

**AGENDA – REGULAR MEETING
BELVEDERE CITY COUNCIL
JANUARY 10, 2022, 6:30 P.M.
REMOTE MEETING**

On March 3, 2020 Governor Newsom proclaimed a State of Emergency due to the COVID-19 pandemic that remains in effect. This meeting will be held remotely consistent with Executive Order N-29-20 and Assembly Bill 361, modifying provisions of the Brown Act to allow remote meetings at the current time. Members of the public are encouraged to participate remotely via Zoom or telephone pursuant to the information and link below. Public comment will be accepted during the meeting. The public may also submit comments in advance of the meeting by emailing the City Clerk at: clerk@cityofbelvedere.org. Please write “Public Comment” in the subject line. Comments submitted one hour prior to the commencement of the meeting will be presented to the City Council and included in the public record for the meeting. Those received after this time will be added to the record and shared with City Councilmembers after the meeting.

City of Belvedere is inviting you to a scheduled Zoom meeting.

Topic: Belvedere Regular City Council Meeting

Time: January 10, 2022, 6:30 P.M.

Join Zoom Meeting:

<https://us02web.zoom.us/j/88395369081?pwd=am5oRXlIV0JhaTNPVXpjREpLTTBHUT09>

Webinar ID: 883 9536 9081

Passcode: 567796

877 853 5247 US Toll-free

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The City encourages that comments be submitted in advance of the meeting. However, for members of the public using the Zoom video conference function, those who wish to comment on an agenda item should write “I wish to make a public comment” in the chat section of the remote meeting platform or use the raise hand function. At the appropriate time, the city clerk will allow oral public comment through the remote meeting platform. Any member of the public who needs special accommodations to access the public meeting should email the city clerk at clerk@cityofbelvedere.org, who will use her best efforts to provide assistance.

**AGENDA – REGULAR MEETING
BELVEDERE CITY COUNCIL
JANUARY 10, 2022, 6:30 P.M.
REMOTE MEETING**

COMMENTS ON AGENDA ITEMS BY MEMBERS OF THE AUDIENCE

The audience will be given an opportunity to speak on each agenda item when it is called. Upon being recognized by the Mayor, please state your name, and limit your oral statement to no more than three minutes. The Council welcomes comments and questions raised by interested citizens but typically does not respond during the comment period.

6:30 PM CALL TO ORDER

OPEN FORUM

This is an opportunity for any citizen to briefly address the City Council on any matter that does not appear on this agenda. Upon being recognized by the Mayor, please state your name, and limit your oral statement to no more than three minutes. Matters that appear to warrant a more lengthy presentation or Council consideration may be agendized for further discussion at a later meeting.

REPORTS & PRESENTATIONS

1. City Council reports.
2. City Manager report.
3. Police Department quarterly report presented by Police Chief Jason Wu.

CONSENT CALENDAR

The Consent Calendar consists of items that the City Council considers to be non-controversial. Unless any item is specifically removed by any member of the City Council, staff, or audience, the Consent Calendar will be adopted by one motion. Items removed will be considered in the sequence as they appear below. If any member of the audience wishes to have an item removed, please step to the microphone, state your name, and indicate the item.

4. Approve minutes of the December 13, 2021, regular meeting.
5. Approve Minutes of the December 21, 2021, special meeting.
6. Adopt a Resolution to Continue Remote Public Meetings pursuant to Assembly Bill 361.
7. Adopt a Resolution ratifying Lexipol Police Department Policy Manual updates.

PUBLIC HEARING

8. Appeal of Planning Commission action of November 16, 2021, denial of Design Review for a dock extension located at 44 San Rafael Avenue. Property owner and appellant: Richard Laiderman.

Staff recommendation: adopt the resolution granting the appeal and approve the Design Review for a dock expansion for the property located at 44 San Rafael Avenue.

9. Adoption of an Urgency Ordinance Amending Belvedere Municipal Code Title 18 -Subdivisions establishing regulations for the subdivision and development of qualified Senate Bill 9 (SB9) properties and amending Title 19 – Zoning to comply with Senate Bill.

Staff recommendation: adopt the urgency ordinance establishing regulations for the subdivision and development of qualified Senate Bill 9 (SB9) properties within the City of Belvedere.

ADJOURN

NOTICE: WHERE TO VIEW AGENDA MATERIALS

Staff reports and other materials distributed to the City Council are available for public inspection at the following locations:

- Online at www.cityofbelvedere.org/archive.aspx
- Belvedere City Hall, 450 San Rafael Avenue, Belvedere. *(Materials distributed to the City Council after the Thursday before the meeting are available for public inspection at this location only.)*
- Belvedere-Tiburon Library, 1501 Tiburon Boulevard, Tiburon.

To request automatic mailing of agenda materials, please contact the City Clerk at (415) 435-3838.

NOTICE: AMERICANS WITH DISABILITIES ACT

The following accommodations will be provided, upon request, to persons with a disability: agendas and/or agenda packet materials in alternate formats and special assistance needed to attend or participate in this meeting. Please make your request at the Office of the City Clerk or by calling 415/435-3838. Whenever possible, please make your request four working days in advance.

Posted: 1/ 06/ 2022

CONSENT CALENDAR

**BELVEDERE CITY COUNCIL
JANUARY 10, 2022**

To: Mayor and City Council

From: Beth Haener, City Clerk

Subject: **Approve minutes of the December 13, 2021 Regular City Council meeting**

Recommended Motion/Item Description

That the City Council approve the minutes as part of the Consent Calendar.

Attachments

Minutes.

**REGULAR MEETING
BELVEDERE CITY COUNCIL
DECEMBER 13, 2021, 6:30 PM
REMOTE VIA ZOOM**

MINUTES

COUNCIL PRESENT: James Campbell, Nancy Kemnitzer, James Lynch, Steve Block, and Sally Wilkinson

COUNCIL ABSENT: None

STAFF PRESENT: City Manager Craig Middleton, Police Chief Jason Wu, Public Works Director Robert Zadnik, Interim Administrative Services Director Kristine Polian, Planning and Building Director Irene Borba, and City Clerk Beth Haener

These minutes are intended to reflect the general content of the regular meeting. An audio file of the meeting is available: <https://www.cityofbelvedere.org/agendacenter>.

CALL TO ORDER IN REMOTE OPEN SESSION

The meeting was called to order by Mayor Campbell at 6:30 PM via remote Zoom meeting. Mayor Campbell read the COVID-19 notice and public participation instructions.

City Manager Middleton took roll call.

OPEN FORUM

Belvedere resident William Rothman shared information about a newsletter he had mailed to residents regarding the approved design of the Community playground, and stated his concerns about the design.

Seeing no one else wishing to speak, Mayor Campbell closed the open forum.

REPORTS & PRESENTATIONS

Item 1. City Council Reports

There were no reports given by Council.

Item 2. City Manager Report

City Manager Middleton addressed concerns about construction impacts on Belvedere residents and stated that the City plans to take a closer look at this issue in the new year to see whether there are policy options that could alleviate some of the issues.

City Manager Middleton noted that every December, the City hosts a thank you event to express appreciation for the many volunteers in Belvedere but indicated that the dangers of COVID had made the event impossible this year. He expressed the City's appreciation for the volunteers this year, who persevered in serving the City even during the pandemic. City Manager Middleton also expressed his appreciation on behalf of City Hall for Mayor Campbell's leadership over the year.

Mayor Campbell called for public comment and, seeing none, closed the public forum.

CONSENT CALENDAR

Mayor Campbell removed Item 6 for further discussion.

MOTION: Move to adopt the Consent Calendar, with the exception of Item 6.

MOVED: By Block, seconded by Lynch. Approval was unanimous of the following items:

3. **Approve minutes of the November 8, 2021, regular meeting.**
 4. **Approve warrants of November 2021.**
 5. **Accept annual audited financial statements for the City of Belvedere.**
 7. **Reappoint Richard Snyder to the Board of Trustees of the Marin/Sonoma Mosquito and Vector Control District.**
-
6. **Adoption of an Ordinance Amendment to Belvedere Municipal Code Title 5 “Business Taxes, Licenses and Regulations” adding Chapter 5.17 “Prohibition of Commercial Activities in City Parks.”**

Councilmember Kemnitzer expressed her concern that the Ordinance as drafted could have unintended consequences and stated that Council needs to make sure that this Ordinance does not adversely impact people who may need paid staff to help them in City parks. Councilmember Kemnitzer requested that this item be continued to when the City has a new attorney who can review it.

Mayor Campbell called for public comment.

Belvedere resident Jane Cooper asked if Council had discussed this Ordinance with the Ranch. Councilmember Kemnitzer stated that any classes offered through the Ranch would be excepted.

Seeing no one else wishing to speak, Mayor Campbell closed the public forum. Council agreed to continue the item.

COUNCIL REORGANIZATION

8. City Council Reorganization

A. Election of Mayor.

MOTION: To elect Sally Wilkinson as Mayor

MOVED: By Campbell, seconded by Block, approval was unanimous

Outgoing Mayor Campbell thanked Councilmembers for their time and teamwork over the past year and commented on the many accomplishments the Council was able to achieve. Outgoing Mayor Campbell thanked all City staff for their support, thanked all the volunteers in the community, and stated that he is honored to turn the gavel over to Sally Wilkinson.

Incoming Mayor Wilkinson accepted the Mayoral Sash.

B. Election of Vice Mayor

MOTION: To elect Steve Block as Vice Mayor

MOVED: By Wilkinson, seconded by Lynch, approval was unanimous

C. Presentation to outgoing Mayor and remarks by Council Members

Mayor Wilkinson presented Councilmember Campbell with a plaque commemorating his time as Mayor and a City of Belvedere jacket. She discussed the many achievements of Councilmember Campbell over the past year. Members of the Council then shared their thoughts and appreciation for Councilmember Campbell. A video for Councilmember Campbell was presented.

OTHER SCHEDULED ITEMS

9. Adopt a Resolution amending Administrative Policy Manual (APM) Policy 2.2 – “Fund Balance and Reserve Policies” to reflect the Finance Committee’s recommendation.

Interim Administrative Services Director Kristine Polian presented the staff report and took questions from Council.

Mayor Wilkinson called for public comment and, seeing none, closed the public forum and brought it back to Council for discussion.

MOTION: To adopt the resolution amending Administrative Policy Manual Policy 2.2 – “funding balance and reserve policies” to reflect the Finance Committees recommendation.

MOVED: By Campbell, seconded by Lynch, approval was unanimous.

10. Adopt a Resolution directing staff to develop funding approach for critical infrastructure project.

City Manager Middleton presented the staff report and took questions from Council.

Mayor Wilkinson called for public comment.

Belvedere resident William Rothman requested clarification on the transfer tax discussed in City Manager Middleton’s report. City Manager Middleton stated that a transfer tax takes effect upon the sale of a property and is a percentage of the sales price. He clarified that the tax would not apply if one were to give property to a child.

Seeing no one else wishing to speak, Mayor Wilkinson closed the public forum and brought it back to Council for discussion.

MOTION: To adopt the resolution that directs the City Manager to develop and present for further Council consideration and possible inclusion on a future ballot a draft measure that would provide funding to enable the City to fund the Critical Infrastructure Project by means of a real property transfer tax and charter city conversion.

MOVED: By Block, seconded by Lynch, approval was unanimous.

11. Approve decision of the Citizen of the Year Committee.

Mayor Campbell stated for the record that he is recused from the item due to a conflict of interest.

MOTION: To approve the decision of the Citizen of the year committee to nominate Adam Gavzer as the Citizen of the Year for 2021, and Ann Allen as Citizen Emeritus for 2021.

MOVED: By Wilkinson, seconded by Block, approval was unanimous.

ADJOURN

The meeting was adjourned at 7:43 P.M.

THE FOREGOING MINUTES were approved at a regular meeting of the Belvedere City Council on December 13, 2021, by the following vote:

AYES: James Campbell, Nancy Kemnitzer, James Lynch, Steve Block, and Mayor Wilkinson
NOES: None
ABSENT: None
RECUSED: None

Approve: _____
Sally Wilkinson, Mayor

Attest: _____
Beth Haener, City Clerk

DRAFT

CONSENT CALENDAR

**BELVEDERE CITY COUNCIL
JANUARY 10, 2022**

To: Mayor and City Council

From: Beth Haener, City Clerk

Subject: **Approve minutes of the December 21, 2021 Special City Council meeting**

Recommended Motion/Item Description

That the City Council approve the minutes as part of the Consent Calendar.

Attachments

Minutes.

**SPECIAL MEETING
BELVEDERE CITY COUNCIL
DECEMBER 21, 2021, 3:30 PM
REMOTE VIA ZOOM**

MINUTES

COUNCIL PRESENT: James Campbell, Nancy Kemnitzer, James Lynch, Steve Block, and Sally Wilkinson.

COUNCIL ABSENT: None

STAFF PRESENT: City Manager Craig Middleton, and City Clerk Beth Haener.

These minutes are intended to reflect the general content of the regular meeting. An audio file of the meeting is available: <https://www.cityofbelvedere.org/agendacenter>.

CALL TO ORDER IN REMOTE OPEN SESSION

The meeting was called to order by Mayor Wilkinson at 3:35 PM via remote Zoom meeting. City Clerk Haener read the COVID-19 notice and public participation instructions.

City Manager Middleton took roll call.

PUBLIC COMMENT ON AGENDA ITEMS

No one wished to speak.

Mayor Wilkinson called to adjourn to Closed Session.

ADJOURN TO CLOSED SESSION

1. Closed Session pursuant to Government Code Section 54957(b)(1). Position: City Attorney.

RECONVENE IN OPEN SESSION

The meeting reconvened in open session via Zoom at 4:25p.m.

OTHER SCHEDULED ITEMS

2. Adopt a resolution authorizing the City Manager to execute an agreement for the City Attorney services.

City Manager Craig Middleton presented the staff report. There were no questions from Council or public.

MOTION: Adopt a resolution authorizing the City Manager to execute an agreement for the City Attorney Services

MOVED: By Block, seconded by Lynch; approval was unanimous.

Councilmember Block stated for the record his appreciation to Councilmember Kemnitzer and Councilmember Lynch for their hard work in finding a great candidate for the City of Belvedere.

ADJOURN

The meeting was adjourned at 4:31 P.M.

THE FOREGOING MINUTES were approved at a regular meeting of the Belvedere City Council on January 10, 2022, by the following vote:

AYES: James Campbell, Nancy Kemnitzer, James Lynch, Steve Block, and Mayor Wilkinson
NOES: None
ABSENT: None
RECUSED: None

Approve: _____
Sally Wilkinson, Mayor

Attest: _____
Beth Haener, City Clerk

DRAFT

CONSENT CALENDAR

**BELVEDERE CITY COUNCIL
JANUARY 10, 2022**

To: Mayor and City Council

From: Beth Haener, City Clerk

Reviewed by: Craig Middleton, City Manager

Subject: A Resolution Authorizing the Continuation of Remote Public Meetings pursuant to Assembly Bill 361

RECOMMENDATION

That the City Council adopt a Resolution authorizing the continued use of remote meetings pursuant to Assembly Bill 361 and give direction to staff as necessary.

BACKGROUND

At the October 11, 2021, regular meeting, the City Council adopted Resolution 2021-41 authorizing the continuation of virtual public city meetings during the continuing state of emergency relating to the COVID1-19 pandemic for the 30-day period beginning October 11, 2021, and making the required findings pursuant to AB 361. Subsequently, at the November 8, 2021 regular meeting, and at the November 29, 2021 special meeting, the City Council adopted Resolution 2021-44 and 2021-45, allowing meetings to be held via teleconference.

In order to continue to hold remote meetings, the City Council must continue to declare every 30 days that (i) the state of emergency continues to be in place; and (ii) State or local officials continue to impose or recommend measures to promote social distancing; or (iii) as a result of the declared emergency, meeting in-person would result in an imminent risk to the health or safety of attendees.

The attached resolution makes the findings to confirm the conditions still exist to allow the continuation of virtual public meetings pursuant to AB 361 for the City Council and on behalf all lower legislative bodies in the City.

The attached resolution anticipates and authorizes remote meetings including hybrid meetings held both via teleconference and in-person. This resolution will allow members of the public to safely observe and participate in local government teleconference meetings during the continued pandemic.

ENVIRONMENTAL DETERMINATION

A meeting format determination under AB 361 is not a “project” under the California Environmental Quality Act, because it does not involve an activity that has the potential to cause a direct or reasonably foreseeable indirect physical change in the environment. (Pub. Res. Code § 21065).

CORRESPONDENCE

As of the writing of this report, no correspondence has been received regarding this agenda item.

RECOMMENDED ACTION

That the City Council adopt the Resolution authorizing the continued use of remote meetings pursuant to Assembly Bill 361 and give direction to staff as necessary.

ATTACHMENTS

1. Resolution.

CITY OF BELVEDERE

RESOLUTION NO. 2022-03

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELVEDERE
AUTHORIZING THE CONTINUATION OF VIRTUAL PUBLIC CITY MEETINGS
DURING THE CONTINUING STATE OF EMERGENCY RELATING TO THE COVID-
19 PANDEMIC PURSUANT TO ASSEMBLY BILL 361**

WHEREAS, on March 4, 2020 Governor Newsom declared a State of Emergency pursuant to Government Code section 8625 due to the COVID-19 pandemic, which State of Emergency remains in effect; and

WHEREAS, State Executive Orders N-25-20 and N-29-20, suspended certain provisions of the Brown Act (Gov. Code, §§ 54950 *et seq.*) to allow public meetings to be held virtually without opening a physical space to the public, which provisions expired September 30, 2021; and

WHEREAS, effective September 16, 2021, Assembly Bill 361, allows local agencies to continue to hold remote public meetings through December 31, 2023 when there is a State-declared emergency, and when state or local officials have imposed or recommended measures to promote social distancing or as a result of the declared emergency, meeting in-person would result in an imminent risk to the health or safety of attendees; and

WHEREAS, the Government Code section 8625 State of Emergency remains in effect; and

WHEREAS, state and local officials continue to impose and recommend measures to promote social distancing due to the continued rates of transmission of the COVID-19 virus and variants as follows:

- a. The July 28, 2021 California Department of Public Health Guidance for the Use of Facial Coverings recommending universal masking indoors statewide to promote social distancing is still in effect; and
- b. The Marin County Public Health Department continues to recommend the use of masking indoors.
- c. On September 22, 2021, the Marin County Director of Health and Human Services, Benita McLarin, issued a letter recommended continued social distancing for governmental meetings, including the use of video and teleconference meetings.

WHEREAS, public meetings involve many people in shared indoor spaces, in close proximity for hours, and City meetings rooms have limited mechanical and natural ventilation, creating a health risk for members of the public at this time; and

WHEREAS, as a result of the continuing declared emergency, public meetings in-person would result in an imminent risk to the health or safety of attendees.

WHEREAS, a meeting format determination under AB 361 is not a “project” under the California Environmental Quality Act, because it does not involve an activity that has the potential to cause a direct or reasonably foreseeable indirect physical change in the environment. (Pub. Res. Code § 21065.)

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Belvedere based on the findings set forth above and incorporated herein, that public meetings of the City’s legislative bodies shall be held using remote technology in compliance with the requirements of Government Code section 54953(e) and all other applicable laws for thirty (30) days following the date of adoption of this Resolution.

PASSED AND ADOPTED at a special meeting of the City Council of the City of Belvedere on January 10, 2022, by the following vote:

AYES: James Campbell, Nancy Kemnitzer, James Lynch , Steve Block, and Mayor Wilkinson
NOES: None
ABSENT: None
ABSTAIN: None

APPROVED: _____
Sally Wilkinson, Mayor

ATTEST: _____
Beth Haener, City Clerk

To: Mayor and City Council
From: Jason Wu, Chief of Police
Subject: **Lexipol Updates: October through December 2021**

Recommended Motion/Item Description

Adopt the resolution accepting the recent update(s) to the Belvedere Police Department Policy Manual (Lexipol).

Background

Pursuant to Section 20.7.1 of the City of Belvedere Administrative Policy Manual, the Belvedere Police Department (BPD) Policy Manual is incorporated into the Administrative Policy Manual of the City of Belvedere by reference. Changes to the Belvedere Police Policy Manual recommended by the City’s public safety risk management consultant (Lexipol) and approved by the Chief of Police shall be implemented on an interim basis and reported to the City Council concurrent with the next quarterly report by the Chief of Police to City Council. Per Policy Section 20.7.1, such changes will, in the ordinary course of business, be ratified by Council at that meeting. In the event that Council expresses significant concern about any BPD policy or change thereto, the Mayor may establish an ad hoc committee to consult with the Chief of Police and report back to the full Council with its recommendation. The BPD will continue to implement any pending changes until such report is made and Council makes a final decision on the matter.

There is no fiscal impact associated with the incorporation of the Police Policy Manual into the Administrative Policy Manual.

Recommendation

Staff recommends that the City Council adopt the attached Resolution ratifying the most recent Lexipol updates.

Attachments

- Resolution with changes to the Belvedere Police Manual included as Exhibit A.

CITY OF BELVEDERE

RESOLUTION NO. 2022-01

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELVEDERE
RATIFYING LEXIPOL POLICE DEPARTMENT POLICY MANUAL UPDATES**

WHEREAS, Belvedere Administrative Policy Manual section 20.7.1 provides that updates and changes to the Belvedere Police Policy Manual recommended by the City’s public safety risk management consultant, Lexipol, and approved by the Chief of Police, are to be ratified by the City Council in the ordinary course of business; and

WHEREAS, Administrative Policy Manual section 20.7.1 further provides that said Police Policy Manual updates shall be reported to the City Council by the Chief of Police on a quarterly basis and submitted for Council ratification; and

WHEREAS, at its regularly scheduled meeting on January 10, 2022, the Chief of Police presented the Police Department’s Quarterly Update to the City Council, which update included changes and updates to the Police Policy Manual as recommended by Lexipol and approved by the Chief of Police; and

WHEREAS, the City Council desires to ratify said Police Policy Manual updates; and

WHEREAS, the Police Policy Manual updates herein are not a “project” under the California Environmental Quality Act.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Belvedere that the updates and changes to the Belvedere Police Policy Manual are hereby ratified as set forth in “Exhibit A”.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Belvedere on January 10, 2022, by the following vote:

AYES: Steve Block, James Lynch, Nancy Kemnitzer, James Campbell, and Mayor Wilkinson

NOES: None

ABSENT: None

RECUSED: None

APPROVED: _____
Sally Wilkinson, Mayor

ATTEST: _____
Beth Haener, City Clerk

EXHIBIT A

A. Updates to Lexipol Policy 203 – Training

This policy has been updated because legislative action impacts its content. 2021 AB 26, effective Jan. 1, 2022, prohibits a peace officer who is the subject of a sustained use of force complaint to train another officer for a period of three years from the date the complaint is sustained. Changes to this policy include:

- TRAINING RESTRICTION (§203.10.1) has been added to include a responsibility to identify those officers who are restricted from training.

Unrelated to the legislative update, additional changes include:

- The policy name has been changed from Training Policy to Training for consistency with other policies in the BPD Lexipol Policy Manual.
- OBJECTIVES has been updated to include an additional applicable consideration (§203.3(d)), and punctuation has been corrected.

B. Updates to Lexipol Policy 301 – Use of Force

This policy has been updated because legislative actions impact its content. 2021 CA AB 26, effective Jan. 1, 2022, amended law regarding the use of force. Changes include:

- PURPOSE AND SCOPE has been updated to include an applicable policy reference (added “Retaliation prohibitions for reporting suspected violations are addressed in the Anti-Retaliation Policy”).
- In DUTY OF INTERCEDE, a citation that defines "intercede" has been added (added “as defined by Government Code §7286”).
- FAILURE TO INTERCEDE has been added as a new subsection (§301.2.4) in POLICY to indicate that peace officers who are trained to intercede and fail to do so, may also be disciplined in the same manner as the officer who used excessive force.
- DUTY TO REPORT EXCESSIVE FORCE has been updated to clarify the supervisor notification requirement, and to add the definition for "immediately."
- TRAINING has updated to include a reference to the Training Policy relating to training restrictions.

2021 CA SB 16, along with 2021 SB 2, effective Jan. 1, 2022, added law to the Penal Code that requires instances of use of force be reported immediately to the peace officer's agency. Changes include:

- USE OF FORCE has been updated for clarification (added “or authorized tools,”).
- NOTIFICATION TO SUPERVISORS has been updated to further emphasize supervisor notification, the definition for "immediately" has been added.

2021 CA AB 490, effective Jan. 1, 2022, amended Government Code § 7286.5 to prohibit a law enforcement agency from authorizing officers to use restraint or transportation methods that could impair an individual's breathing or respiratory capacity. Changes include:

- ADDITIONAL RESTRICTIONS has been added as a new subsection (§301.3.6) in USE OF FORCE.

Unrelated to the legislative updates, additional changes include:

- An applicable policy reference (“See the Medical Aid and Response Policy for additional guidelines.”) has been added in MEDICAL CONSIDERATION.

C. Updates to Lexipol Policy 309 – Domestic Violence

This policy has been updated because legislative action impacts its content. 2021 CA SB 320, effective Jan. 1, 2022, amended law regarding protective orders and possession of ammunition by adding "ammunition" to the statute. Changes to this policy include:

- In COURT ORDERS, a citation has been updated as another provision of §309.9.2(c) also applies in regard to implementing a policy for relinquishment of firearms or ammunition (corrected to Family Code §6389(c)). Gendered pronouns have also been removed.
- In REPORTS AND RECORDS, terminology (“ammunition”) and a citation (Family Code §6389(c)) have been updated.

D. Updates to Lexipol Policy 312 – Senior and Disability Victimization

This policy has been updated because legislative actions impact its content. 2021 CA SB 823, effective Jan. 1, 2022, renamed the Bureau of Medi-Cal Fraud to the Division of MediCal Fraud and Elder Abuse. Changes include:

- In MANDATORY NOTIFICATION, an agency name has been updated.

2021 CA AB 135, effective Jan. 1, 2022, amended Welfare and Institutions Code § 15610.57. 2021 CA AB 1171, effective Jan. 1, 2022, amended Welfare and Institutions Code § 15610.63, deleting spousal rape from the statute. Changes include:

- RELEVANT STATUTES has been updated to reflect the law changes.

Unrelated to the legislative update, additional changes include:

- An initialism has been corrected (from SDSS to CDSS) and gendered pronouns have been removed in MANDATORY NOTIFICATION.

E. Updates to Lexipol Policy 314 – Child Abuse

This policy has been updated because legislative action impacts its content. 2021 CA AB 670, effective Jan. 1, 2022, amended law regarding mandatory notifications involving child abuse or neglect where the parent is a minor or dependent adult. Changes to this policy include:

- MANDATORY NOTIFICATION has been updated to add an additional notification requirement, and to add clarity about when a District Attorney does not have to be notified. Also, a spacing error has been corrected, and a gendered pronoun has been removed.

F. Updates to Lexipol Policy 318 – Hate Crimes

This policy has been updated because legislative actions impact its content. 2021 CA AB 600, effective Jan. 1, 2022, amended definitions relating to hate crimes. Changes to this policy include:

- DEFINITION AND LAWS has been updated to conform to the new legislation (added “discriminatory selection of victims” and “regardless of whether it is

stereotypically” to §318.2.1 Bias motivation and Gender expression, respectively).

2021 CA AB 57, effective Jan. 1, 2022, amended law in light of recent reports and studies of hate crimes and the failure to identify, report, and respond to these crimes. The legislation also amended law to identify an additional element of bias motivation.

- In DEFINITION AND LAWS, "Bias motivation" has been updated.
- TRAINING has been updated to include training in the recognition of religion bias (added “and religious bias”).

G. Updates to Lexipol Policy 319 – Standards of Conduct

This policy has been updated because legislative action impacts its content. 2021 CA AB 958, effective Jan. 1, 2022, passed new law regarding law enforcement gangs that requires a policy prohibiting participation in these gangs and a violation being grounds for termination. Changes to this policy include:

- RELATIONSHIPS has been updated to include the prohibition (added §319.5.4(f)). In addition, some punctuation changes have been made to conform with current style guidance.

H. Updates to Lexipol Policy 329 – Gun Violence Restraining Orders

This policy has been updated because legislative action impacts its content. 2021 CA SB 538, effective Jan. 1, 2022, added a new section to the Penal Code that a court or court facility that receives petitions for any restraining order shall permit those petitions to be submitted electronically during and after normal business hours. The court or court facility has until July 1, 2023, to implement this service and develop local rules and instructions for filing. Changes to this policy include:

- GUN VIOLENCE RESTRAINING ORDERS has been updated to include an electronic petition, and a citation has been added (“submit the petition electronically or orally” and “Penal Code §18122” added to §329.3).

Unrelated to the legislative updates, additional changes include:

- In POLICY, grammar has been corrected (added “for” in §329.2).
- Gendered pronouns have been removed in GUN VIOLENCE RESTRAINING ORDERS.

I. Updates to Lexipol Policy 409 – Cite and Release Policy

This policy has been updated because legislative action impacts its content. 2021 CA AB 1171, effective Jan. 1, 2022, amended Penal Code § 1270.1 by deleting the cite for spousal rape from the statute. Changes to this policy include:

- In DISQUALIFYING OFFENSES, the applicable content has been removed (“Rape of a spouse (Penal Code § 262)).

J. Updates to Lexipol Policy 427 – First Amendment Assemblies

This policy has been updated because legislative actions impact its content. 2021 CA AB 48, effective Jan. 1, 2022, added law that prohibits the use of kinetic energy projectiles or chemical agents by any law enforcement agency to disperse any assembly, protest, or demonstration, except in compliance with specified standards. This bill also requires each law enforcement agency, within a specified timeframe, to post on their website a

summary of any incident in which a kinetic energy projectile or chemical agent is deployed by that agency for the purpose of crowd control. Changes include:

- USE OF KINETIC ENERGY PROJECTILES AND CHEMICAL AGENTS FOR CROWD CONTROL and its subsection, USE SUMMARY, have been added to this policy to address the new law (added §427.13 and §427.13.1).
- TRAINING has been updated to address the standards on appropriate use (new language added to §427.12).

2021 CA SB 98, effective Jan. 1, 2022, added new law regarding media access for journalists and news media for protected activity events pursuant to the First Amendment of the U.S. Constitution. Changes include:

- MEDIA ACCESS has been added as a new subsection (§427.9.1) in MEDIA RELATIONS to include the new law.

Unrelated to the legislative updates, additional changes include:

- Spacing has been corrected in UNLAWFUL ASSEMBLY DISPERSAL ORDERS.

K. Updates to Lexipol Policy 603 – Eyewitness Identification

A review of this policy has resulted in an update to one section. Changes to this policy include:

- EYEWITNESS IDENTIFICATION has been updated to clarify that an audio recording should be made when video recording is not feasible (added new language to §603.5).

L. Updates to Lexipol Policy 800 – Property and Evidence

This policy has been updated because legislative action impacts its content. 2021 CA SB 320, effective Jan. 1, 2022, amended law regarding protective orders in domestic violence matters by adding "ammunition" to the statute. Changes include:

- In RELEASE OF FIREARM IN DOMESTIC VIOLENCE MATTERS, terminology has been updated (added “or ammunition” to §800.6.9), and punctuation has been corrected.

M. Updates to Lexipol Policy 801 – Records Section

This policy has been updated because legislative action impacts its content. 2021 CA SB 715, effective Jan. 1, 2022, amended law regarding additional requirements of information to be entered in the Automated Firearms System. Changes to this policy include:

- RECORDS SECTION has been updated to add the new requirements (new text added to §801.3.2(h)).

N. Updates to Lexipol Policy 803 – Records Maintenance and Release

This policy has been updated because legislative action impacts its content. 2021 CA SB 16, effective Jan. 1, 2022, amended law removing the word "civilian" regarding complaints and renumbered various sections. Changes include:

- In RELEASE RESTRICTIONS, terminology has been removed (deleted “civilian”), and a citation has been updated (updated to Penal Code §832.7(b)(9)). Grammar and punctuation have also been corrected.

2021 CA AB 825, effective Jan. 1, 2022, amended law regarding security breaches and personal information. Personal information now includes "genetic data." Changes include:

- SECURITY BREACHES has been updated to include the addition.

O. Updates to Lexipol Policy 1000 – Recruitment and Selection

This policy has been updated because legislative actions impact its content. 2021 CA SB 16, effective Jan. 1, 2022, requires agencies to request and review personnel records of applicants with prior peace officer experience in this state prior to offering employment. Changes include:

- In SELECTION PROCESS, the request and review requirement has been added (added §1000.4(a)(1) and §1000.4(a)(2)).

2021 CA SB 2, effective Jan. 1, 2022, amended law regarding peace officer certification. Changes include:

- In SELECTION PROCESS, a review of prior law enforcement employment information that is maintained by POST has been added (Penal Code §13510.9)
- In EMPLOYMENT STANDARDS, a citation has been added (added “Penal Code §13510.1”).
- Disqualifications for employment as a peace officer have been amended to include those individuals who have had certification revoked, surrendered by law, or denied issuance. Also included are individuals identified in the National Decertification Index of the International Association of Directors of Law Enforcement Standards and Training or a similar federal government database that reflects revoked certification for misconduct or reflects misconduct that would result in a revoked certification in California (added §1000.7.1(i) and §1000.7.1(j)).
- STANDARDS FOR OFFICERS has been updated to include the additional standards (“excepted as provided by Government Code §1031.4” added to §1000.7.1(c)).

2021 CA SB 807, effective Jan. 1, 2022, amended the time frame for retention of employment records. Changes include:

- In RECORDS RETENTION, the time frame has been extended from 2 to 4 years.

2021 CA AB 89 amended the minimum age for peace officers except as provided for certain entities. Changes include:

- STANDARDS FOR OFFICERS has been updated to include the new requirements from 18 to 21 years of age.

2021 CA AB 1096, effective Jan. 1, 2022, removed the term "alien" from the laws in California. Changes include:

- In STANDARDS FOR OFFICERS, the term has been removed (§1000.7.1(b)).

P. Updates to Lexipol Policy 1003 - Anti-Retaliation

This policy has been updated because legislative action impacts its content. 2021 CA AB 26, effective Jan. 1, 2022, requires in policy a prohibition on retaliation against an officer who reports a suspected violation of a law or regulation. Changes to this policy include:

- RETALIATION PROHIBITED FOR INTERCEDING OR REPORTING has been added as a new subsection in RETALIATION PROHIBITED to include the prohibition (added §1003.3.1).

Q. Updates to Lexipol Policy 1004 – Reporting of Employee Convictions

This policy has been updated because legislative action impacts its content. 2021 CA SB 320, effective Jan. 1, 2022, amended law regarding protective orders in domestic violence matters by adding "ammunition" to the statute. Changes to this policy include:

- In PROCEDURE FOR RELIEF, terminology has been updated, and grammar has been corrected.

Unrelated to the legislative update, additional changes include:

- Spelling has been corrected in OTHER CRIMINAL CONVICTIONS AND COURT ORDERS (from “contendre” to “contendere” in §10004.3).
- Serial commas have been added in updated sections.

R. Updates to Lexipol Policy 1005 – Drug – and Alcohol – Free Workplace

This policy has been reviewed and updated for consistency with the Drug-Free Workplace Act, which requires federal grant recipients to maintain a drug-free workplace. The scope of this policy originally extended to drug, alcohol, and controlled substance use by members during the discharge of agency duties. However, that scope expanded as state and federal laws regarding marijuana began to diverge. This update is in keeping with the original scope of the policy. Revisions have been made to provide agencies with a policy that does not go beyond the requirements of the Drug-Free Workplace Act. Therefore, content related to the off-duty use of medical cannabis has been removed because the Drug-Free Workplace Act does not regulate off-duty drug possession or use by a federal grantee's employees. Please note that the removal of references to off-duty drug use from this policy does not mean that illegal off-duty activity by agency members is allowed. Lexipol's Standards of Conduct Policy addresses off-duty illegal conduct, including illegal drug use, by directing members to obey all federal, state, and local laws, as well as instructing members to conduct themselves in a manner that does not impair the good order and discipline of the agency. Changes to this policy include:

- A statutory citation (41 USC §8103) has been moved from GENERAL GUIDELINES to PURPOSE AND SCOPE.
- In GENERAL GUIDELINES, content prohibiting the use of alcohol and drugs in the workplace has been removed because it is duplicative of prohibitions provided in the Standards of Conduct Policy, gendered pronouns have been removed, and a policy reference has been corrected.
- USE OF MEDICATIONS has been updated for clarity (from “avoid taking” to “not use”); gendered pronouns have been removed.
- USE OF MARIJUANA has been renamed MEDICAL CANNABIS for broader applicability, and the content has been updated for clarity to specify that on-duty use of medical cannabis is prohibited.
- REQUESTING SCREENING TESTS has been renamed SCREENING TESTS, and the content has been updated to reflect best practice.

- SUPERVISOR RESPONSIBILITY has been renamed SUPERVISOR RESPONSIBILITIES to better reflect the contents, and the content has been updated for consistency with the rest of this policy.
- SCREENING TEST REFUSAL has been renamed DISCIPLINE to better reflect the contents, and gendered pronouns and redundant content have been removed. CONFIDENTIALITY has been updated to include an applicable policy reference (Personnel Records Policy #1012).

S. Updates to Lexipol Policy 1009 – Personnel Complaints

This policy has been updated because legislative action impacts its content. 2021 CA SB 16, effective Jan. 1, 2022, amended law deleting "his/her" from the statute and replacing it with "complaining party." Changes to this policy include:

- In ACCEPTANCE, gendered pronouns have been removed, and a serial comma has been added.

2021 CA SB 586, effective Jan. 1, 2022, authorized the Commission on Peace Officer Standards and Training (POST) to revoke a certified peace officer's certification under specified circumstances. The bill is specific to POST and their investigations; however, the bill does require law enforcement agencies to be responsible for the completion of an investigation of allegations of serious misconduct by a peace officer, regardless of their employment status. Changes include:

- In RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE, a citation (Penal Code §13510.8) has been added.

2021 CA SB 2 added law to the Penal Code that provides beginning Jan. 1, 2023, agencies to notify POST, on a form specified by POST, of certain personnel events that include separations from employment or appointments or events that could affect a peace officer's POST certification. Agencies must execute and maintain a POST affidavit-of-separation and submit to POST as required by Penal Code § 13510.9. The bill requires by July 1, 2023, any agency employing peace officers shall report to POST the separations from employment or any events that could affect certification that occurred between Jan. 1, 2020, and Jan. 1, 2023. The bill also requires that agencies provide POST access to investigation documentation for inspection or duplication for up to two years after reporting the disposition of an investigation. Changes include:

- REQUIRED REPORTING TO POST has been added as a new section (§1009.16) to include the reporting requirement.

T. Updates to Lexipol Policy 1012 – Personnel Records

This policy has been updated because legislative actions impact its content. 2021 CA SB 807, effective Jan. 1, 2022, amended law that certain personnel records are to be maintained for four years. This is the minimum period of retention. Government Code citations referencing the destruction of records were removed as the Records Maintenance and Release Policy directs that the Custodian of Records manages the records management system, including destruction of records. Changes include:

- DEPARTMENT FILE has been updated to include the longer records retention requirement (from 2 to 4 years for disciplinary action resulting from sustained internally initiated complaints; from 5 to 15 years for disciplinary action resulting

in sustained civilian's complaint involving misconduct; minimum 5-year retention for a civilian's complaint involving misconduct that was not sustained).

- INTERNAL AFFAIRS FILE has been updated to include the longer records retention requirement (from 5 to 15 years for sustained civilian's complaints involving misconduct; from 2 to 4 years for internally generated complaints; and at least 5 years-retention for "not-sustained" civilian complaint involving misconduct.").

2021 CA SB 16 and 2021 CA SB 2, effective Jan. 1, 2022, amended law relating to the retention and release of certain peace officer records. A complaint made by a member of the public that was not a sustained finding of misconduct shall be retained no less than five years. A complaint made by a member of the public that has a sustained finding shall be retained no less than 15 years. Changes include:

- DEPARTMENT FILE has been updated to include the updated retention requirements (§1012.3(e)(1), §1012.3(e)(2), and §1012.3(e)(3)),
- INTERNAL AFFAIRS FILE has been updated to include the updated retention requirements (§1012.6).

2021 CA AB 958, effective Jan. 1, 2022, added new law regarding law enforcement gangs. Information relating to the termination of a peace officer for participating in a law enforcement gang shall be disclosed to another law enforcement agency who is conducting a pre-employment background check on that officer. Changes include:

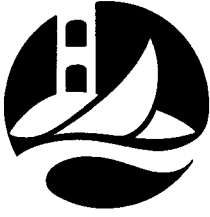
- RELEASE OF LAW ENFORCEMENT GANG INFORMATION has been added as a new subsection (§1012.8.3) in SECURITY to include the new requirement.

Additionally, the bills make a sustained finding involving force that is unreasonable or excessive, and any sustained finding that an officer failed to intervene against another officer using unreasonable or excessive force, subject to disclosure. The bills require records relating to sustained findings of unlawful arrests and unlawful searches to be subject to disclosure. The bills also require the disclosure of records relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in conduct involving prejudice or discrimination on the basis of specified protected classes. The bills expand the authorization to redact records to allow for the preservation of victim and whistleblower anonymity. The bills require records subject to disclosure to be provided at the earliest possible time and no later than 45 days from the date of a request for their disclosure, except as specified. Changes include:

- RELEASE OF PERSONNEL RECORDS AND RECORDS RELATED TO CERTAIN INCIDENTS, COMPLAINTS, AND INVESTIGATIONS OF OFFICERS; REDACTION; DELAY OF RELEASE; and NOTICE OF DELAY OF RECORDS have been updated to include the new legislative requirements (Penal Codes: §832.7(b)(1), §832.7(b)(3), §832.7(b)(4), §832.7(b)(5), §832.7(b)(6), §832.7(b)(7), and §832.7(b)(8)).

Unrelated to the legislative updates, additional changes include:

- MEMBER ACCESS TO HIS/HER OWN PERSONNEL RECORDS has been renamed MEMBERS' ACCESS TO THEIR PERSONNEL RECORDS. In addition, other gendered pronouns in the section have been removed, and serial commas have been added.



CITY COUNCIL
SITE VISIT INFORMATION

Project Location: 44 San Rafael Avenue

Site to be visited (if other than project location): _____

Contact Person: Richard Laiderman

Contact Telephone Number: 415-819-6809

Contact Email address: richard.laiderman@gmail.com

Day, Date, Time(s) of Availability for Site Visit: ¹ Anytime

Special notes regarding access/other information:

Please call or email prior to visit so I can meet you there. I am often in the city during the week and in Belvedere on weekends. However I am happy to meet council members at their convenience.

¹ Suggested times would be on both Saturday and Sunday, on the weekend prior to City Council Meeting. Additional weekday/weeknight time slot also suggested. Allow two hours or more for site visit period. Please note that not more than 2 Council Members may be present simultaneously.

PUBLIC HEARING

**BELVEDERE CITY COUNCIL
JANUARY 10, 2022**

To: Mayor and City Council

From: Rebecca Markwick, Senior Planner

Reviewed By: Craig Middleton, City Manager
Irene Borba, Director of Planning & Building

Subject: Appeal of a Planning Commission decision made on November 16, 2021, denying Design Review for the property located 44 San Rafael Avenue. Property Owner and Appellant: Richard Laiderman

Recommended Motion/Item Description

1. That Mayor Wilkinson preside over the Public Hearing.
2. That the City Council adopt a resolution granting the appeal and approve the Design Review for a dock expansion for the property located at 44 San Rafael Avenue.

Background

Proposed Project

The project was submitted on May 17, 2021, as a Design Review Exemption. Subsequently staff contacted the applicant and indicated that it would require a Design Review Exception (DRE), the DRE application was received on July 2, 2021. The pre-notice for the dock expansion was mailed on July 29, 2021. Staff received a phone call from the neighboring property owner, Ms. Felicienne Miller at 48 San Rafael Avenue as well as a letter from her attorney, Riley Hurd III on August 6, 2021.

Staff, along with Planning Commission Chair Mark, conducted a site visit at 44 San Rafael Avenue and discussed the project with the homeowner and asked that the story poles be put in place in the lagoon to show where the exact dock extension was proposed as that was one of the concerns of Ms. Miller. Staff also conducted a site visit at 48 San Rafael Avenue to determine the impacts to the property. 48 San Rafael Avenue is uniquely situated on the lagoon; it is a corner lagoon lot, which does not provide much water access. Once the story poles were up, and the site visits conducted, staff and Chair Mark determined that the project should be reviewed by the Planning Commission. Given the unique siting of the lot, staff suggested that the proposed dock be reduced in size so that the visual impact is not so great to 48 San Rafael Avenue.

October 19, 2021, Planning Commission

The project was reviewed at the October 19, 2021. Planning Commission hearing. Links to the October 19, 2021 meeting [agenda](#), [minutes](#) and [audio](#) are included here. The public hearing was opened and staff presented the report and recommended approval of the dock expansion with a

condition that it be reduced in size. There were comments from the neighbors, two property owners were in support of the project and two property owners were opposed to the project. The property owners at 48 San Rafael Avenue vocalized that they could be amenable to the expansion if it were reduced in size. There was some confusion about the Belvedere Lagoon Property Owners Association's (BLPOA) role in "approval" and whether the BLPOA would still be able to clean the corner of the lagoon with the dock extension. Per standard policy and practice, staff sent the project to the BLPOA once it was received. In their letter dated May 28, 2021, BLPOA had no objection to the proposed work provided that the property owner receive approval from the City of Belvedere.

Chair Mark closed the public hearing and the Commission deliberated. Two of the Commissioners were concerned with the size of the dock in this specific location and that a dock in this location would have a significant impact to the neighbors. Another Commissioner was concerned with the impacts to the neighbors and could not support the project because the structure as designed was not harmonious with the neighboring properties. One of the Commissioners was in support of the project. Most of the Commissioners could not make the findings to approve the project as designed and requested the property owner to revise the project; the project was continued.

Planning Commission Denial

The Planning Commission reviewed the project again at the November 16, 2021 hearing. The [Staff Report](#), [minutes](#) and [audio](#) can be found using the links. Staff presented the report and indicated that the dock had been reduced in size by 44 percent and recommended approval of the dock expansion.

The public hearing was opened and the property owner and applicant Richard Laiderman described his outreach to the neighbor at 44 San Rafael, Ms. Miller. They discussed the size of the dock and Mr. Laiderman agreed to reduce it in size and to move the paddleboard and fix the fence. He also offered to support her in extending her own dock. When he put up the new story poles he then heard from Ms. Von Stroh, who wanted further reduction of size. He offered to reduce it to 6 feet, which is 1 foot less than what he discussed with Ms. Miller. With that reduction, the size was 52% less than the original application.

Robert Miller, son of the owner of 48 San Rafael Avenue, spoke next. He indicated that his mother's objection to the proposed dock extension is misunderstood. Her objection is that the extension of the dock extends into her view corridor and into the shared Lagoon and does not meet the standards that the Planning Commission must consider.

Sprague Von Stroh, 1 Hilarita Circle had concerns about privacy impacts and the view impacts to their home.

The Commissioners deliberated on the dock expansion; the [minutes](#) reflect their deliberations which ultimately ended up in a tie vote. A tie vote is considered a denial.

On November 29, 2021, City staff received a timely appeal of the Planning Commission's decision by Richard Laiderman.

Analysis

The applicant has stated in his appeal letter:

1. *“My proposal is clearly in conformance with all the design review criteria in section 20.04.005 and 20.04.110 to 20.04.120.*
2. *It is entirely within my property line and smaller than neighboring docks. It is not even up against my property line as are many other docks.*
3. *I have a fundamental right to enjoy and improve my own property.*
4. *The objections of neighbors were based on invalid premises.*
5. *The support of other neighbors was ignored.*
6. *Dissenting commissioners cited objections outside the scope of both design review and neighbors’ objections to which I was not given the opportunity to respond.”*

In summary, the appeal contains these main arguments: 1) the dock is in conformance with the Design Review findings; 2) the objections of the neighbors were based on invalid premise; and 3) the Commissioners arguments against the dock were not based on Design Review findings.

Staff notes that the City Council’s review of the project is de novo, meaning that the Council reviews the project as a matter of first impression and that all issues are properly before the Council. (*BreakZone Billiards v. City of Torrence* (2000) 81 Cal.App.4th 1205, 1221.) While the City Council may utilize the Planning Commission’s discussion, comments, and decision to inform its independent analysis, the City Council is the final decision-maker and is not bound by the Planning Commission’s action. (*Id.*) Here, the Council analyzes the project based on the standards found in Design Review section of the Municipal Code.

No Violation of Design Review Code; No View or Privacy Impacts

Staff suggests that all Design Review findings can be made, and there are no impermissible view or privacy impacts.

In Belvedere, the Municipal Code does not provide property owners with a right to absolute privacy or an unobstructed view.¹ Rather, limits are placed on views and privacy in the Design Review Code, which were crafted to balance the interests of maintaining privacy and views with the private-property interests of developing and improving property.

For example, fences and screening should not “significantly block views.” (Bel. Mun. Code, § 20.04.150(B).) Building and window placement should “give consideration to the privacy of adjacent buildings.” (Bel. Mun. Code, § 20.04.160.) Landscape plans should provide privacy between properties, and consider the future impact that new plantings may have on significantly

¹ Please note that there are other sections of the Municipal Code that consider view impact and privacy, which do not apply here. For example, when considering an application for an Exception to Total Floor Area Ratio, the Planning Commission considers whether the additional requested square footage will reduce the neighbor privacy and whether it will significantly impair primary views. (Bel. Mun. Code, § 19.52.120(A)(1).) Additionally, Chapter 8.28 prohibits the obstruction of a preexisting view that was in place at the time a property owner purchased the property, by trees and shrubbery. Neither of these sections are applicable in the current project before the Council.

obstructing views. (Bel. Mun. Code, § 20.04.200(B)-(C).) By the Code language, the construction of a dock does not implicate a view or privacy analysis.

Although no specific privacy or view Design Review findings apply here, staff suggests that all applicable Design Review criteria are satisfied, including a balanced and harmonious relationship between the improvement and the site, the minimization of bulk and mass, and the colors and materials used. (Bel. Mun. Code, §§ 20.04.120-140.) As the final decision-maker, the City Council reviews the project for compliance with these Design Review standards (Chapter 20.04).

Conclusion

Staff recommends that the City Council adopt a resolution approving the appeal and that it approves Design Review for the property located at 44 San Rafael Avenue.

Recommendation

1. That Mayor Wilkinson preside over the Public Hearing.
2. That the City Council adopt a resolution granting the appeal and approve the Design Review for a dock expansion for the property located at 44 San Rafael Avenue.

Attachments

1. Draft City Council resolution granting the appeal and approving the project.
2. Appeal of Planning Commission action and letter of appeal filed by Richard Laiderman on November 29, 2021.
3. Letter from the BLPOA, dated May 28, 2021

CITY OF BELVEDERE
RESOLUTION NO. 2022-02

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELVEDERE
GRANTING AN APPEAL OF PLANNING COMMISSION DESIGN REVIEW DENIAL AND
GRANTING DESIGN REVIEW APPROVAL FOR A DOCK LOCATED AT 44 SAN RAFAEL
AVENUE**

WHEREAS, the applicant submitted proper applications for Design Review for a dock expansion on the property located at 44 San Rafael Avenue; and

WHEREAS, the Planning Commission held properly noticed hearings on October 19, 2021 and November 16, 2021 to consider whether to grant the application; and

WHEREAS, On November 16, 2021, the Planning Commission held a vote on the application, in which three members voted in favor of granting the application and three members voted against, resulting in a denial of the application; and

WHEREAS, on November 29, 2021, the City Clerk received a timely letter of appeal from the property owner and applicant Richard Laiderman, challenging the Planning Commission’s denial of proposed project for the property located at 44 San Rafael Avenue (the “Appeal”); and

WHEREAS, on January 10, 2021, the City Council considered the appeal and the project, including the review of the entire record, staff report, and testimony presented at the hearing; and

WHEREAS, based on the entire record including documents submitted by appellant, property owners, and members of the public, the staff report, and testimony presented at the hearing, the City Council: 1) grants the appeal and 2) approves Design Review for the Project, determining that the Project is in conformance with the specified Sections of the Belvedere Municipal Code as described herein.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Belvedere as follows:

- 1.** Based upon the findings set forth in Exhibits A and B, the findings articulated in the accompanying staff report incorporated herein by reference, and the findings stated during the City Council hearing, the City Council of the City of Belvedere does hereby grant approval for Design Review for a dock expansion located at 44 San Rafael Avenue, as indicated in **Exhibits A and B**.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Belvedere on January 10, 2022 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

APPROVED: _____

Sally Wilkinson, Mayor

ATTEST: _____

Beth Haener, City Clerk

EXHIBIT A

Design Review

Design Review Conditions of Approval:

- a) The property owner shall hold the City of Belvedere and its officers harmless in the event of any legal action related to or arising from the granting of this Design Review approval, shall cooperate with the City in the defense of any such action with counsel determined by the City in its discretion, and shall indemnify the City for any award of damages and/or attorneys' fees and associated costs that may result. This approval is conditioned upon the accuracy of all facts stated in the application and supporting documents.
- b) Plans submitted to the Building Department for permit issuance shall be consistent with the approved Planning Commission plans and shall conform to the applications and materials prepared by Richard Laiderman and Jung-wha Song stamped received by the City of Belvedere on November 2, 2021.
- c) Construction shall be limited to the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, except in special circumstances after obtaining written permission from the City Manager.
- d) All requirements of the City Engineer shall be met.
- e) An **Encroachment Permit** is required from the contractor for temporary and permanent improvements, work activities, and staging or storage of equipment and materials within the public right of way, subject to approval of the Public Works Manager.
- f) Design Review approvals expire twelve (12) months from the date of approval.
- g) All requirements of the Fire Marshal shall be met.
- h) Any new exterior lighting requires Design Review approval.
- i) The general contractor shall submit a proposal to the City Manager, for review and approval, addressing the schedule for construction and parking locations for construction vehicles. Prior to the issuance of a building permit, the applicant shall update the Construction Management Plan to the satisfaction of the Building Official.
- j) Plans submitted to the Building Department for permit issuance shall be consistent with the approved Planning Commission plans.
- k) Construction shall be completed within the Construction Time Limit established for this project.
- l) In the event unanticipated archaeological or paleontological resources are uncovered during construction, all work must be halted and an evaluation must be undertaken by a qualified archaeologist or paleontologist to identify the appropriate actions that shall be undertaken.

- m) These Conditions of Approval shall be printed on the Building Permit Construction Plan set of drawings.
- n) These restrictions shall be binding upon any successor in interest of the property.
- o) Prior to the issuance of a building permit the property owner shall demonstrate compliance with State/BAAQMD air quality requirements related to the dust generated by grading and construction

EXHIBIT B

DESIGN REVIEW FINDINGS

Design Review Findings:

The Design Review findings, specified in the Belvedere Municipal Code, Title 20, state that all new structures and additions should be designed to avoid excessively large dwellings which are out of character with their setting or with other dwellings in the neighborhood. All buildings should be designed to relate to and fit in with others in the neighborhood and should not attract attention to themselves. To avoid monotony or an impression of bulk, large expanses of any one material on a single plane should be avoided. Vertical and horizontal elements should be used to add architectural variety, to break up building planes, and to avoid monotony. Landscaping should soften and screen structures and maintain privacy. As conditioned, the required findings for Design Review are made as follows:

Preservation of existing site conditions. To preserve the landscape in its natural state, the removal of trees, vegetation, rock, and soil should be kept to a minimum. Projects should be designed to minimize cut and fill areas, and grade changes should be minimized and kept in harmony with the general appearance of the neighboring landscape.

Landscaping, including the removal of trees, vegetation, rock, and soil, will not occur as the project scope proposes to expand the dock into the lagoon.

Relationship between structures and the site. There should be a balanced and harmonious relationship among the structures on the site, between the structures and the site itself, and between the structures and those on adjoining properties. All new buildings or additions constructed on sloping land should be designed to relate to the natural land-forms and step with the slope in order to minimize the building mass and bulk and to integrate the structure with the site.

The proposed project will create a harmonious relationship among the existing residence and residential structures on the adjoining properties. Specifically, the proposed dock is balanced and harmonious with the structures on the site and the structures on adjoining properties. The project presents a balanced and harmonious relationship between the site, other structures, and adjoining properties. The work associated with this project relates to waterside improvements constructed in the lagoon and are designed to minimize bulk and mass. No changes or additions to the existing home or are proposed as part of this project. The size and configuration of the dock is designed to minimize bulk and mass and maintain a consistent appearance with similar improvements in the neighborhood.

Minimizing bulk and mass.

To avoid monotony or an impression of bulk, large expanses of any one material on a single plane should be avoided, and large single plane retaining walls should be avoided. Vertical and horizontal elements should be used to add architectural variety, to break up building planes, and to avoid monotony.

Inapplicable as the project does not propose any exterior improvements which may result in the impression of bulk or large expanses of any one material or a single plane retaining wall. The project will have no impact.

Materials and colors used. Building designs should incorporate materials and colors that minimize the structures visual impacts, that blends with the existing landforms and vegetative cover, that relate to and fit in with structures in the neighborhood, and that do not attract attention to the structures themselves. Soft and muted colors in the earthtone and woodtone ranges are preferred and generally should predominate. Trim and window colors should be compatible with and complementary to the other building colors.

The proposed colors and materials are earthtoned and will blend in with the existing landforms as well as the lagoon waters.

Fences and screening.

A. Fences and physical screening should be located so as to be compatible with the design of the site and structures as a whole, should conceal and screen garbage areas, mechanical equipment, and structural elements from public view, should preserve privacy between adjoining dwellings, where practical, and should not significantly block views.

Not applicable as the project scope will not involve the alteration to the existing fencing of the property.

Privacy. Building placement, and window size and placement should be selected to give consideration to the privacy of adjacent buildings.

Not applicable. The project does not propose any buildings with windows, or modifications to size or placement of existing windows.

Drives, parking and circulation. Walkways, driveways, curb cuts and off-street parking should be planned and designed so as to minimize interference with smooth traffic flow, to encourage

separation of pedestrian from vehicular traffic, and to be as safe and convenient as is practical. They should not be out of relationship with the design of the proposed buildings and structures on the site, and should not intrude on the privacy of, or conflict with the appearance or use of neighboring properties.

Inapplicable as the proposed project will not result in the alterations of existing walkways, driveways, curb cuts or off-street parking which would necessitate further review from staff.

Exterior lighting, skylights, and reflectivity. Exterior lighting should not create glare, hazard, or annoyance to neighboring property owners or to passersby. Lighting should be shielded and directed downward, with location of lights coordinated with the approved landscape plan. Skylights should not have white or light opaque exterior lenses.

The project does not propose to add or alter any exterior lighting to the existing residential property. If lighting were to be proposed, the applicant would be required to design the lighting fixtures to face in a downward angle and/or be shielded so as not to create glare, hazard or annoyance to neighboring property owners or the surrounding community.

Consideration of nonconformities. The proposed work shall be viewed in relationship to any nonconformities, as defined in Title 19, and where it is determined to be feasible and reasonable, consideration should be given to conditioning the approval upon the mitigation or elimination of such nonconformities.

The proposed project was reviewed in compliance with Title 19 of the Belvedere Municipal Code and it was determined that the project would not result in any nonconformities.

Landscape plans -- Purpose.

A. Landscape plans should be compatible with the character of the site and surrounding developed properties. Native or natural appearing vegetation, with generally rounded, natural forms, should be placed to appear as loose, informal clusters. B. Landscape plans shall include appropriate planting to soften or screen the appearance of structures as seen from off-site locations and shall include appropriate screening for architectural elements, such as building foundations, deck supports, and retaining walls, that cannot be mitigated through architectural design. C. Landscape plans should provide privacy between properties. Choice of landscape materials should take into consideration the future impact which new planting may have in significantly obstructing views from nearby dwellings.

Landscape Plans – Materials. A. Plant materials native to northern California and Marin County, and those that are drought-tolerant are encouraged. Evergreen species are encouraged for use in screen planting situations. Because of high water usage, turf areas should be minimized and narrow turn areas, such as in parking strips, should be avoided. B. Landscape plans should include a mix of fast and slow growing plant materials. Fast growing trees that have a short life span should be used only when planted with others which reach maturity at a later age. C. Landscape plans should include water conserving irrigation systems. Plant materials should be selected so that once established, much of the major site landscaping would survive solely on rainfall. Plant materials native to northern California and Marin County, and those that are drought tolerant, are

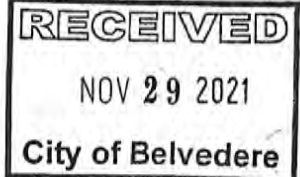
encouraged. Because of high water usage, turf areas should be minimized and narrow turf areas, such as in parking strips, should be avoided.

Inapplicable as the project scope would not result in any alterations to the existing landscaping.



APPEAL OF PLANNING COMMISSION ACTION

CITY OF BELVEDERE • CITY COUNCIL
450 SAN RAFAEL AVE • BELVEDERE, CA 94920-2336
PH. 415-435-3838 • FAX 415-435-0430 • WWW.CITYOFBELVEDERE.ORG



FOR STAFF USE ONLY

Appeals must be checked for sufficiency by the Office of the City Attorney before they are accepted by Staff.

Date: 11/29/21 Rec'd. by: CC Amount: 1028.- Receipt No.: 05490D

APPEAL PROCEDURE

Appeals of actions taken by the Planning Commission are governed by Section 20.04.070 of the Belvedere Municipal Code and must conform to the provisions thereof:

The applicant or any interested person may file an appeal with the City Council from any denial, approval or conditional approval of any application by the Planning Commission pursuant to this Chapter. Said appeal shall be in writing and shall be filed with the City Clerk not later than the tenth calendar day after the Planning Commission's action. Appeals shall set forth the alleged inconsistency or nonconformity with procedures or criteria set forth in this Chapter, and shall be accompanied by a filing fee as is hereafter fixed from time to time by City Council resolution. The City Clerk shall, not less than ten calendar days prior to the date set for the Council hearing on the appeal, give written notice to the appellant or his representative, and to the property owner, of the date, time and place of the hearing. The Council may affirm, reverse or modify the decision of the Planning Commission, at all times being guided by the criteria set forth in this Chapter. The Building Official, Planning Consultant, and Planning Commission shall each be advised of the Council decision.

The appeal fee is currently set at \$523.00 and is nonrefundable.

To protect the rights of all parties, the appeal will normally be scheduled for hearing at the next available City Council meeting occurring not less than two weeks after the appeal is filed, providing that the necessary noticing requirements can be met. Any request for delay or continuance of the hearing is subject to approval by the property owner and the City Council.

APPELLANT INFORMATION

Appellant is: Property owner Other interested party

Name of Appellant: RICHARD LAIDERMAN

Mailing 44 SAN RAFAEL AVE. Daytime phone: 415-819-6809

Address: BELVEDERE, CA 94920 Fax: _____

Email: RICHARD.LAIDERMAN@GMAIL.COM

Appeal of Planning Commission Action • Page 1 of 2 • City of Belvedere

Appellant's representative (Optional): _____

Mailing _____ Daytime phone: _____

Address: _____ Fax: _____

_____ Email: _____

BASIS OF APPEAL

Date of Planning Commission action: Nov. 16, 2021 Agenda Item No.: 3

Address of property: 44 SAN RAFAEL

Action you are appealing: DENIAL OF APPLICATION

State the inconsistency or nonconformity you are alleging with procedures or criteria set forth in Chapter 20, *Architectural & Environmental Design Review*, and/or Chapter 19, *Zoning*, of the Belvedere Municipal Code (you may attach additional pages and/or exhibits in support of your appeal):

SEE ATTACHMENT 1: BASIS OF APPEAL

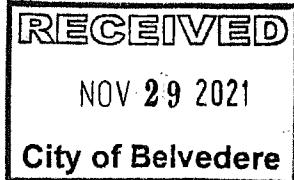
I, the undersigned, hereby make appeal of the Planning Commission action cited, and I hereby certify that the facts, statements and information presented herein and in the attached exhibit(s) are true and correct to the best of my knowledge and belief.

I understand the contents of this document are a Public Record.

Signature: 

Name: RICHARD LAIDERMAN

Date: 11/29/2021



Attachment 1: Basis of Appeal

I wish to appeal the decision against my application to refinish and slightly expand my dock. I believe the decision of the planning commission was fundamentally unfair because:

1. My proposal is clearly in conformance with all the design review criteria in section 20.04.005 and 20.04.110 to 20.04.120.
2. It is entirely within my property line and smaller than neighboring docks. It is not even up against my property line as are many other docks.
3. I have a fundamental right to enjoy and improve my own property.
4. The objections of neighbors were based on invalid premises.
5. The support of other neighbors was ignored.
6. Dissenting commissioners cited objections outside the scope of both design review and neighbors objections to which I was not given the opportunity to respond.

My proposal is entirely consistent with the scale and character of the community. It is considerably smaller than other nearby docks. The planning commission staff examined each and every design review criteria and found the project in compliance without exception. They recommended approval of my application.

Two neighbors objected to my dock proposal. One neighbor objected because we are in a smaller part of the lagoon and they don't think more building is appropriate. They cited encroaching on their view and privacy. The proposed dock is not in their view corridor. In other words, if you extended their property lines into the lagoon my proposed dock would not be inside the lines. This neighbor's own dock extends beyond their property line into BLPOA property. They use this BLPOA property to store their boats for all the neighbors to view. They enjoy their dock (which would never be approved today because it is in BLPOA waters) but they begrudge us a small dock well within our property line.

The other objector has no lagoon property at all. She enjoys an easement over my property which is limited solely to ingress and egress. (I shared a copy of the original easement with the planning commission staff.) Yet the planning commission acted as if she was entitled to all the rights of full ownership including a protected view. Her main concern was preserving her view when she sits on a chair on my property. But protected views are from windows in homes, not from chairs on someone else's property.

In spite of all this I made sincere efforts to compromise with my neighbors. I reduced the size of the dock extension by 52%. I moved it in 5 feet in from my property line and moved it 32 inches further away from the chair on which my neighbor likes to sit. With these modifications, my final request was for a 6' by 13'2" extension or 79 sq.ft. I tried very hard to compromise. I had multiple discussions with my neighbors. I reduced the size of the proposal by more than half. I offered other compromises and gestures.

The commissioners who voted against my proposal cited reasons that were not raised by my objecting neighbors yet they gave me no chance to respond. In particular, one dissenting commissioner cited, as virtually his sole concern, the precedent this might set which could trigger an “arms race” to extend from existing docks to their property lines out into the lagoon.

I was not allowed to respond to this. It is a reasonable concern, but not part of design review. Each project is supposed to be judged individually against design review standards. It is not appropriate to judge a project against conjectured future projects of other property owners.

Further, it is hard to imagine that my proposal would set a problematic precedent. First it does not extend to my property line (the commissioner’s fear was that it would serve as precedent for others to built out to their property lines). It extends less than 60% of the way between the existing dock and the property line. A 60% precedent would actually be a good compromise between property owners rights and the commissioner’s concern.

It is also worth noting that most lagoon property lines do not extend into lagoon waters. And in those cases where it does, the lagoon is very wide and the problem is of less concern.

Two dock extension projects were recently approved (at 3 Edgewater and 62 Peninsula) which went right up to their property lines. It is hard to not feel like we are being discriminated against.

Another dissenting commissioner disliked the existing character of the community. She *insulted the docks of two of my neighbors (both larger than my proposal) and maintained they never should have been allowed.* The docks in question have been there for many decades.

This commissioner then said she thought the original designers of the lagoon meant to protect the two corner lots with easements in our part of the lagoon. She is correct that the easements go out about 16 ft. into the lagoon to protect water access for the corner lots. My proposal is well outside of these lines. This commissioner also ignored the testimony of my neighbor who grants the other corner easement. He testified that even with his much larger dock, the corner lot had never had an issue accessing the water or made a complaint.

This commissioner finally stated that the dock would make it difficult to service the lagoon. This in spite of being repeatedly informed that 1. She was in error and 2. It was not part of design review and 3. The BLPOA (who’s purview it is within) did not object. The BLPOA did not even object to the original 2x larger dock proposal.

A third commissioner said my compromise was only 30% when in fact it was 52%. Again I was unable to respond and correct.

I understand that the City Council would rather not override Planning decisions which are most often unanimous. However this was not a unanimous decision. It was a rare 3-3 tie vote. This is the first time in many years, that a decision has been made by a tie vote and the first time (in at least the 2 years I was able to check) that the planning commission has gone against a staff finding for approval of a dock project.

I appreciate that the commissioners are volunteers performing an important public service. But their zeal to protect the lagoon from development must be tempered by a fundamental sense of fairness and respect for property owners rights to make compliant improvements - especially when the applicant demonstrates a ready willingness to compromise.

Sincerely - Richard Laiderman

**BELVEDERE LAGOON PROPERTY OWNERS ASSOCIATION
P.O. BOX 465
BELVEDERE, CA. 94920**

May 28, 2021

Richard Laiderman
44 San Rafael
Belvedere, CA 94920

Via email: richard.laiderman@gmail.com; PlanningSecretary@cityofbelvedere.org;
larry.stoehr@gmail.com; hjm1998@aol.com

RE: 44 San Rafael Rd Dock extension

Dear Richard Laiderman,

It is our understanding as the owner of 44 San Rafael you have applied to the City for a permit to replace your existing dock decking and extend your existing dock to the property line with your neighbor at 40 San Rafael and also to the rear property line with the BLPOA property, as described in plans submitted to the City and in particular as described in your Application for Design Review dated 5/15/2021 and attached drawings.

Based upon the representations that the proposed work is to replace your existing dock decking and extend the existing dock as described above and in your application the BLPOA has no objection provided that you ensure that the new dock extension does not cross into BLPOA property and that you use appropriate procedures during construction to prevent construction debris and chemicals from entering the water, including vacuum sanders and a boom in the water to catch debris.

If the above guidelines are followed, the Board has no objection to the proposed work on the dock. However, please note this letter does not express any opinion as to whether your proposed work is competent for its purpose nor meets City Planning requirements and this letter does not replace the necessary City approvals.

Thank you for your cooperation.


Ken Johnson
Board President