

**MINUTES**  
**REGULAR MEETING OF THE CITY COUNCIL**  
**CITY OF MONTEREY**  
**TUESDAY, March 21, 2006**  
**4:00 – 5:30 and 7:00 – 11:00 P.M.**  
**COUNCIL CHAMBER, FEW MEMORIAL HALL**  
**MONTEREY, CALIFORNIA**

**CALL TO ORDER:**

Mayor Albert called the meeting to order at 4:00 p.m.

**Council Members**

**Present:** Councilmembers Della Sala, Downey, Haferman, Roberson, Mayor Albert  
**Absent:** None

**City Staff:**

**Present:** City Manager, City Attorney, City Clerk, Assistant City Manager, Community Development Director, Public Facilities Director, Library Director, Deputy Public Works Directors, Senior Planner

**CONSENT ITEMS**

On a motion by Councilmember Downey, seconded by Councilmember Della Sala, and carried by the following vote, the City Council approved the Consent Agenda, except Items C3, C10 and C11, which were removed for discussion:

AYES: 5 COUNCILMEMBERS: Della Sala, Downey, Haferman, Roberson, Albert  
NOES: 0 COUNCILMEMBERS: None  
ABSENT: 0 COUNCILMEMBERS: None

**Approval of Minutes**

C1. March 7, 2006 (City Clerk 701-09)  
**Action: Approved**

**Award of Contract**

C2. Award of Contract for General Municipal Building Improvements On-Call Contract 2006 (Public Works 807-02)  
**Action: Adopted Resolution No. 06-36**

**Ordinances**

C3. First Reading - Recommendation from the Parks & Recreation Commission to Adopt an Ordinance Prohibiting the Use of Tobacco Products in or Around Beaches and to Create Smoking Zones adjacent to the Beach, and Recommending a \$25 Fine. (Public Works 809-05)  
**Action: Removed from Consent; public testimony taken; passed Ordinance to print**

Mayor Albert opened the floor for public comment. David Dilworth, Helping Our Peninsula's Environment, thanked Monterey for taking a leadership position on this issue and spoke in support of the ordinance. Kristen Martinson introduced Whitney Gibbs and Lauren Anderson, Pacific Grove High School Students, who reported that they picked up over 7500 cigarette butts from Del Monte Beach last Saturday within two hours. They displayed a container filled with those cigarette butts. Having no further requests to speak, Mayor Albert returned the discussion to the City Council.

It was moved by Councilmember Roberson, seconded by Councilmember Downey, and carried by the following vote, to pass the ordinance to print:

AYES: 5 COUNCILMEMBERS: Della Sala, Downey, Haferman, Roberson, Albert  
 NOES: 0 COUNCILMEMBERS: None  
 ABSENT: 0 COUNCILMEMBERS: None

- C4. First Reading—Amending Monterey City Code Section 23-9, Camping, Picnicking and Day Use Permits (Public Works 809-05)

**Action: Passed Ordinance to Print**

### Resolutions

- C5. Rescinding Resolution No. 14,328 and Establishing New Regulations for Placement of Street Banners and Authorizing the Public Works Director to Issue Permits Allowing Display of Banners Over Public Rights-Of-Way (Public Works 803-23)

**Action: Adopted Resolution No. 06-37**

- C6. Modifying Parking Fees and Establishing Part Time Employee Parking Voucher Program (Public Facilities 407-06)

**Action: Adopted Resolution No. 06-38**

- C7. Authorizing Appropriation of Public Library Fund Revenue (Library 406-04)

**Action: Adopted Resolution No. 06-39**

- C8. Approving Lease Extension and Option - Lake El Estero Boating Concession - Adjacent to Del Monte Avenue - Lessee is Genevieve Giammanco (Community Development 206-03)

**Action: Adopted Resolution No. 06-40**

### Other

- C9. Appointments to Colton Hall Museum Cultural Arts, Historic Preservation and Parks and Recreation Commissions (Council Subcommittee 701-06)

**Action: Appointed Carol Todd, Jerry Welling, Anne Washburn & Sandra Solitario to CHM/CAC, with terms ending December 31, 2007; appointed Susan Theodore & Elizabeth Schneider to unexpired terms ending December 31, 2006 on CHM/CAC; and appointed Erna Morris as a non-voting member of CHM/CAC. Appointed Robert Petty, Boris Jacobowsky, Virginia McLaine & Carol O'Neil to HPC, with terms ending December 31, 2007; and appointed Christine Hopper as a non-voting member on HPC. Appointed Jeani Cooney & David Canepa to Parks & Recreation Commission, with terms expiring December 31, 2007.**

- C10. Request from the Fisherman's Wharf Association to Use Marketing Dollars for Wharf Beautification (Public Facilities 904-17)

**Action: Removed from Consent; public testimony taken; discussed; and tabled**

Mayor Albert opened the floor for public comments. Bob Massaro said that the banner program is very efficient. He stated that he received the staff report on this item yesterday, and he is here to represent Fisherman's Wharf Association. He said that the owners are interested in beautifying the Wharf with additional plant life, but it is expensive since they require pots. He said that the original idea was to divert the promotional money to beautification efforts, and the Wharf Association had suspended advertising in anticipation. He stated that \$9000 for a study is excessive, and ongoing maintenance is a big question after the beautification is done. He said that the Association was

hoping that this would be a one-time transfer of money from the promotional funds. He said that the Wharf owners have no problem sharing the costs, but they have a special relationship with the City because the City owns that asset, so it is different from Cannery Row, North Fremont and Lighthouse. He said that the Wharf owners believe that their treatment should be different. Having no further requests to speak, Mayor Albert closed public comment.

City Manager Meurer clarified that the \$9000 is meant to produce a beautification design, and it would require an RFP. He said that it is premature to talk about the implementation prior to having it designed, and that the City stands ready to match the Wharf Association's advertising dollars. He said that the proposal for beautification is to split the cost 50/50, noting that property owners such as Del Monte Center generally do not pay even 50% of the tenants' beautification costs, but splitting costs is the Council's policy.

On question, Mr. Massaro clarified that the Fisherman's Wharf Association Board has a meeting scheduled with the Council Subcommittee tomorrow.

It was moved by Councilmember Roberson, and seconded by Councilmember Haferman to table the item for additional review by the Waterfront Subcommittee.

Councilmembers discussed the importance of a quick turnaround time before tourist season, the design costs, and whether planters would be an appropriate addition to a unique area like Fisherman's Wharf.

The motion carried by the following vote:

AYES:	5	COUNCILMEMBERS:	Della Sala, Downey, Haferman, Roberson, Albert
NOES:	0	COUNCILMEMBERS:	None
ABSENT:	0	COUNCILMEMBERS:	None

C11. Approving City's Response to 2005 Monterey County Civil Grand Jury Final Report (City Manager)  
**Action: Removed from Consent; public testimony taken; discussed; and approved**

City Manager Meurer explained the Civil Grand Jury process, noting that Monterey was not asked to provide input on this specific issue.

Mayor Albert opened the floor for public comment. David Dilworth presented his proposed draft response to the Grand Jury. He said that National Sunshine week was a couple of weeks ago. He raised questions regarding the City's response to Item #6 regarding placing items on Council agendas. He cited the Education Code, and suggested mimicking that education code for the City of Monterey. He said that Monterey does some commendable things regarding open government. He presented suggestions and a list of ways to increase open government and public participation and asked Council to agendize an item regarding "Open Government." Having no further requests to speak, Mayor Albert returned the discussion to the City Council

Councilmember Haferman asked when the response is due and Assistant City Manager Cohn said it is due in early April. He explained the process for placing items on the agenda. City Manager Meurer clarified the various processes available for the public to bring issues forward, such as the suggest e-mail box, telephone hotline, and the public comment period. On question, Assistant City Manager Cohn said that a publication could be drafted to clarify the processes to the public. Mr. Meurer read from the "Public Comment" definition on the agenda that explains how to address the City Council.

It was moved by Councilmember Roberson to approve the response as written, and to direct staff to clarify on the City’s web page how to propose items for the Council agenda and to monitor items to ensure follow through, and Councilmember Della Sala seconded the motion.

Mayor Albert said that often the Council receives requests to agendize non-city business, and has a policy not to do so. Councilmember Downey noted a recent example of someone requesting action on Marina developments as an item that the Monterey City Council has no jurisdiction over, saying that it would be inappropriate to agendize such an item. Councilmember Haferman noted that while staff and Councilmembers know how the system works, the public might not always understand the process. He said that open government is helping the public better understand the process. Councilmember Roberson said that Monterey’s Council works well together as a representative body, and he would not want to have a single Councilmember promoting his or her own agenda. Councilmember Della Sala said Monterey does a good job with open government, and this would be an improvement.

The motion carried by the following vote:

AYES:	5	COUNCILMEMBERS:	Della Sala, Downey, Haferman, Roberson, Albert
NOES:	0	COUNCILMEMBERS:	None
ABSENT:	0	COUNCILMEMBERS:	None

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

**PUBLIC COMMENTS**

Mayor Albert opened the floor for Public Comments on items not on the agenda. David Dilworth said that Monterey enjoys the largest, healthiest pine forest anywhere, and it fits the definition of an Environmentally Sensitive Habitat Area (ESHA). He said that Pebble Beach Company is trying to subdivide and put non-coastal uses in the pine forest. He said that Helping Our Peninsula’s Environment (HOPE) has reported these matters to the Coastal Commission. Having no further requests to speak, Mayor Albert closed Public Comment.

**PUBLIC APPEARANCE**

1. Council Overview of Proposed Neighborhood Improvement Program Projects for FY ‘06/’07 (Public Works 808-02)  
**Action: Received report; discussed**

City Manager Meurer introduced the item. Deputy Public Works Director Turnbeaugh presented the staff report. On question, he explained the process for providing evaluations, estimates, surveys and videos of the proposed projects. City Manager Meurer confirmed that there is a lot of front-end investment to evaluate the projects.

The Mayor noted that the NIP is a prime example of open government in Monterey, where members of the public have authority to spend almost \$2 million of transient occupancy tax revenue. The City Council discussed the project proposals and concerns about how the City can do a better job of letting the neighbors know about these projects and the NIP meetings. City Manager Meurer clarified that a large part of the responsibility falls on the neighborhood representatives.

Mayor Albert opened the floor for public comments. David Dilworth, HOPE, said that his organization touts the NIP to other cities. He voiced concerns regarding light pollution, saying that reducing it saves money. He said that he is happy to see the traffic calming projects, and suggested that the time spent doing estimates is not wasted. He voiced concerns regarding

notification procedures. Having no further requests to speak, Mayor Albert closed public comment on the item and called a recess at 5:32 p.m.

Mayor Albert reconvened the meeting at 7:00 p.m., where all Councilmembers were present.

### **CONTINUED PUBLIC COMMENTS**

Mayor Albert reopened the floor for Public Comments on items not on the agenda. Having no requests to speak, he closed Public Comments.

### **PUBLIC HEARINGS**

2. 698 Laine Street; Appeal of Planning Commission decision approving a Use Permit for personal communications antennas at St. Mark's Coptic Orthodox Church; Appellant Neil Hertsch, Dan Linehan, Robin Hasbrouck and Carolyn Mitchell; Owner Coptic Orthodox Church of Monterey; R-3-5 Zoning District; Exempt from CEQA requirements (Community Development 203-02)  
**Action: Received staff report; opened Public Hearing; received public testimony; discussed and continued to April 18, 2006.**

City Attorney Mall explained that this matter is governed by the Federal Communications Act, that the federal government has given local governments a very narrow band of the law upon which they may rule, and it prevents cities from considering health and safety issues as a reason for denial. She said that staff and the Planning Commission were unable to identify the strict findings required under those laws to uphold the appeal. Senior Planner Marvin presented the staff report, saying that many of the points of the appeal relate to public safety and aesthetics, which are outside the jurisdiction of the City under the federal law. He said land use impacts raised in the appeal concern a commercial use in a residential zone, adequacy of the photographic simulation, and potential alternative sites.

Mayor Albert opened the floor to the appellants. Dan Linehan, property owner, outlined his scientific qualifications. He voiced concerns that hearings have been held on Valentine's Day and during Bayview School vacation times. He said that the towers emit microwaves, and the applicant's marketing documents are misleading. He said that exposure to the microwave emissions is more severe at close range. Mr. Linehan said that this is a commercial enterprise and not an appropriate use of residential zoning. He said that there are already three cell sites in close proximity and asked the City to update the plan for locating cell towers. He asked why it would be inappropriate to delay the decision. He said that no long-term health studies have been concluded.

Neil Hertsch, appellant and parent of a healthy second grader, said that Bayview is a good school, and he would hate to see half of the students leave due to perceived risks from this cell tower. He asked the Council to stand up to the corporations. He noted that the federal law is ten years old, and this is about the emission of radiation that affects the long-term health of our children. He said that Cingular has not done a presentation at the school.

Mayor Albert opened the floor to the applicant. Leah Hernikl representative from Cingular, said she is here to address zoning issues. She said that the co-location of cell towers is possible in some instances. She said her company is currently reviewing two additional sites for cell tower installation over the next two years. On question, she said that this particular site was chosen after reviewing several sites in the area. Ms. Hernikl said Cingular did not investigate the Cannery Row Garage as a site. On question, she said that some towers are currently located on schools.

Dr. Jerry Bushberg offered to answer questions regarding the health issues. On question, he explained that a person within ten feet of this particular antenna and at the same elevation would

be at risk for exposure. He said that measurements could be taken before and after installation. He stated that analyses are performed for worse case scenarios. He said that the maximum exposures for this tower would be 400 times lower than the maximum allowed, and real time measurements would be possible after installation. On question he made some comparisons to other items, such as cordless telephones and explained the types of maintenance performed on cell towers. On question, he said that he would not be concerned if he had a child attending Bayview School. He said that there would be an extraordinary low level of risk from the tower, and having it there would be helpful in case of an emergency at the school.

On question, Senior Planner Marvin explained the statutory and practical reasons for holding this hearing tonight and City Clerk Gawf explained the noticing requirements for public hearings. City Attorney Mall said that the hearing could be continued for additional testimony at a future meeting.

Mayor Albert opened the Public Hearing to members of the general public. Bruce Crist, New Monterey Neighborhood Association, said that he believes in good planning. He said that cell towers are spread throughout the city in a haphazard fashion. He submitted copies of the Marin County Telecommunications Facilities Policy Plan Application Requirements Checklist. He noted that this is a residential area. Carolyn Mitchell, who lives diagonally across the street from the church, explained that the playground is above street level. She asked Council not to rush to judgement on this issue and to recognize the fear of the health issues. She said that chronic exposure to this type of radiation is not a good idea, and it could have a negative impact on the value of homes and apartments in the neighborhood.

Lorna Moffit quoted Walt Whitman and said that it is time to rise up because cell phone towers are killing us all. She said that the federal law prohibited cities from denying these towers based on health reasons because they knew that they were harmful. She said that the incredibly dangerous technology would affect everyone. Robin Hasbrouck, appellant, said that her son’s bedroom is right next to the church. She asked how often the FCC checks to make sure the towers are within the regulations. She said that the science is scary, and the military uses microwave technology as weapons. Having no further requests to speak, Mayor Albert closed the Public Hearing.

Councilmember Downey said she called the Public Health Director of Monterey County to see if he would have concerns about locating this tower here and he said no, but that she would prefer location in a commercial area. She said she would prefer to be more proactive in the planning. Councilmember Haferman said that the law is clear that the City cannot do anything regarding health issues as long as Cingular meets the FCC regulations, and he believes they have met them. He asked Cingular to reconsider this siting as a public relations matter.

It was moved by Councilmember Della Sala, and seconded by Councilmember Roberson to continue the item to the second April meeting to give the applicant and staff a chance to look at alternative locations for the site and obtain additional information:

Mayor Albert clarified that the Hearing would be reopened at the April meeting so additional testimony could be received.

Councilmember Roberson asked how quickly a consideration that this use is not appropriate use in a residential zone could be brought back to the City Council. He asked the church to withdraw their permission to Cingular and appealed to Cingular to research alternate locations.

The motion carried by the following vote:

AYES:	5	COUNCILMEMBERS:	Della Sala, Downey, Haferman, Roberson, Albert
NOES:	0	COUNCILMEMBERS:	None
ABSENT:	0	COUNCILMEMBERS:	None

Mayor Albert called a recess at 8:15 p.m., then reconvened the meeting at 8:22 p.m.

**PUBLIC APPEARANCE**

- 3. Reconsideration of Leases for Adventures by the Sea and Monterey Bay Kayaks on the Catellus East Waterfront Property to Amend the Council’s Action of February 21, 2006 to include a two-year Extension of the Existing Leases to 2009  
**Action: Authorized lease extension from December 4, 2007 to December 31, 2009 subject to evaluation of lease terms.**

City Manager Meurer introduced the item, and Community Development Director Wojtkowski presented the staff report.

Mayor Albert opened the floor for public comments. Michelle Knight expressed appreciation for Council’s willingness to consider this item, saying that two additional years is a reasonable amount of time. Cass Schrock, Monterey Bay Kayaks, spoke in support of the staff recommendation. She asked if the intent of the Council’s previous action was that joint use of a building meant that the tenants would share equal portions of the building. She said that she would welcome use of Monterey Bay Kayak facilities by the Youth Yacht club. Frank Knight, Adventures by the Sea owner, said that city staff promotes beach parties at trade conferences. He noted that catering managers are telling people that Adventures by the Sea might not be in business in a year. He said that Council should be proud of this business. He asked Council for two additional years. He said that the reason they bring the business is because of their location and facility. Mayor Albert returned discussion to the City Council.

It was moved by Councilmember Downey, and seconded by Mayor Albert, to authorize the lease extension from December 4, 2007 to December 31, 2009 subject to evaluation of lease terms and fair market rents, possibly without considerations for special events and restroom maintenance.

Mayor Albert said that he would not want to eliminate special events. Councilmember Downey said that the City has not utilized the events fully, so she would prefer to pay for any events the City holds and charge fair market rent. City Manager Meurer said that options could be brought back as part of the appraisal effort. Councilmember Della Sala reviewed the schedule and asked if a one-year extension would be enough time to complete the process. Community Development Director Wojtkowski expressed concerns that it has been very difficult to get information from the Coastal Commission staff, so the process could be longer. City Manager Meurer said that if staff is able to move forward more quickly he believes that the businesses would support moving forward. Councilmember Della Sala asked to have a provision in the lease to that effect. After further discussion, he said that he is comfortable extending the lease for two additional years.

The motion carried by the following vote:

AYES:	5	COUNCILMEMBERS:	Della Sala, Downey, Haferman, Roberson, Albert
NOES:	0	COUNCILMEMBERS:	None
ABSENT:	0	COUNCILMEMBERS:	None

**COUNCIL COMMENTS**

Councilmember Della Sala reported on a graduation ceremony that he attended at the Monterey Culinary Center, and said that the facility, instructors and students are top notch. He said that the graduates would no doubt make a national impact in their culinary pursuits. Councilmember Downey asked to agendize a discussion on Marine Protected Areas so Council could take a position with regard to one of the packages. She reported that she attended a benefit for Monterey

High School sports, and it was a great evening of fund raising. She said that Cutting Day was a fun event. She reported that she attended a lecture on counter terrorism at the Naval Postgraduate School, where they demonstrated micro robots that were designed after the cockroach and were quite innovative.

Councilmember Haferman noted that the new owner of Marsh's, Jerry Jansen, has removed the chain link fence around the building. He said that he recently heard Mr. Jansen speak, his enthusiasm really came through, and this is the right person for this project. Councilmember Haferman said that a member of the public asked him about Monterey's disaster plans for different types of catastrophes. Assistant City Manager Cohn said that the disaster plan is a public record, but is an internal planning document so is not posted on the web site, however there is guidance on the web site about what the public should do. City Manager Meurer said that the telephone book also has information, and the City encourages people to have 72 hours of supplies available for disaster preparedness. Mr. Meurer said that a joint exercise with other agencies is planned for the near future.

### **CITY MANAGER REPORTS**

City Manager Meurer stated that staff has received broad guidance in the past from the City Council regarding Marine Protected Areas, and the Harbormaster has been participating in the process based on that guidance. He said that because of the guidance's affinity toward the fishing interests, the Harbormaster has been articulating the Council's past policy direction that supports "Package #1." City Manager Meurer reported that staff would continue participating in that process. He reminded Council that the Architectural Review Committee is meeting tomorrow on the Public Service Center project, and the Wharf Association would be meeting with the Council's Waterfront Subcommittee tomorrow as well. Mr. Meurer reported that it appears that the City would obtain a multi year fireworks permit, but with conditions for studies and environmental analysis that include Snowy Plover habitat.

Councilmember Downey added that she has a report from the Blue Ribbon Task Force that she would distribute to the Council.

### **ADJOURNMENT**

There being no further business to come before the City Council, Mayor Albert adjourned the meeting at 9:00 p.m.

Respectfully Submitted,

Approved,

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Bonnie L. Gawf, City Clerk

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Dan Albert, Mayor