

MINUTES
REGULAR MEETING OF THE CITY COUNCIL
CITY OF MONTEREY
TUESDAY, March 20, 2007
4:00 – 5:30 and 7:00 – 11:00 P.M.
COUNCIL CHAMBER, FEW MEMORIAL HALL
MONTEREY, CALIFORNIA

CALL TO ORDER:

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

Council Members

Present: Councilmembers Downey, Haferman, Selfridge, Sollecito, Mayor Della Sala

Absent: None

City Staff:

Present: City Manager, City Attorney, City Clerk, Assistant City Manager, Fire Chief, Police Chief, Director of Plans, Engineering & Environmental Compliance, Finance Director, Public Facilities Director, Recreation and Community Services Director, Human Resources Director, Library Director, Senior Planners

PUBLIC COMMENTS

Mayor Della Sala opened the floor for Public Comments on items not on the agenda. Robert Franklin, founder of FamilyThrive and Marina Technology Cluster resident, said that he is organizing a TeenThrive Earthfest to get teens excited about being green and sustainable. He invited everyone to attend. Identifying himself as “John Q. Public,” Chris Evans said that he is glad that the 4th of July Parade is going to happen, but he is unhappy that the content has been opened up to anything and everything through negotiations with the ACLU. He asked Council to fight the ACLU or cancel the parade. Having no further requests to speak, Mayor Della Sala closed Public Comments and explained that the Council would conduct an evaluation in August of this year’s parade.

PUBLIC HEARINGS

1. Extension of An Urgency Ordinance of the City Council of The City of Monterey that Adopted a 45-day Moratorium on the Conversion of Rental Housing to Condominiums; and Policy Direction to the Planning Commission to Prepare Ordinance Amendments Revising the Standards for Condominium Conversions; Exempt from CEQA Requirements (Community Development 203-02- [see Staff Report](#))
Action: Amended and adopted Ordinance No. 3386, extending the urgency ordinance moratorium on condominium conversions for 3 months; directed staff and Planning Commission to immediately start processing ordinance amendments with the goal of ending the moratorium as soon as possible; exempted conversion projects that are for 4 or fewer units; and directed the Planning Commission to report back to the City Council on their progress within 3 months

Senior Planner Marvin presented the staff report, reviewing the Council’s findings regarding the imposition of the moratorium. He noted that the Planning Commission recommended ending the moratorium, and that staff disagrees because more time is needed to study the matter and

update the ordinance before accepting new applications. City Manager Meurer explained that this is a capacity issue for staff and staff would prefer to have clear rules before processing additional conversion applications.

On request, Planning Commission Chair Leon Garden reviewed the Commission's decision, saying that the majority found that the urgency is over, the market has changed, and the ordinance would be fine-tuned in time for the vast majority of future applications. He said that the new rules would not necessitate a change in the General Plan. He asked Council to include resources if they decide to direct the formation of a subcommittee.

Mayor Della Sala opened the Public Hearing. Sheryl McKenzie, Government Affairs Director for the Monterey County Association of Realtors, said that the association did not oppose the original moratorium, but she was surprised that staff requested the extension. She said that she was disappointed that it would take 9-10 months to prepare the ordinance, offered assistance from MCAR to expedite the matter, and supported the Planning Commission recommendation. Phil Johnson, Johnson Architectural Group, agreed with Chair Garden that the urgency is over and there are few large projects out there at this time. Having no further requests to speak, Mayor Della Sala closed the Hearing.

City Manager Meurer said that it is important to have the rules spelled out when the applications come in. He outlined some of the difficulties that have occurred with the current conversions.

It was moved by Councilmember Downey to amend and approve the staff recommendation to extend the Urgency Ordinance moratorium on condominium conversions for three months to allow the necessary time to prepare the ordinance; to direct staff and the Planning Commission to immediately start processing ordinance amendments with the goal of ending the moratorium as soon as possible; to exempt from the moratorium small conversion projects that are four or fewer units; and to directed the Planning Commission to report back to the City Council on their progress in no more than three months.

Councilmember Downey explained that she believes it is important to give staff the necessary time, and that there are many unhappy residents of the current conversion projects. Mayor Della Sala said that he could support three months, but would not have been able to support the full ten months. On question from Councilmember Selfridge, Mr. Marvin explained the distinction in the Subdivision Map Act between small and large projects. He said that there are many examples in the Old Town area where small condo conversion projects would encourage home ownership.

Councilmember Selfridge seconded the motion.

Councilmember Haferman said that more resources are required for this program. City Manager Meurer said that this is a relatively small issue with regard to Council's larger list of priorities and it becomes a function of the Council's priority list. Mayor Della Sala suggested that staff accept the Association of Realtors' offer to help.

The motion carried by the following vote:

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| AYES: | 5 | COUNCILMEMBERS: | Downey, Haferman, Selfridge, Sollecito, Della Sala |
| NOES: | 0 | COUNCILMEMBERS: | None |
| ABSENT: | 0 | COUNCILMEMBERS: | None |

2. 1200 Del Monte Center; Appeal of Planning Commission Decision that Upheld an Architectural Review Committee Decision to Deny Installation of a Horse Statue Outside the Entrance to P.F. Chang's China Bistro Restaurant; Appellant and Applicant Fancher Development; Owner American Assets Real Estate Group; C-2-SC Zoning District; Exempt from CEQA Requirements (Community Development 203-02 - [see Staff Report](#))
Action: Found that the statue is art, not an advertisement or sign, and upheld the appeal to allow the installation of an 11-foot horse statue outside the entrance to P.F. Chang's China Bistro Restaurant (4-1, Selfridge voting no)

Senior Planner Rerig presented the staff report. He reviewed the Planning Commission's findings of inappropriateness and inconsistency. Mayor Della Sala opened the floor to the applicant.

Gordon Crespo, MBH Architects, made a slide presentation, saying that it demonstrates that the horse is in scale with the architecture at Del Monte Center. He said that the horse is part of the art and architecture. Brian Substet, Senior Partner with P.F. Chang's, said that the plans call for only two signs, and P.F. Chang's has never used the horse as an advertisement or marketing tool. He explained that it was commissioned out of the British Art Museum, with an investment of over a half-million dollars. He said explained that P.F. Chang's uses the Bonsai as a trademark. Mr. Crespo said that there is also a 7'6" version of the horse sculpture, and they would agree to that, but would prefer the larger sculpture. He said that the existing tree somewhat hides the storefront and the horse sculpture would help people identify the restaurant. On question, Mr. Substet reviewed the restaurant's art collection. He said that if the seven-foot horse would be more acceptable, a higher pedestal would be necessary to avoid liabilities. Mr. Crespo said that as an architect, the larger horse is in better proportion. Mr. Substet presented a flat panel frieze that he could substitute.

Mayor Della Sala opened the Public Hearing to members of the general public. Mike Dawson, Monterey resident, said that the horse is art, not a sign. He spoke in favor of keeping the horse. Joyce Blevins, Monterey resident, also supported the horse. Jerry Welling, Monterey resident and Alta Mesa area resident, said that the horse is art, and said that he would love to have it in Monterey. Having no further requests to speak, Mayor Della Sala closed the Hearing.

On question, Senior Planner Rerig explained that the frieze relief is still defined as statuary under the City's rules. Councilmember Sollecito agreed that the large horse is appropriate. He noted that technically the ARC & Planning Commission followed the rules, but he finds that this statue is art.

It was moved by Councilmember Sollecito, and seconded by Councilmember Haferman, to uphold the appeal to allow the applicant to install the eleven-foot horse statue as proposed by the applicant:

Councilmember Haferman said that he agrees that this is art and that is why he is supporting it. Councilmember Selfridge said that Monterey is unique and this is not comparable to the bear statues. Councilmember Downey said that ARC and the Planning Commission did what they were supposed to do under the rules. Mayor Della Sala agreed, saying that this should be viewed as a transformation and he has advocated more public art throughout the business districts. He said that Monterey must encourage this and develop designs for future statuary.

Councilmember Sollecito confirmed that his finding is that this statuary is art not advertising art, and there is not a demonstrable connection with the restaurant.

Councilmember Downey said that she would support the motion because of the statue's history.

The motion carried by the following vote:

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|---------|---|-----------------|---|
| AYES: | 4 | COUNCILMEMBERS: | Downey, Haferman, Sollecito, Della Sala |
| NOES: | 1 | COUNCILMEMBERS: | Selfridge |
| ABSENT: | 0 | COUNCILMEMBERS: | None |

- 1200 Del Monte Center; Two Appeals of Planning Commission Decision that Approved Late Night Hours to 12 Midnight on Friday and Saturday and 11 p.m. Sunday through Thursday for P.F. Chang's China Bistro Restaurant: 1) Alta Mesa Neighborhood Association Appeals Approval of Hours after 10 p.m.; 2) Applicant Appeals Condition of Approval Requiring Sound Study at Residential Boundary; Appellants Alta Mesa Neighborhood Association and Fancher Development; Owner American Assets Real Estate Group; C-2-SC Zoning District; Exempt from CEQA Requirements (Community Development 203-02 - [see Staff Report](#))

Action: Approved the use permit to allow the business operating hours to extend no later than 11:00 p.m. on Fridays and Saturdays and until 10:00 p.m. on Sunday through Thursday, including the restriction of the outdoor patio dining to 10:00 p.m., to be reviewed in six months; directed Del Monte Center to conduct a sound study

Senior Planner Marvin presented the staff report, recommending denial of both appeals. City Manager Meurer clarified that the shopping center management has agreed to post a security guard to prevent street sweepers and grease pumpers from working during late night and early morning hours.

Mayor Della Sala opened the Hearing to the Appellant. Mike Dawson, Alta Mesa Neighborhood Association President, explained the reasons that the decisions are being appealed. He said that the noise from Del Monte Center does not stop at closing time and he voiced concerns regarding the effects on the neighboring residences. He noted that the Planning Commission went against the staff recommendation on a split vote of 4-3, and that the infrastructure maintenance is getting pushed further into the night. He said that rules must be enforceable and asked that a gate be installed at the North entrance to the property.

Mayor Della Sala opened the Public Hearing. Paul Smith, Alta Mesa resident, said that Del Monte Center is not a good neighbor, and that is a separate issue from the P.F. Chang's application. He voiced concerns regarding noise levels. Joyce Blevins said that her house is twenty-one feet from the property line, and the center affects property values. She voiced concerns regarding noise and safety. She said that P.F. Chang's could be used as a catalyst to hold DMC accountable. Wade Fernside, Don Dahvee resident, spoke in opposition to any closing time after 10:00 p.m., suggesting blocking the North entrance and parking lots after 10:00 p.m. He reviewed concerns regarding late night maintenance noise issues, as well as noise issues associated with restaurant operations. He said that according to his research, P.F. Chang's accommodates large parties for late night events.

Brian Substet, Senior Partner, said that P.F. Chang's takes deliveries only between 7:00 and 11:00 a.m. He said that he believes they are being blamed for problems of Del Monte Center. He stated that P.F. Chang's does not promote large parties and drinking. He explained that this is an expensive development for his company, and late night hours are required for success of

the operation. He said that P.F. Chang's is willing to sign agreements or be fined if they do not abide. He said that he wants the neighbors to be their clients. On question, Mr. Substet clarified that he would not schedule a large party after closing hours. Mayor Della Sala closed the Public Hearing.

City Manager Meurer said that the staff is working on an amendment to the nuisance ordinance, which would facilitate enforcement of these issues, and staff has been meeting with DMC owners and tenants to address the neighborhood's issues.

Councilmember Sollecito said that he is glad that the issues are being addressed, and a soundwall might be a partial solution. Councilmember Downey suggested designating parking spaces for the employees. On question, staff clarified that there is a public hearing process to revoke use permits at any time if they are being violated. On question, staff said that El Indio closes its kitchen at 9:30, and that California Pizza Kitchen would be in violation of their use permit because they close at 11:00 p.m. Councilmember Haferman said that he could not support the midnight closing time.

It was moved by Councilmember Haferman, and seconded by Councilmember Sollecito, to approve the use permit to allow the business operating hours to extend no later than 11:00 p.m. on Fridays and Saturdays and until 10:00 p.m. on Sunday through Thursday, to be reviewed in six months.

On question, Mr. Marvin said that most of the complaints are coming from infrastructure maintenance, with a few from existing restaurant noise Councilmember Downey said that if this works out to everyone's satisfaction, she would encourage the applicants to come back to Council to request an additional hour of operation. On question from the Mayor, staff clarified that P.F. Chang's could return to the Planning Commission and ask for an extension.

Councilmember Haferman clarified that his motion includes the restriction of the outdoor patio dining to 10:00 p.m. The motion carried by the following vote:

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|---------|---|-----------------|--|
| AYES: | 5 | COUNCILMEMBERS: | Downey, Haferman, Selfridge, Sollecito, Della Sala |
| NOES: | 0 | COUNCILMEMBERS: | None |
| ABSENT: | 0 | COUNCILMEMBERS: | None |

It was moved by Councilmember Selfridge, and seconded by Councilmember Downey to direct Del Monte Center management to carry out the sound study. The motion carried by the following vote:

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|---------|---|-----------------|--|
| AYES: | 5 | COUNCILMEMBERS: | Downey, Haferman, Selfridge, Sollecito, Della Sala |
| NOES: | 0 | COUNCILMEMBERS: | None |
| ABSENT: | 0 | COUNCILMEMBERS: | None |

Councilmember Sollecito stated that he is disqualifying himself from tonight's personnel hearing because he was Mr. McMahon's supervisor in the past. Mayor Della Sala called a recess at 6:16 p.m., then reconvened the meeting at 7:00 p.m. Councilmember Sollecito was absent due to having excluded himself from hearing the personnel matter.

CONTINUED PUBLIC COMMENTS

Mayor Della Sala opened the floor for public comments on items not on the agenda. Debra Lindsay, Director of Sustainable Monterey County, invited Council and individuals in the audience to upcoming events and to the website www.sustainablemontereycounty.org. Lorna Moffett presented materials and testimony regarding the herbicide, Roundup, and asked Council to pass an ordinance regarding its use. Having no further requests to speak, Mayor Della Sala closed public comments.

COUNCIL COMMENTS

Due to the press of business, there were no Council Comments.

OTHER BUSINESS

4. Public Employee Discipline/Dismissal/Release – Hearing to be Held in Open Session at the Request Employee (Human Resources 501-02)
Action: Directed that the hearing proceed; set time limits of 8 hours for each attorney to hear his case; opened the hearing, heard testimony and continued the matter to April 7, 2007 at 7:00 p.m.

City Attorney Mall outlined a proposed procedure and time limits for the hearing. She noted that Counsel has stipulated to the entry of certain evidence and the administrative record. John Pearson, the employee's attorney, noted that Mr. McMahon had requested that this hearing be open to the public.

Mr. Pearson requested a continuance of the hearing due to possible discrepancies in the tape recordings and the summaries of the witness statements, and highlighted specific comments in the witness summaries as examples. He made a motion to remand the matter to City Manager Meurer or to continue the Council Hearing. Mr. Pearson said that this case is a matter of law under GC 3304(d), with regard to the statute of limitations, and a hearing is scheduled for April 13, 2007 in front of Superior Court Judge O'Farrell. Mr. Pearson said that this Council has not set due process procedures for this type of personnel hearing, such as subpoena power. He said that time constraints should be laid out, but four hours is inadequate.

Vince Hurley, attorney for the City of Monterey, said that there is no authority to remand the matter to the City Manager. He said that this meeting is called to order and the request is not timely. He noted that Mr. Pearson requested the tapes in a letter dated March 5, postmarked March 6 and received on March 12. He said that the notice of discipline is dated May 19, 2006, and Mr. Pearson could have requested the tapes at any time since. He noted that Mr. McMahon waited until this hearing was set before filing a writ of mandate with the Superior Court, when he had eight months to do so. He said that the hearing should go forward at this time based on the fact that this Council has jurisdiction.

City Attorney Mall clarified that the matter being heard before the Superior Court is only one aspect of tonight's hearing. On question, Mr. Hurley said that the witnesses signed the statements in the binders as true, and he has no knowledge that there are discrepancies.

On a motion by Councilmember Haferman, seconded by Councilmember Downey, and carried by the following vote, the City Council directed that the hearing proceed at this time:

AYES: 4 COUNCILMEMBERS: Downey, Haferman, Selfridge, Della Sala
 NOES: 0 COUNCILMEMBERS: None
 ABSENT/ NOT PARTICIPATING: 1 COUNCILMEMBERS: Sollecito

On question, Mr. Pearson said that his case would take sixteen to twenty hours and Mr. Hurley said that a total of six hours would be enough for his case.

It was moved by Councilmember Downey, and seconded by Mayor Della Sala, to allow each attorney eight hours to present his case. The motion carried by the following vote:

AYES: 4 COUNCILMEMBERS: Downey, Haferman, Selfridge, Della Sala
 NOES: 0 COUNCILMEMBERS: None
 ABSENT/ NOT PARTICIPATING: 1 COUNCILMEMBERS: Sollecito

Mr. Pearson raised due process objections regarding the transcripts and a request to go forward with cross-examination of any witness.

Beginning at 7:56 p.m. Mr. Hurley presented opening arguments.

Time 23 Minutes – City

Council took a recess at 8:19 p.m., then reconvened at 8:25 p.m.

At 8:27 p.m., Mr. Hurley called Jodi Braxton as a witness. She was sworn in and testified.

Time 58 Minutes – City

Council recessed at 9:25 p.m., then reconvened at 9:37 p.m.

From 9:38 p.m. until 9:40 p.m., Mr. Hurley concluded questioning Ms. Braxton.

Time 2 Minutes – City

Ms. Braxton requested to make a public statement, stating that Mr. McMahon took advantage of her at her most vulnerable time

At 9:44 p.m., Mr. Pearson lodged his objection to not having the tape transcripts, then cross-examined the witness, finishing at 10:26 p.m. He moved to strike all of the references to witness' summarized statements, and the motion was taken under consideration by the Council.

Time 42 Minutes – Employee

At 10:27 p.m., Mr. Hurley highlighted pages 413 through 414 of the transcript for Council's consideration during deliberation. He called Sergeant Tognetti, who was sworn and then testified. Mr. Hurley completed his questions of this witness at 10:58 p.m.

Time 31 Minutes – City

Time summary

| | Time Allotted | Time Used | Time Remaining |
|----------|---------------|-------------------|--------------------|
| City | 8 hours | 1 hour 54 minutes | 6 hours 6 minutes |
| Employee | 8 hours | 42 Minutes | 7 hours 18 minutes |

Mayor Della Sala said that the hearing would continue on Tuesday, April 3 at 7:00 p.m., and Cross-examination of Sergeant Tognetti would begin at that time.

CLOSED SESSION

5. Public Employee Discipline/Dismissal/Release-Pursuant to Government Code Section 54957 (Human Resources 501-02)
Action: No closed session was held

ADJOURNMENT

There being no further business to come before the City Council, Mayor Della Sala adjourned the meeting at 11:00 p.m.

Respectfully Submitted,

Approved,

Bonnie L. Gawf, City Clerk

Chuck Della Sala, Mayor