

CALL TO ORDER

Vice Mayor DeLaney called the meeting to order at 6:00 p.m. with all members present except Mayor Schroder, who was excused, and Councilmember Ross, who arrived shortly after roll call.

CLOSED SESSION (adjourn to City Manager's Office)

CONFERENCE WITH REAL LEGAL COUNSEL – ANTICIPATED LITIGATION  
Initiation of litigation pursuant to subdivision (c) of Section 54956.9 of the California Government Code: (One potential case).

RECONVENE – PLEDGE OF ALLEGIANCE – ROLL CALL

The meeting reconvened at 7:00 p.m. with all members present as indicated. Vice Mayor DeLaney reported that the Council met in closed session, with direction given. Nothing else was reported.

Councilmember Ross clarified that no direction was given, only discussion. Vice Mayor DeLaney acknowledged he was correct.

PRESENTATION(S)/PROCLAMATION(S)

None.

PUBLIC COMMENT (COMPLETE SPEAKER CARD AND GIVE TO CLERK)

Reserved only for those requesting to speak on items not listed on the Agenda.

Barry Winge stated his belief that the Environmental Impact Report of the Downtown Specific Plan is not in compliance with CEQA provisions and federal law, and he objected to the lack of response by the Council. He offered his assistance to correct the report. He provided a review of the EIR and requested that copies be given to the Council. Mr. Winge noted that when changes are made to the Specific Plan, those changes need to be reflected in the EIR as well.

Rick Parker stated that he was very saddened about the Council's decision regarding his floating restaurant. He indicated that he would like to know why his project was denied. Mr. Parker informed the Council that a petition was signed in favor of his restaurant and that he will take it to a vote of the people. He offered to send his petition of signatures to the Council.

Mr. Swisgood spoke on the poor condition of the Marina. He also indicated that the floating restaurant is an opportunity for the City and urged Council's reconsideration, as he believes this would be an asset to the City. He commented that the boat would be a big attraction to Martinez and bring customers from other cities. He further stated that the restaurant at the Sharkey Building will not be able to pull in the same business.

Mike Alford also spoke on the Council's decision in rejecting Rick Parker's floating restaurant, noting it would not cost the City anything. He demanded that Council do something about the poor condition of the marina.

Julian Frazer spoke on Historic Preservation, in response to a quote from John F. Kennedy used by a Councilmember at the last meeting. He distributed and read from a letter from the Town of Brookline, Massachusetts (birthplace of John F. Kennedy), regarding preservation of structures of historic and architectural significance. Mr. Frazer urged the Council to do a survey of buildings and act now to create historic preservation neighborhoods throughout the City. He also commented on the deteriorating condition of the Joe DiMaggio boat, which the City had promised to restore. He indicated that at the least a structure over the top of the boat should be put in place immediately to stop the deterioration. Mr. Frazer also briefly commented on eminent domain issues in the City of San Ramon where restrictions had once been in place but now were be taken away.

Vice Mayor DeLaney clarified her quotation from John Kennedy regarding change.

Max Horn stated that Martinez needs upgrading and that the City would be wise to bring an unusual restaurant to the Marina, such as the floating restaurant. He also spoke on his familiarity with earthquake retrofitting requirements.

Ann Mobley urged the Council's support and reconsideration of Rick Parker's restaurant and requested that the City preserve the old Sharkey Building.

Michelle Soul indicated that she is in full support of the floating restaurant as an interesting venture that would benefit the City, especially since the marina is currently such an eyesore.

Craig Gray concurred with the others in supporting the floating restaurant and asked if the consultant's findings are part of the public record. Vice Mayor DeLaney explained that there was no written report. The item was discussed in closed session where the consultant determined that the project was not economically viable at this time.

Maryann Broadhorst confirmed that Pacific Marina Development is the company the City is working with on the marina lease and that Almar Marina Management will be the marina operator. She also asked if Mr. Parker will have a chance to resubmit his proposal at a future date. Vice Mayor DeLaney clarified that there are infrastructure issues at the Marina that need to be resolved first, and then the City can issue an RFP to accept restaurant proposals.

Councilmember Wainwright added that the proposed floating restaurant at the marina could block slips that would provide potential rental income. He agreed that the marina needs at least one restaurant. He encouraged Mr. Parker to return with a new proposal.

Rick Parker clarified that the location of his restaurant would not be displacing any slips, but would be using the guest dock, and could meet the other requirements as well. He indicated that he would be bringing the boat to the guest dock in the next few weeks so that the public can look at it.

Vice Mayor DeLaney indicated that the regular meeting would now be adjourned and a special meeting opened to discuss Railroad Quiet Zones.

Councilmember Wainwright asked if the City abided by all Special Meeting requirements. Deputy City Clerk Mercy Cabral indicated that it had.

Councilmember Wainwright read the municipal code and asked if the notices were sent and if e-mails were adequate forms of notification. City Attorney Jeff Walter stated that faxes and/or e-mails can be used if provided 24 hours in advance.

Vice Mayor DeLaney stated that she was the one who called the Special Meeting, acting in the absence of the Mayor.

Councilmember Wainwright stated that he did not believe the criteria had been met for a Special Meeting.

In view Councilmember Wainwright's concerns, Mr. Walter recommended that the item be continued to a future meeting.

Councilmember Wainwright indicated that Special Meetings should be reserved for urgent matters and should require a 72 hour notice. He believed that shutting off the train whistle in Martinez is an important issue that needs public input.

Councilmember Ross agreed this was not an urgent item and could be postponed.

Vice Mayor DeLaney explained her reasoning for placing the item on the agenda, but agreed that a continuance was probably best.

*Added from Special Agenda:*

#### CITY MANAGER

1. Railroad Quiet Zone Update. [T.Tucker/6.7.6&10.17.00]

Item continued.

#### CONSENT CALENDAR

MOTION WAIVING READING OF TEXT OF ALL RESOLUTIONS AND ORDINANCES.

Motion waiving.

Councilmember Wainwright asked that Item #10 be pulled for discussion. Councilmember Ross stated he would like to comment on Item #9 and recused himself from Item #7.

Vice Mayor DeLaney opened public comment on the Consent Calendar.

Julian Frazer stated he would like to pull Item #1 and Item #9 off the Consent Calendar. Vice Mayor DeLaney urged him to go ahead now with his comments. He stated that when someone wants to pull something off the Consent Calendar, it can then be placed on the agenda for further discussion. Mr. Frazer also commented on the fact that Vice Mayor DeLaney was not correctly following the recently adopted procedures.

1. Motion approving the City Council Minutes of April 19, 2006. [M.Cabral]

Mr. Frazer clarified comments he made at the April 19<sup>th</sup> meeting (page 4 of the minutes) regarding structures that define the character of a neighborhood and should be preserved. Regarding page 13 and 15, he clarified that one objection to redevelopment is the amount of money that would be diverted from funding for emergency services.

Mr. Frazer stated that he would also like to pull Item #9 for discussion. Vice Mayor DeLaney requested he go ahead and make comment at this time.

Councilmember Wainwright interjected stating that he would like to make comments regarding Item #1 first. He stated that he thought the motion regarding the lights at Tavan Field (page 9 of the minutes) included covering the costs to the users of the lights (\$70.00) and asked if the clerk could verify this and correct the minutes if needed.

B. Wainwright moved for approval of Item #1 to include the comments made by Mr. Frazer and the research on his question. Motion died for lack of second.

On motion of M. Ross, seconded by J. Kennedy, the Council approved the minutes of April 19, 2006, with the amendment requested by Councilmember Wainwright by the following vote: Mayor Schroder, Absent; Rest, Ayes.

7. Motion approving the Arts and Library Commission's recommendation to allow the Friends of the Library to pursue plans to improve the backyard area of the Martinez Library and upon acceptance and completion of the project, authorize City financing and installation of the appropriate fencing to prevent night inhabitants and vandalism. [J.Tool/16.09.00]

Councilmember Ross noted that after consulting with the City Attorney, he did not need to recuse himself after all. He said he thought this would be a great use for the area.

On motion by M. Ross, seconded by B. Wainwright, the Council approved Item #7 by the following vote: Mayor Schroder, Absent; Rest, Ayes.

9. Resolution No. 043-06 establishing policy principles for local telecommunication services to ensure and protect vital city and community interests. [M.Chandler/22.01.06/41.00.05]

Councilmember Ross discussed Item 9 and the need to retain local control while still allowing choice. He was confident that AT&T would be able to deliver.

Vice Mayor DeLaney opened public comment on Item #9.

Mr. Piersall asked whether or not the City staff made contact with San Ramon or Pasadena to find out why they contracted with AT&T rather than wait for the full package of services. Councilmember Ross said that they had made contact with San Ramon, but not Pasadena. He stated that AT&T is located in San Ramon.

Mr. Piersall interjected that AT&T is actually located in Texas. Councilmember Ross stated that is true, but they also have offices in San Ramon and may have wanted to support them. He confirmed there was no information on Pasadena.

Julian Frazer commented on the broad range of Comcast's service area throughout the United States. He suggested that maybe a different type of technology should be considered, which might enable the City to split up the franchise.

Mr. Alford agreed with Mr. Frazer that opening up new technology would keep the City from being locked into one company, as it is with the garbage company.

Seeing no further speakers, Vice Mayor DeLaney closed public comment on the item.

Councilmember Ross discussed the reasons for having only one garbage company for simplicity of service.

Vice Mayor DeLaney agreed that these policies would create a level playing field for competing businesses, while still retaining local control and keeping prices down.

On motion of J. Kennedy, seconded by M. Ross, the Council approved Item #9 of the Consent Calendar by the following vote: Mayor Schroder, Absent; Rest, Ayes.

10. Resolution No. 044-06, authorizing the City Manager to sign the contract with Moffatt & Nichols for Phase I entitlement costs of up to \$275,000 for the Marina and allocate, as a loan, \$275,000 from the General Fund to the Marina fund for contract costs.

[J.Tool/14.&17.04.06]

At the request of Councilmember Wainwright, Mr. Pearson presented a staff report explaining staff's recommendation to contract with Moffatt & Nichols.

Councilmember Wainwright asked what services will be provided for the \$275,000 and asked if that would be the maximum amount. Mr. Pearson confirmed it was an estimate.

Councilmember Wainwright asked for confirmation that Phase I would cover the two major items – the breakwater and the dredging. Deputy Director of Parks & Recreation Joanne Tool stated yes and explained the various components, including engineering and technical studies.

Councilmember Wainwright asked about a time frame. Ms. Tool said it should take approximately six months to complete Phase I.

Councilmember Wainwright questioned the distinction between Phase I and Phase II. Ms. Tool stated that Phase I is gathering all the information and Phase II is obtaining permits.

Councilmember Wainwright asked for clarification that Phase I is primarily completion of paperwork that is given to agencies, and that Phase II permits will cost more (\$176,684). Ms. Tool stated that the \$176,684 covers Phase II, III and IV.

Councilmember Wainwright asked about Phase III and IV. Ms. Tool stated that Phase III is for bid documents for actual construction of the breakwater and the dredge, and Phase IV is for obtaining building permits.

Councilmember Wainwright asked about the difference of Phase II and IV, for obtaining permits. Ms. Tool explained that Phase IV is to obtain permits for final drawings, construction bids and to actually do the work. She further explained that the City will know where it stands with the breakwater and dredging after Phase I, and can then determine if they then want to move forward with the lease agreement at that time.

Councilmember Ross asked about time issues. Ms. Tool stated that the longer it is delayed, the longer it will be before the City has the answers it needs, and the longer the dredge is delayed.

Councilmember Ross asked, and Ms. Tool confirmed that two to three more weeks would not be a significant delay. He suggested a continuation until after the special meeting on the marina.

Vice Mayor DeLaney asked if there was a rough estimate of time on Phase I. Ms. Tool stated about six months. Vice Mayor DeLaney stated that she had no problems with going forward with the entitlements, but was concerned about the lease itself and missing information.

Vice Mayor DeLaney opened public comment on the item.

Mr. Alford asked about the entitlements and why the City has to pay for them. He questioned why the City is even doing business with this company.

Mr. Frazer discussed his objections to the contract, especially given the City's past experience with Westrec. He encouraged the Council to seek to make some improvements within the next six months, not two years from now, so that people can start to see necessary improvements in the marina area. He also asked if the special meetings could be included in the packets for those who subscribe.

There being no further comments, Vice Mayor Delaney closed public comment.

Councilmember Ross noted that Moffatt & Nichols are experienced consultants in the marina business, and they would be able to tell the City whether the proposed improvements are feasible.

On motion by M. Ross, seconded by J. Kennedy, to approve Item #10 of the Consent Calendar, to authorize the City to contract with Moffatt & Nichols to do the feasibility study for \$275,000 to determine the viability of the breakwater and other items contained in the contract.

Councilmember Wainwright said each Councilmember should be able to speak before a motion is made. He commented on the changes to the original agreement, resulting in the City paying for the entitlements. He said he could not support a contract today with so much missing information in the lease and questions about the lessee's business standing.

Vice Mayor DeLaney questioned whether the City would be required to pay more than \$275,000 for Phase I, should additional resources be required. Mr. Pearson stated the \$275,000 would be the maximum.

Vice Mayor DeLaney asked what the contract deliverables would include. Mr. Pearson reviewed the different components of the contract.

Councilmember Ross asked whether the full extent of the entitlement costs was known at the time the RFP was released. Mr. Pearson said the details were not specified at that point. Councilmember Ross noted it was unusual for a lessee to pay such costs.

Vice Mayor DeLaney asked the Council to vote on the motion. It was approved by the following vote: B.Wainwright, No; R.Schroder, Absent; Rest, Ayes.

2. Motion rejecting Claim(s) against the City by PG&E, Claim #06-05 and Peter & Sons Koi & Pond Supply, Claim #06-12.. [J.Catalano]
3. Motion approving Check Reconciliation Register dated 5/10/06, 5/4/06, and 5/11/06. [C.Heater/2.1.0]
4. Motion approving the City of Martinez Investment Policy. [C.Heater/2.1.0]
5. Motion approving Revenue Summary and Expenditure Summary for April, 2006. [C.Heater/2.1.0]
6. Motion adopting Ordinance 1327 C.S. Title 2 of the Martinez Municipal Code, Section 2.08.030, Quorum and Majority Vote, effective 30 days after adoption. [41.07.00]
8. Resolution No. 042-06 adopting the Fiscal Year 2006-07 Appropriations Limit. [C.Heater/2.1.0]

There was no public comment on Items 2, 3, 4, 5, 6 and 8 of the Consent Calendar.

On motion of J. Kennedy, seconded by M. Ross, the Council approved Items 2, 3, 4, 5, 6 and 8 of the Consent Calendar by the following vote: R. Schroder, Absent; Rest, Ayes.

PUBLIC HEARING(S)

ORDINANCE(S)

## CITY COUNCIL

11. Consider and discuss placing an Infrastructure bond measure on the November 7<sup>th</sup> ballot as requested by Vice Mayor DeLaney (Continued from the April 19<sup>th</sup> meeting).  
[40.20.09]

Vice Mayor DeLaney spoke on the City's need for infrastructure improvements. She also discussed Measure O that was defeated in November, 2004, and the projects that would have been funded through it.

Councilmember Wainwright asked how this mechanism was different from Measure O. Vice Mayor DeLaney explained that this was not the same as an infrastructure district, but would be a property tax bond similar to Measure O.

Councilmember Wainwright asked about the time frame for this bond. Vice Mayor DeLaney said that the Council would need to take action by the last meeting in July, 2006, to be placed on the November, 2006, ballot. She discussed the survey results from Measure O and the projects the public would like to see done.

Councilmember Kennedy asked whether the \$30 million would cover all the projects, and she indicated she would like to see some allotted for flood control. She was supportive of the bond issue and was hopeful that the community would support it.

Councilmember Ross says he would like to see a geographically well-balanced bond issue for the entire City and not just for the downtown area as Measure O seemed to be. He noted that the costs may have gone up in the meantime, and the City's priorities may have changed also. He would like the Council to explore the idea further.

Vice Mayor DeLaney opened public comment on the item.

Harlan Bailey commented on the lack of changes to the library over the past 43 years, and the benefits a good library can bring to a community. He asked for better support of the library.

David Piersall said putting Measure O back on the ballot unchanged would be the "triumph of hope over experience." He stated that he was originally in support of Measure O until \$2 million was slated to be set aside for acquiring more parkland, as well as the marina provisions being unclear. He thinks the Council needs to come up with a better plan, with projects that will bring the community together.

Al Turnbaugh stated that he voted no on Measure O as well because he disagreed with how the money was to be spent. He discussed objections to downtown property owners having to pay for a flood control district, saying these costs should be included as well. He also commented on conflicting goals and purposes from community members who speak against redevelopment, but oppose renovation and repair of historic buildings because of preservation issues.

Julian Frazer said that the numbers need to be defined if Measure O is re-enacted, and he commented on Measure AA that passed in 1991, as a joint measure between the City and the

County. He suggested that the preservation of open space and the library should have high priority. He also commented on the need for a broad base of support prior to a bond being proposed. Specifically, he said the Councilmembers who are in favor of a bond measure should be sure their supporters don't work against it.

Roger Goodwin reviewed some of the provisions that had been in Measure O. He urged the Council to move forward on this and make sure there is a complete understanding of how the funds would be allocated.

Marta Van Loan said she did support Measure O, but she acknowledged that a more focused approach would help. She expressed concern however that the bonded indebtedness might outlast the improvements themselves.

Seeing no further speakers, Vice Mayor DeLaney closed public comment on the item.

Councilmember Wainwright said he thought there should be better explanation of how the bond funds would be allocated, and he agreed that the measure needs to be one that unifies the City. He also agreed that the funds would be better used for improvements that will last the 30 year pay back period. He expressed concern about the tone of some of the public comments made, and he asked that there be no more name-calling and disparaging remarks.

Councilmember Wainwright also commented on the need to preserve historic buildings downtown and a bond passed by San Francisco to repair unreinforced masonry buildings (URMs). He suggested the bond should cover seismic retrofits as well.

Councilmember Ross agreed the community needs to come together for the bond issue, and for redevelopment, for the financial and physical betterment of the City.

Councilmember Kennedy commented on the need to replace the City pool, not repair it. She noted that bond money can be used with grant funding to make even greater improvements, as other cities have done.

Vice Mayor DeLaney discussed the challenges ahead to get something together in time for the November election. She agreed that the list of projects they have now may not be the projects the public would be interested in supporting, and she mentioned several others. She also said she thought that additional public meetings may be beneficial for this. She noted that Proposition 42 proposed that additional sales tax on gas was supposed to go to cities for local street and road improvements. Martinez would receive \$1.1 million should the infrastructure bonds pass in November, which would be very helpful to Martinez.

12. a. Consider the proposed amendments regarding an Emergency Historic Preservation Ordinance meeting Title 22, Zoning, of the Martinez Municipal Code and if agreeable in principle, refer to the City Attorney for review in time for deliberation at our next regular scheduled Council meeting as requested by Councilmember Wainwright; and

- b. Suspend the issuance of any City permit for the removal or demolition of any building 50 years of age or older until the Council has acted upon these proposed amendments.

Councilmember Ross recused himself as he has a property in escrow in this area.

Councilmember Wainwright explained the purpose and background of Item #12. He also discussed the Historical Resource Inventory created by the City in 1982. He mentioned that there were other historic buildings in the City not on the list, such as the Sharkey building, and thus they are not protected from demolition or removal. He also discussed the provisions of his proposed amendments to the ordinance. He commented on recent research that shows the Sharkey Building is on the County's list of historic buildings, and the discovery that the building facade is virtually unchanged from its original appearance, contrary to what the Council had been told.

Vice Mayor DeLaney asked about Chapter 22.47 of the Municipal Code, specifically the wording under 22.47.050 since it indicates that any resident of Martinez has the right to pursue historic designation by the Historical Society with City Council approval.

Councilmember Wainwright acknowledged that anyone can go to the Historical Society for a designation of a cultural resource, but that does not protect the buildings from demolition or removal. Vice Mayor DeLaney stated that it outlines in the permit section that it is unlawful for any person to tear down, demolish, construct, alter or remove any structure that has been designated a cultural resource.

Councilmember Wainwright clarified that his amendments would save all buildings that have not been so designated that are over 50 years old. Vice Mayor DeLaney questioned the need to overrule the provisions that currently exist and risk taking away property rights from their owners.

Vice Mayor DeLaney opened public comment.

Mr. Piersall commented he was relieved to see that Councilmember Wainwright believes that the laws ought to be subject to amendments, but does not believe he adequately justified his proposed amendment, noting that it seems to be focused on 630 Court Street. He questioned why the Historic Society did not include 630 Court Street on their 1982 inventory, and whether anything had changed since that time to deem it of historic significance now. He also commented on the improved safety to the public from allowing replacement of the building with another of similar design and character, yet seismically safer.

Mr. Alford said that since this is on the County historical list, the City should not tear it down; history cannot be replaced. He also commented on the BH Development presentation of two weeks ago and suggested the building be brought up to code rather than torn down.

Mr. Turnbaugh discussed development of a URM ordinance, and the opportunity for public input on it. He commented that what Councilmember Wainwright is proposing the worst form of eminent domain, a regulatory taking without any compensation. He suggested this needs to be

given a lot of thought before a decision is made. He also discussed the seismic retrofit, earthquake and public safety problems with the Sharkey Building as it exists now.

Apolinar Omania spoke about a building he owns at 405 Berrellesa Street and how there is no way he is going to be able to save it. He also owns 432 Berrellesa where he has built a nice new structure.

Julian Frazer expressed concern that the Councilmember who campaigned about preserving historic Martinez is now proposing to tear historic buildings down. He also noted that 50 years is the standard at which a building can be considered for historic significance. Mr. Frazer noted as well that no building, new or retrofitted, can be guaranteed not to come down in an earthquake. He commented on the fact that many who want to allow historic buildings to be removed because of earthquake risks are willing to consider putting housing north of the tracks where liquefaction is a potential risk.

Ms. Billingsly expressed concern about the precedent that could be set, allowing more buildings to be torn down on Main Street. She said the building should be preserved since it is on the County's list of historic buildings, or at least the Board of Supervisors should be consulted first.

Alice Alderatte commented on the trees on private properties in Martinez and the tree ordinance that protects them and provides procedures for removing them. She also said that buildings that have such historic value to the community should have some kind of protection.

There being no further speakers, Vice Mayor DeLaney closed public comment.

Councilmember Wainwright commented on Mr. Turnbaugh's comments that the Council would "abdicate to the Historical Society." He clarified that ultimately such requests would go to the Planning Commission after review and recommendation by the Historical Society. He also said his proposal is a method for protecting older buildings in Martinez from removal or demolition without proper review.

Councilmember Kennedy stated that she worked in the field of historic preservation for 30 years. She noted that if the City had a redevelopment agency, there would be a way to sell property at lower prices and give developers incentives to retrofit or renovate, rather than demolish a building. She also commented that she read the engineer's report specifically detailing what the Sharkey Building needs. She believes the proposed amendments would put a six month hold on projects and would effectively take away personal property rights, which is worse than eminent domain. Given the cost for new construction, she doubted that there would be wholesale demolition of the downtown as some have implied. She concluded that she could not support the amendments.

Councilmember Wainwright clarified that the RFP for developing this property did not envision demolition, but retrofitting/renovation. He cautioned against basing the decision for the Sharkey building on one structural engineer's report done in 2004. He urged another look at the possibilities, given the impacts to the downtown in the future.

Vice Mayor DeLaney concurred with Councilmember Kennedy. She commented on a book she received from the Martinez Historical Society, saying she was surprised by how much present-day Martinez does not resemble the Martinez of the past. She specifically noted that there were many homes that have been relocated within the City in the past. Although the goal of preserving the downtown is wonderful, the current Municipal Code has provisions for that. She felt that requiring a 60 day waiting period and then another 120 days, could prevent people from improving their property in the event of a disaster.

Vice Mayor DeLaney also stated that there has not been a final analysis on the Sharkey building at this time, and she believes that Mr. Hirahara's experience and his team will know what is best for the City and the building.

Vice Mayor DeLaney stated that the Council had neglected to vote on Item #11, and invited Councilmember Ross back in for the vote.

On motion by M. Ross, seconded by J. Kennedy, the Council voted to direct staff to prepare a potential bond measure for the November 7 ballot, including the possibility of hiring bond counsel and other appropriate professionals as necessary, and to develop a protocol for public input to help facilitate the bond measure's creation by the following vote: Mayor Schroder, absent; Rest, Ayes.

### 13. CITY COUNCIL COMMENTS

Councilmember Wainwright stated that he had an item for the agenda that was denied by the Mayor - to reconsider the April 26th action to authorize the City Manager to sign the completed marina sublease agreement with Martinez LLP subject to final review by the City Attorney and the City Council. Mr. Wainwright indicated that he objected to the handling of the motion. He summarized the opinion of the City Attorney that the City is not bound by Roberts' Rules of Order unless not following them violates State law. He asked City Attorney Jeff Walter whether that was correct, and Mr. Walter asked the rest of the Council if they were willing to waive attorney-client privilege for him to respond. The Council agreed by consensus.

Mr. Walter confirmed that the courts have decided that unless there is some mandatory State law that would be violated by not following a particular parliamentary procedure, it is implicit that the procedures are being amended when the Council takes action different than the rules would dictate. Thus, his conclusion was that the failure of the Council that night not to follow the formal two-thirds majority rule that Councilmember Wainwright cited did not undermine the underlying action that was taken.

Councilmember Wainwright requested that on the upcoming City Council agenda, the Council should consider the motion by Councilmember Ross on calling the question which was neither seconded nor voted on, and agree to consider the marina sublease without prejudice and in its entirety when submitted again at a future regularly scheduled meeting, as special meetings tend to limit public participation. He commented on the need for a full debate on the issues since the sublease can last 40-45 or even up to 60 years, including public involvement and review.

Councilmember Ross discussed the motion that was made and the background as to why it arose. He paraphrased the original agenda item, that the Council was to direct the City Manager to execute the contract sublease on her own without Council interference or involvement. Based on questions that Vice Mayor DeLaney and Councilmember Wainwright raised, he believed that the item should be postponed to another meeting so that the questions could be answered, and that the power to make the final decision should be taken from the City Manager and given back to the Council.

Vice Mayor DeLaney interjected that this is not the time for a debate on the issue, but for City Council comments.

Councilmember Ross said he thought the motion should stand as it was made at the time, allowing for the questions that were raised to be answered. Councilmember Wainwright said he was asking for this to be put on the agenda for a regular scheduled meeting.

Vice Mayor DeLaney said she was confident the marina issues would be discussed fully at a future meeting. Mr. Walter noted that the new policies indicate that if the Mayor denies an item to be placed on the agenda, two Councilmembers can then put it on.

Councilmember Wainwright moved to have reconsideration of the April 26th action be put on a future agenda. Motion failed for lack of a second.

#### CITY MANAGER

#### 14. Marina Agreement Progress Report (standing)

Community Development Director Richard Pearson reported that the attorneys are working on the next draft of the agreement. He indicated that the Department of Boating and Waterways will be meeting on June 27, and the City will have to present a signed agreement at that meeting.

Vice Mayor DeLaney asked when the lease would be brought back to the Council. Mr. Pearson responded that it could be heard at a Special Meeting on May 31, or June 14, 2006, or at the Regular Meeting of June 21, 2006, but the latter would be cutting it close.

Vice Mayor DeLaney asked about putting it on the June 7, 2006, meeting agenda. Mr. Pearson said that would be great, but the Specific Plan is scheduled for that night, and he doubted they could cover both items.

Mr. Walter reported that due to scheduling conflicts, staff was tentatively scheduling a Special Meeting on May 31<sup>st</sup> or June 14<sup>th</sup>. City Manager Catalano suggested that staff could videotape the session and work with Comcast to broadcast it.

Councilmember Wainwright spoke to the City Attorney about his comments regarding the sublease. He expressed concern that the City has not done the level of due diligence that should be done when considering a 40-45 year lease, especially considering the scrutiny that was given to Mr. Parker's proposal. Mr. Pearson stated that staff is reviewing the financial information

with the same consultant that reviewed Mr. Parker's proposal, and a report will be made. Mr. Pearson also stated that some of the questions asked of Mr. Parker are not appropriate in this case, as there was a detailed RFP and two binders full of answers to those questions, that the Council has had for a year or more to review.

In response to a further question from Councilmember Wainwright, Mr. Pearson stated that determining whether or not the lessee can provide the \$4 million equity will be part of the financial review.

Vice Mayor DeLaney opened public comment on the item.

Julian Frazer said an RFP should be issued for a restaurant at the marina. He also commented on the 2-year entitlement period, and he suggested the lessee should agree to do a capital improvement within the first year. He also commented on the need to investigate the quality of any restaurant coming in. Mr. Frazer noted that it would be good if the City Attorney would direct the City Council, particularly the Mayor or Vice Mayor, to tell them what the procedures are. He asked what the process is to make a motion for reconsideration.

Mike Alford spoke on the scrutiny that Mr. Parker underwent. He commented that when someone comes in with a proposal and then changes it, as the marina lessee did, it's criminal. He further expressed frustration that none of his questions are ever answered, just shifted from one individual to another.

There being no further speakers, Vice Mayor DeLaney closed public comment.

Councilmember Ross responded to Mr. Frazer's comments, noting that if the marina operator leaves after the entitlement period, they will have to pay back half of the \$275,000 spent by the City.

Vice Mayor DeLaney reiterated that there needs to be a signed agreement by the June 27 DBAW meeting, and confirmed that there would likely be a special meeting sometime between June 7 and June 21<sup>st</sup>, in order to allow sufficient discussion on the matter.

#### 15. Redevelopment Financial Feasibility Study Progress Report (standing).

City Manager June Catalano reported that the City hired Libby Seifel of Seifel Consulting, Inc. to complete the next portion of the study as requested by Council. Her report will be due by July 1<sup>st</sup>.

Economic Development Director Susan McCue reviewed the scope of work and cost of the plan. Ms. McCue also discussed Phase II - the financial feasibility portion. She described what the consultant will do, concluding with a report and presentation by her at the July 5, 2006, Council meeting.

Councilmember Wainwright asked about the notation of costs and wanted to know what they were for. Ms. McCue stated that what the consultant will do is identify projects that would make sense in the study area, cost those out and do an analysis over time of the expense of those costs related to cash flow.

Councilmember Wainwright asked about the administrative costs incurred and whether they will be factored into the redevelopment plan. Ms. McCue stated that they would be. Councilmember Wainwright commented that Ms. McCue's verbal explanation was clearer than what was written.

Vice Mayor DeLaney opened public comment.

Julian Frazer wanted to know if all the staff costs would be covered. He commented on the need to hire good consultants and to get accurate cost estimates.

There being no further speakers, Vice Mayor DeLaney closed public comment.

#### 16. Shell Release Citizens Advisory Committee Update.

City Engineer Tim Tucker updated the Council and gave a brief background on the Shell incident of November 8th and the establishment of the citizens committee. Mr. Tucker indicated that the Committee is meeting weekly, and he reviewed the issues before them. He also reviewed the membership of the committee: Gayle Goldblatt, Marlene Bigley, Raul Lomeli, Ralph Sattler, and Tom Borman. He indicated that the committee is working closely with Steve Leshner of Shell. Mr. Tucker stated that Shell has posted Most Frequently Asked Questions developed by the committee on their website: [ShellMartinezRefinery.com](http://ShellMartinezRefinery.com). He also stated that the committee is currently working on identifying the remaining issues and drafting a final report.

Mr. Tucker said that to date only the Root Cause Analysis has been made available by Shell for committee review. The committee is still awaiting the release of the Environmental Analysis Report. Shell has provided many answers to many questions and provides the committee with updates to the number of outstanding claims. He stated that there was over 3,000 outstanding claims when the committee began their work, but Shell recently reported they currently have 250 outstanding claims.

Councilmember Ross confirmed that a questionnaire had been sent out to the community by Shell at the direction of the committee.

Vice Mayor DeLaney opened public comment.

Julian Frazer questioned whether there were any impacts on the marina. He said it would be better if Shell intentionally dumped the oil on City roads to pave them, instead of releasing it into the air. He also commented on difficulties with signing of the settlement agreements, noting that if a person disagrees with any of the provisions they can be crossed out before signing, and it shouldn't affect their settlement.

Mike Alford wanted to know if Shell has ever told Martinez exactly what they dumped out on them, as a lot of people are having health problems this year. He asked if it was sulfur dioxide. Councilmember Ross stated that it was asphalt oil.

Mr. Tucker stated that it is basically oil. He also said the County health department has the root-cause analysis that goes into more specifics.

Councilmember Ross commented on the makeup of sulfur dioxide, noting it was less than 1% benzene and not considered dangerous.

Mr. Alford wanted to know if it sticks and dries when the weather changes. Councilmember Ross stated that it is basically low grade motor oil, and does break down in the sunlight.

At the request of City Manager June Catalano, Mr. Tucker further spoke on other incidents that have occurred with Shell, including an oil spill and a gas release. He stated that no detectable materials were found in the soil down at the marina from the January incident.

Councilmember Ross clarified that even though what was released in November was not particularly dangerous, it is still unacceptable to have anything released over the City.

17. Comment(s)/Update(s)/Report(s).

No comments made.

#### APPOINTMENTS TO COMMISSIONS AND/OR AGENCIES

#### ADJOURNMENT

Adjourned at 10:30 p.m. to a Regular City Council Meeting on June 7, 2006, at 7:00 p.m. in the Council Chambers, 525 Henrietta Street, Martinez, California.

Approved by the City Council,

Lara DeLaney, Vice Mayor

Mercy G. Cabral, Deputy City Clerk – 7/5/06