenda item is for Council discussion and direction to staff.

7:48 P.M. Floor opened for Public Comment.

Matt Nohr representing the Orosco Group provided a presentation and summarized the variables, land costs, conceptual renderings of the four parklets, Parcels R1 and R2, and what explained what other cities are doing in regards to the Quimby Act.

7:54 P.M. Council member Blackwelder momentarily stepped down from the dais.

Mr. Nohr continued with his presentation to provide details regarding the courtyard improvements that would cost the Developer approximately \$400,000, along with other calculated fees for private owned space.

7:59 P.M. Council Member Blackwelder returned to the dais.

Council Member Sofer expressed her concern regarding the City's responsibility for maintaining habitat preserved areas that abut the development and would take funding to ensure its maintenance. She noted that the Developer should be forthcoming in the maintenance of recreational spaces.

There was Council discussion regarding the credit valuation, whether the

inclusion of affordable housing can or cannot be a credit as it is not an exception in the municipal code, how the Quimby Act benefits the community by providing recreational areas, and that the Developer will be providing a project that includes undergrounding of utilities, streetscapes, parks, and more housing.

Developer Don Orosco addressed the Council and reminded them how the project originated 20 years ago. The project would provide 1,800 jobs, low to moderate income housing units, eliminate blight, satisfy State mandated housing requirements, produce additional revenue to the City, and create new recreational outlets. The project will stimulate future growth. He respectfully requests the Councils' consideration, and appreciates the Council's discretion and application of the Quimby Act and

William Silva of Woodman Development provided his comments and interpretation of the Quimby Act noting that the Act is to ensure that there are parks and recreational spaces for residential developments. If the facilities are provided for, there should be no reason for the fees. He thanked the Council for their consideration and is eager to get the project moving forward.

8:33 P.M. Floor closed to Public Comment.

Council Member Blackwelder commented that there was no such thing as a Quimby Act when other projects were being developed in Sand City several years ago and understand the benefits it adds to the community. There are adequate facilities for all the units and would like to remove obstacles that would prevent the project from moving forward.

Council Member Hawthorne commented that \$2.5 million is a big price to pay for the development considering the amount of beauty and esthetic appeal it will provide to the City.

Council Member Sofer remarked that she would like to see the project developed and does not desire that the project become a gated community within the City. The Mayor concurred and would like to see the project move forward.

City Manager Blair added that the development would be a great improvement to the City and would have a positive long-term impact. City Planner Pooler did an amazing job putting together the information and land valuations. Staff is willing to support the Council's decision.

There was further Council discussion regarding whether the open spaces count as a credit toward in-lieu fees, and that the recent calculations did not include the habitat area, the clubhouse, Skydeck and hotel courtyard.

City Attorney Norgaard commented that under the municipal code the

application of Quimby Act fees are mandatory, and the affordable housing units do not count as a credit toward in-lieu fees; however, credit is allowed for private open spaces such as courtyards.

There was Council consensus to credit everything as proposed by Mr. Nohr. To include all the areas, except the habitat area, and to exclude the affordable housing as credit to the in-lieu fees.

{Council Member Cruz returned to the dais}

D. Comments by Council Members on Meetings and Items of interest to Sand City

There were no comments from the Council.

E. Upcoming Meetings/Events

1) Confirmation of Future Dates for 2020 Sand City Events

The Council was in consensus and confirmed the future dates for the 2020 Sand City Events. Mayor Carbone requested that the Council let the Deputy City Clerk know if they will be attending the Monterey Peninsula Chamber's Annual Membership Luncheon.

AGENDA ITEM 12, CLOSED SESSION

9:01 P.M.

A. City Council/Successor Agency Board to adjourn to Closed Session regarding:

1) Conference with labor negotiator pursuant to Government code section 54957.6.

Agency designated representatives: Donna Williamson/Vibeke Norgaard, City Attorney

Employee organization: Sand City Police Officers' Association (POA) and Misc. Employees

9:32 P.M.

B. Re-adjourn to Open Session to report any action taken at the conclusion of Closed Session in accordance with 54957.1 of the Ralph M. Brown

Agency designated representatives updated the City Council on the status of labor negotiations (Item 12(A)) and received guidance for same..

AGENDA ITEM 13, ADJOURNMENT

Motion to adjourn the meeting was made by Council Member Hawthorne, seconded by Council Member Sofer. There was consensus of the City Council to adjourn the meeting at 9:35 p.m. to the next regularly scheduled City Council meeting on Tuesday, February 4, 2020 at 5:30 p.m.



Connie Horca, Deputy City Clerk