

**REGULAR MEETING
BELVEDERE CITY COUNCIL
OCTOBER 10, 2022, 6:30 PM
REMOTE VIA ZOOM**

MINUTES

COUNCIL PRESENT: James Campbell, Nancy Kemnitzer, James Lynch, Peter Mark, and Sally Wilkinson

COUNCIL ABSENT: None

STAFF PRESENT: City Manager Robert Zadnik, Director of Planning and Building Irene Borba, Police Chief Jason Wu, Administrative Services Director Helga Cotter, City Attorney Amy Ackerman, Planner Samie Malakiman, Building Official Brian Van Son, and Director of Public Works Antony Boyd

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 6:30 PM via remote Zoom meeting.

City Manager Zadnik took roll call.

City Manager Zadnik read the COVID-19 notice and public participation instructions.

OPEN FORUM

Belvedere resident William Rothman spoke in opposition of Measure D.

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

REPORTS AND PRESENTATIONS

1. City Council Reports

Councilmember Mark reported that the Oversight Committee for the draft Environmental Impact Report (EIR) is scheduled to meet over Zoom on October 12, 2022, at 1:00 P.M.

Mayor Wilkinson called for public comment, and seeing none, closed public comment.

2. City Manager Report

City Manager Zadnik reported that on October 16, 2022, Belvedere and Tiburon are hosting a “Get Out and Go 94920” event to familiarize residents with evacuation protocol.

City Manager Zadnik reported that there will be a joint City Council and Planning Commission meeting on October 20, 2022, at 6:00 P.M. on Zoom to discuss the City’s draft housing element.

City Manager Zadnik reported that City staff has been receiving reports of coyote sightings in Belvedere and staff has disseminated educational documents on the subject.

City Manager Zadnik reported that Tony Boyd started as the Director of Public Works last month and that he is already quite busy working on capital projects.

MOTION: Move to adopt the Consent Calendar with one motion.

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

The Consent Calendar consisted of the following Items:

5. **Approve minutes of the August 8, 2022, regular meeting.**
 6. **Approve minutes of the September 12, 2022, regular meeting.**
 7. **Approve letter to the California Department of Transportation (Caltrans) and the Metropolitan Transportation Commission (MTC) for Highway 37 interim improvements.**
 8. **Approve Award of Contract for 2022 Road Maintenance Project to Pavement Coatings Company, the lowest responsive bidder.**
 9. **Approve Revocable License for 25 Peninsula Road for improvements in the Peninsula Road right-of-way**
 10. **Approve Revocable License for 28 Windward Road for improvements in the Windward Road right-of-way.**
 11. **Approve Revocable License for 68 Lagoon Road for improvements in the Lagoon Road right-of-way.**
 12. **Adopt Resolution 2022-50 Accepting the recent update(s) to the Belvedere Police Department Policy Manual (Lexipol).**
 13. **Adopt Resolution 2022-51 Authorizing the Continuation of Teleconference Public Meetings Pursuant to Government Code section 54953(e) (Assembly Bill 361).**
 14. **Waive Further Reading and Authorize Introduction and/or Adoption of Resolutions and Ordinances by Title Only (Standard procedural item – no backup information provided).**
-

PUBLIC HEARING

15. **Council consideration of an appeal for the assessment of construction time limit penalties for 1 Belvedere Avenue, Belvedere CA 94920. Applicant & Owners: Justin and Susan Kelly**

Building Official Van Son gave a verbal report on the construction project at 1 Belvedere Avenue, going over the timeline of the permit issuance and appeal requests, including the staff recommendation to City Council.

Councilmember Lynch commented that Attachment 1 for this item's staff report refers to a \$100,000 penalty, not a \$200,000 penalty and asked if attachment listed the correct amount.

Building Official Van Son confirmed that the incorrect ordinance was attached to the staff report, and that ordinance 2009-02 has the current \$200,000 penalty maximum.

Councilmember Lynch commented that the staff report lists both December 14, 2019, and June 28, 2019, as the completion date and asked for a clarification on the discrepancy.

Building Official Van Son replied that the June 28, 2019, date was a typo and that December 14, 2019, is the correct date.

Councilmember Lynch asked if staff has considered adding an additional 60 days to the deadline due to the Santa Rosa fire.

Building Official Van Son replied that the City Council did not provide a 60-day extension for CTLs due to the Santa Rosa Fire.

Councilmember Mark asked if the Tubbs Fire had any impact on project timelines in Belvedere.

Building Official Van Son replied that the Tubbs Fire resulted in contractors spending considerable time on re-building of homes and structures, which could have had a conceivable impact on the 1 Belvedere Avenue project.

Councilmember Mark asked if the owners of 1 Belvedere Avenue were allowed to apply for a CTL extension at any time after the building permit had been issued.

Seeing no public comment, Mayor Wilkinson closed the Public Hearing and asked for the City Council to deliberate on the item.

Mayor Wilkinson asked Mr. Van Son to confirm that AB 1561 excludes all other extensions if applied, and only allows one 18-month extension.

Building Official Van Son replied in the affirmative, adding that all extensions are included in the 18-month extension.

Councilmember Mark commented that the CTL is to prevent undue impact on the community from construction projects, not to raise money. Councilmember Mark added that he is sympathetic to the appellants because they could not apply for a CTL extension, the complexity of the project, and the supply chain and labor impacts of the pandemic. Councilmember Mark added that he would be supportive of a reduction in the fine, but not waiving it outright.

Councilmember Lynch commented that the City Council's job is to uphold the laws, not apply moral analysis to them. Councilmember commented that even if the City Council took the 115-day delay into account, it would still not impact the potential fine of \$200,000. Councilmember Lynch then commented that he does not see a way in which a principal reduction of the fine could be applied that could be easily explained to any future appellants and that he is inclined to uphold the full \$200,000 fine.

Councilmember Kemnitzer commented that the CTL laws are put in place to balance out the needs of the applicant and the applicant's neighbors and added that it is difficult to determine what conditions were unpreventable and which were not. Councilmember Kemnitzer added that she tried giving Mr. Kelly the benefit of the doubt but believes that the fine should be applied because fines must be applied fairly and equally to all residents.

Councilmember Campbell commented that the City Council is tasked with following a set of laws and that the CTL is in place to provide a balance between the applicants and the applicant's neighbors. Councilmember Campbell added that he is inclined to uphold the proposed CTL fine.

Mayor Wilkinson commented that the project did impact the neighbors significantly and that it is important that the City Council apply these laws equally. Mayor Wilkinson then commented that she believes the CTL fine should be upheld.

Mr. Kelly commented that the project was delayed an extra four months because the contractors were waiting for Pacific Gas & Electric (PG&E) to come do certain inspections and asked that the City Council look at the CTL timeline in the view of what's done in practice, not what is done on paper. Mr. Kelly then asked that the City Council reduce the fine by half to \$100,000.

Mr. Jungsten added that the house could not be finalized until PG&E technicians inspected the property and hooked up the utilities and that the house was finished long before the project was finalized.

Mayor Wilkinson shared that she has previously worked with Mr. Jungsten on a complicated project and that she paid a CTL fine for the project.

Councilmember Campbell asked Mr. Van Son if issues with utility providers factor into the levying of a CTL fine.

Building Inspector Van Son replied in the negative.

Councilmember Lynch asked Ms. Morrison if there is information on the PG&E delays in the appeal letter or Dropbox file shared with the City Council.

Ms. Morrison replied that she did not specifically identify PG&E inspections as a reason for the delay.

Councilmember Lynch commented that the City Council does understand the practical issues of building in Belvedere, sharing that he himself has built two homes in Belvedere and has dealt with CTL deadlines and appeals in the past. Councilmember Lynch then stated that the City Council is sensitive to Mr. Kelly's concerns but that it must apply the law equally.

City Manager Zadnik replied in the affirmative.

Mayor Wilkinson asked if any of these proposed changes have resulted in shorter construction times in Tiburon.

Councilmember Mark replied that that data is not something the City has access to at this time.

ADJOURN

The meeting was adjourned at 8:42 P.M.

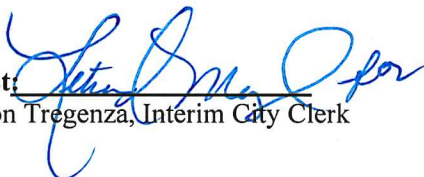
THE FOREGOING MINUTES were approved at a regular meeting of the Belvedere City Council on November 14, 2022, by the following vote:


AYES: CAMPBELL, KEMNITZER, LYNCH, MARK, WILKINSON

NOES:

ABSENT:

RECUSED:

Attest: 
Harrison Tregenza, Interim City Clerk

Approve: 

Sally Wilkinson, Mayor