

- 1 6. Stipulate strict post-festival clean up requirements with enforceable penalties for
2 non performance.
3
4 7. Stipulate that 10 percent of the art booths be local artists
5
6 8. Reduce the size and cost of the Friday night gala to return it to a community event
7 as specified in the Sausalito art festival petition. Roll the sit down dinner back to
8 \$100 a person and have three seatings as in past years. Give residents the
9 opportunity to buy tickets to the gala prior to opening it up to large corporate
10 sponsors in the Bay Area.
11
12 9. Finally, the agreement needs stiff, automatic and enforceable penalties for
13 noncompliance.
14

15 Mayor Kelly noted that financial reports are usually on a fiscal year basis for a particular
16 entity, or year-end, and to audit those statements takes three to four, maybe five or six
17 months to complete. The November deadline might be too soon. He asked if she would
18 be okay with a deadline further out as long as it is audited in full.
19

20 Carolyn said audited in full is good; timely is good as well. It would depend on their year.
21

22 Mayor Kelly asked that the speaker repeat request number 5.
23

24 Carolyn said it is important that the funds received from the art festival go to the City's
25 General Fund, not some special project like the Sally bus which failed. As a result the
26 City was not paid these monies owed. The agreement specifies no special project nor
27 should it. Please keep it that way.
28

29 Mayor Kelly said he thought the Agreement does provide for them to spend money on
30 the bathrooms at Marinship. He asked if that was acceptable.
31

32 Carolyn said yes, that's fine.
33

34 Councilmember Leone said he wouldn't view the Sally Shuttle as a failure; it's just that
35 the funding for it went away from the City's point of view.
36

37 **Public Comment on Closed Session Items closed.**
38

39 The Council immediately went into Closed Session in the Conference Room to consider
40 Closed Sessions items 1 through 3. Item 4 was not considered, as described below.
41

42 Mayor Kelly reconvened the meeting in the Council Chambers for the Business portion
43 of the meeting.
44

1 **PLEDGE OF ALLEGIANCE**

2
3 Craig (last name not given) led everyone present in the Pledge of Allegiance.

4
5 **REPORT ON CLOSED SESSION ITEMS**

6
7 Mayor Kelly reported the Council received reports and gave direction to staff on Closed
8 Session Items 1 through 3. No votes were taken on any item.

9
10 Mayor Kelly asked if there was any public comment on the Closed Session items listed
11 on the Agenda, but there was no response.

12
13 1. **CONFERENCE WITH REAL PROPERTY NEGOTIATOR** pursuant to CGC
14 § 54956.8

15 Property: 18 Pearl Street

16 Negotiating Parties: Dana and Kent Whitson

17 City Negotiators: City Attorney

18 Under Negotiation: Price and Terms

19
20 2. **CONFERENCE WITH REAL PROPERTY NEGOTIATOR** pursuant to CGC
21 § 54956.8

22 Property: Marinship Park and Martin Luther King (MLK) Park

23 Negotiating Parties: Sausalito Art Festival LLC

24 City Negotiators: City Manager and City Attorney

25 Under Negotiation: Price and Terms

26
27 3. **CONFERENCE WITH LABOR NEGOTIATOR** pursuant to CGC § 54957.6

28 Agency Negotiator: City Manager

29 Employee Organizations: SEIU 949, Sausalito Firefighters Association IAFF Local
30 1775, and unrepresented Employees (Management and Confidential)

31
32 4. **CONFERENCE WITH LEGAL COUNSEL** – Existing litigation pursuant to
33 subdivision (b) of CGC § 54956.9

34 Name of Case: State Farm Insurance Co. vs. City of Sausalito

35
36 **APPROVAL OF AGENDA**

37
38 **Councilmember Leone moved, seconded by Vice Mayor Belser, for approval of the**
39 **agenda as submitted. The motion was approved unanimously without a roll call**
40 **vote.**

1 **PUBLIC HEARINGS**

2
3 **Adopt an interim urgency ordinance of the City Council of the City of Sausalito**
4 **extending the moratorium adopted within the City of Sausalito by Ordinance No.**
5 **1186 on the approval of any subdivisions, use permits, variances or any other**
6 **applicable entitlement which would allow for existing motels and hotels to be**
7 **subdivided or converted into condominiums for a period of ten months and fifteen**
8 **days**

9
10 **Staff Report by Associate City Planner Sierra Russell**

11
12 Ms. Russell reported that the City recently received inquiries regarding the potential
13 conversion of hotel developments to for-sale condominium units, also known as condo
14 hotels. On June 19, 2007, the City Council adopted Ordinance No. 1186 which imposed a
15 45-day moratorium for the processing of such condo hotel conversions. In that time City
16 staff has surveyed other communities and reviewed the City's residential condominium
17 standards and believes that additional standards are necessary and can be developed
18 during the next few months regarding condo hotels and the processing of such
19 applications. Time needed to develop these standards requires an extension of the
20 existing moratorium.

21
22 Condominium conversion requests are currently reviewed under Chapter 1066 of the
23 City's zoning ordinance. Although the provisions of Chapter 1066 do apply to apartment
24 complexes, there are currently no regulations that directly apply to condo hotels. Given
25 that the conversions of hotels to such uses have the potential to change the nature of the
26 hotel operations, there is a concern that conditions of project approval in the City's
27 current municipal code regulations related to residential condominium conversions do not
28 specifically address the land use developmental impacts from condo hotels. A condo
29 hotel is defined as a development that has the outer appearance and amenities of a
30 traditional hotel but whose rooms can be sold as individual condominium ownership, so it
31 functions similarly to a hotel. But because condo hotels are individually owned and can
32 potentially be subject to no or varying length of stay restrictions, they are considered a
33 quasi residential land use as they are essentially residential investments with the
34 possibility of also functioning for visitor serving uses.

35
36 The most common land use concern related to conversion of hotels to condo hotels is the
37 loss of visitor serving uses that generate revenue for cities through tourist and Transit
38 Occupancy Tax programs. The California Coastal Commission is monitoring the issue of
39 condo hotels and the conversion of such uses along the coastline in terms of maintaining
40 public access and the availability of overnight visitor serving accommodations. Although
41 the City isn't under the jurisdiction of the California Coastal Commission, the City is
42 under the jurisdiction of BCDC and the impacts are similar because the City is along the
43 shoreline and near the water.

1 Staff surveyed the municipalities in Marin County and found that none have adopted
2 specific regulations for condo hotels. The cities that have regulations for such uses in
3 closest proximity to Sausalito are Calistoga and Napa, both of which have adopted
4 specific use regulations for condo hotels. Those regulations are attached to the staff
5 report. Santa Rosa does not have specific regulations for condo hotels, however, they
6 recently approved a condo hotel through a conditional use permit with specific provisions
7 related to the use and operation, and that it would be maintained as a hotel use. Rancho
8 Mirage has detailed regulations for condo hotel projects regulated through a development
9 agreement that contains detailed standards related to the operation of such uses.

10
11 Based on staff's review of these examples of regulations, there are some key conditions
12 of operation evident.
13

- 14 • Restriction on use and occupancy
- 15 • Notice of restrictions to property owners through CC&Rs (Covenants, Codes and
16 Restrictions
- 17 • Management, recording keeping and Reporting; requirement of a single
18 management entity for the management, operation and maintenance of the
19 property who forwards that information to the City for the collection of TOT
20 taxes.

21
22 The current moratorium will expire on August 3, 2007, and as the City currently has no
23 standards in place to regulate condo hotels, staff recommended extending the moratorium
24 to provide time to further address the issue. Although staff believes additional standards
25 are needed, it is feasible that potential impacts could be addressed through the City's
26 existing conditional use permit. However, additional legal research of court cases and
27 state law would be necessary to identify if condo hotels could be included within the
28 existing zoning ordinance definition and whether the operational conditions necessary for
29 condo hotels could also be regulated through the existing conditional use permit process.
30 The alternative option is to adopt specific requirements for condo hotels which would
31 involve a zoning ordinance amendment.

32
33 Staff recommends the Council extend the moratorium and allow staff the time to prepare
34 an ordinance that more appropriately addressed condo hotels.
35

36 **Council Questions**

37

38 Councilmember Albritton asked staff to describe the process for revising the ordinance
39 and how much time it will take, in terms of the City's processing. He asked whether the
40 City has to have the personnel now or whether they will need to hire staff. He asked if
41 there is a way to pay for it. He further asked how staff intends it to be completed.
42

43 Community Development Director Paul Kermoyan noted that staff has discussed the
44 issue with members of the audience present that day, and one of the suggestions was the

1 possibility of hiring a consultant. The City does have a consultant on board, Lisa
2 Newman, who is currently under contract and who could do this for the City at the
3 applicant's cost. The initial reaction of the interested parties was fairly receptive. Staff's
4 workload is constantly high, and this review would have to be fitted into the Council's
5 priorities. The staff doesn't want to stymie growth in the development community, but
6 they must approach the issue on the basis of the reality of what staff can handle.

7
8 The discussion in the staff report of use permit versus ordinance goes back and forth.
9 When the possibility of the present application was discussed, his initial reaction was that
10 they could control this use under a Conditional Use Permit (CUP) combined with the
11 tract map, the subdivision. Those two entities could give the City the ability to control the
12 use. He anticipated reviewing other municipalities' conditions and using those as a model
13 to attach conditions to the conditional use permit as well as the subdivision to control this
14 use. They understand how important it is though for standards to be clear and transparent
15 for the public and the developer. The recommendation to create codes would be focused
16 on the public needing to know what the expectations are. Staff will need to hear from the
17 Council what its priorities are relative to other code updates that are on the table, but the
18 idea of hiring a consultant to review this at the applicant's cost seems to be a win/win.

19
20 Councilmember Albritton asked if they were to do that, what the timing would be.

21
22 Mr. Kermoyan said it should be a very simple ordinance to prepare. He would think it
23 would take a month to two months at the staff level, then it would go to the public
24 hearing level at the Planning Commission, and at the City Council an environmental
25 document would have to be prepared if there are any impacts. It might be a total four
26 months.

27
28 Councilmember Leone asked if Mr. Kermoyan was saying if an outside consultant was
29 hired, it would not infringe on the time that staff needs to devote to these other priorities
30 and initiatives such as the preparation of Historic Guidelines, the green building code
31 adjustments, and the code enforcement ordinance. He would think the process would still
32 require internal staff time to interact with the outside consultant as well as present to the
33 Commission and Council, go over the environmental documents, etc.

34
35 Mr. Kermoyan said hiring an outside consultant wouldn't eliminate work, but it would,
36 however, reduce the workload. It would be more of a monitoring and review process for
37 staff; there will be staff time.

38
39 Councilmember Leone asked the City Attorney if there has been a case previously where
40 an outside entity pays for something that is a general purpose ordinance. He asked if that
41 would have any implications.

42
43 City Attorney Mary Wagner said she understood the question. It's a question of
44 perception. It could be structured in such a way that the City is choosing who the

1 consultant is, the City is in charge of directing that consultant and the only input that the
2 potential applicant has is what any other applicant would have. She was not aware of a
3 context where the City has had this come up, where a general ordinance has been drafted
4 in that way. The City does it frequently with other planning related issues. They do it for
5 evaluation of property, i.e., geotech and engineering issues. Ms. Newman has been
6 working as a staff planner, although under contract. It is similar to what is done with full
7 cost recovery. She knows there are jurisdictions that do ordinances with the assistance of
8 consultants paid for by the applicant.

9
10 Councilmember Leone asked for the status on the project in question. If the City adopts a
11 moratorium, from a technical standpoint, would the City accept applications during that
12 moratorium.

13
14 Ms. Wagner said there was a submittal that was returned as incomplete, so there is not a
15 pending submittal at the moment. Jurisdictions treat the question of processing in
16 different ways, in whether or not they are required to process an application, but as that
17 application comes up for approval, if there is a moratorium in place it has to be denied.
18 She would need to do further legal research.

19
20 Councilmember Leone noted in order to undertake this sort of outside funding for a
21 consultant, would you have to have an actual project in process, and if you have to have
22 that in order to use the outside consultant, would you then have to have accepted the
23 application as complete to start this process?

24
25 Ms. Wagner said if the question was how they structure it, you can have a separate cost
26 agreement.

27
28 Councilmember Leone said he was not concerned about the billing, but was asking
29 whether or not you have to have a project in the pipeline that's been accepted, in order to
30 start this process to use outside funding to do something that affects the City's zoning
31 code or something that would directly affect a particular project.

32
33 Ms. Wagner said she understood.

34
35 Councilmember Albritton said you certainly don't have to have a project to have an
36 outside payment of staff costs.

37
38 Vice Mayor Belser said it seemed to her it would be better not to have a project in the
39 pipeline because of the danger that you're buying the result, to put it bluntly.

40
41 Mayor Kelly said San Francisco is notorious for this. You file an application in San
42 Francisco, and then you hire the outside consultant to write your CEQA report, and so on,
43 and his experience is that the consultant writes the report uninfluenced by the applicant's

1 input. There are protections that can be imposed if the City follows that route so that the
2 process is clear and unambiguous.

3
4 Councilmember Leone said there are implications such as whether these two concepts are
5 necessarily at odds with each other, a moratorium and hiring a consultant to conduct the
6 review. That's what should be done during the moratorium; that is, they study the issue
7 and come up with a solution, whatever that solution may be.

8
9 Mayor Kelly said it could be that the City doesn't have the money to investigate the issue
10 during the moratorium, and then the moratorium expires and you still don't have an
11 ordinance.

12
13 Ms. Wagner said she agreed with Councilmember Albritton that you don't have to have a
14 project in the pipeline in order to have this type of arrangement. Another example that
15 comes to mind is expedited plan check where an applicant pays to have the work happen
16 faster, so it's not the result that's changing, it's not the work that's changing, but the
17 result is coming in a quicker fashion.

18
19 Councilmember Leone said so a moratorium wouldn't exclude the possibility of bringing
20 an outside consultant in during that period and having an outside party pay for that
21 consultant.

22
23 Ms. Wagner said that was right.

24
25 **Public Comment**

26
27 **Fernando Villa** lives in Westwood, California and represents the company working with
28 the Casa Madrona. He very much looks forward to working with the City and
29 understands the concerns of the City behind the impetus for the proposed moratorium. If
30 the Council is inclined to adopt the moratorium, he would ask the Council to direct staff
31 to provide some kind of reporting process during the moratorium on a periodic basis. He
32 agrees that having an outside consultant paid for by an outside party would not affect the
33 outcome or infringe on the Council's authority.

34
35 Mayor Kelly asked if Mr. Villa read the two sample ordinances provided in the staff
36 report. He asked whether anything had struck him as unusual about those or whether
37 they are along the lines of what he has experienced previously.

38
39 Mr. Villa said they are pretty much along the lines of what he has experienced
40 previously. He agrees with staff that there are themes that run throughout the ordinances,
41 e.g., retaining the essential nature of the hotel use, making sure that after the conversion
42 occurs that the hotel remains a hotel, the occupancy is transient and the zoning code is
43 honored. And also of concern is that the City doesn't lose the Transient Occupancy Tax
44 (TOT) revenue, and he understands and accepts those concerns.

1
2 Councilmember Leone asked if Mr. Villa represents the owners or the company that
3 owns the Casa Madrona.

4
5 Mr. Villa said he represents the ownership.

6
7 Councilmember Leone asked Mr. Villa to describe the company. One thing that has not
8 occurred is an effort to educate the community on the company.

9
10 Mr. Villa said this is a new client, so he can't say he knows this company's history of
11 operations, but based on his experience with this property in this community he can say
12 what it intends to do is entirely consistent with the other hotel condo conversions he's
13 worked on up and down the state of California. Their goal is to maintain the use and use
14 this process to enhance the finances of the project. The changes will enhance and
15 maintain the historic value of the property because that's part of its appeal. Mr. Villa said
16 his company is very interested in educating the community and assuaging any concerns
17 they have.

18
19 Councilmember Leone asked what was driving this conversion from hotel to condo hotel
20 concept in general.

21
22 Mr. Villa said this is occurring in resort destination points, and it is being marketed as an
23 experience, and a chance to spend some time in one of these remarkable places, although
24 it's not a time share, it's a place they can call their own for two weeks or however long.
25 There is a good strong market for this phenomenon, particularly in California. But it has
26 to be a high quality place with amenities and appearance of something that's special. It is
27 a form of recapitalizing and refinancing, so that you have 30 or 40 or 50 owners who
28 participate in the rental program. And the capital is used to reinvest in the property and
29 enhance the amenities.

30
31 Councilmember Albritton asked if Mr. Villa has participated in the drafting of this kind
32 of ordinance before.

33
34 Mr. Villa said yes he has. He used to be a city attorney. And he has participated in
35 preparing conversion guidelines. There are different ways to participate. In one city, he
36 agreed with the City to have a development agreement by which the City's concerns were
37 addressed.

38
39 Councilmember Albritton asked how has he participated in the drafting of ordinances.

40
41 Mr. Villa said his company doesn't draft the ordinances, but for example in the City of
42 West Hollywood, one alternative the City considered was amending the zoning code and
43 providing guidelines for the conversion of hotels to a condo hotel. His company's views
44 and concerns were submitted to the planning staff, and then they provided input on the

1 draft. His clients have paid for outside consultants previously on projects in various cities
2 because of resource concerns and the need for timeliness. They had no say in what the
3 consultant or City did but they did provide comments on the draft, etc. And his
4 experience and views, he believes, are consistent with other companies involved in the
5 same process.

6
7 **Close of Public Comment**

8
9 **Council Discussion**

10
11 Mayor Kelly said the moratorium gives the City a chance to create a good ordinance for
12 the City because there are more hotels than this one. The extent to which the company
13 will help fund this is a good thing, not a bad thing, and it has to be obviously at arms
14 length. He's encouraged that two communities nearby have done this already and he likes
15 what he read in the staff report. The moratorium is the right way to do it. He pointed out
16 the hotel has asked if they can put the application in so at the time the ordinance is
17 passed, they can be sort of ahead of the schedule. How that would be done has to be
18 worked out.

19
20 Councilmember Albritton said that has to be done with a commitment on the company's
21 part that they will subject themselves to any requirements of the new ordinance.

22
23 Mayor Kelly said he was prepared to support the moratorium. It would require a
24 unanimous vote of the four Council members present.

25
26 Councilmember Albritton said he would like to have a sort of a carrot and stick
27 opportunity where the City does take advantage of the company's willingness to
28 contribute to the cost of a consultant but that the City doesn't get in a position where the
29 City ends up going two years with the company paying for a consultant and then not
30 come to some kind of resolution. To the extent that there needs to be some kind of
31 agreement for the use of the consultant, he's willing to consider that, and that might
32 protect the City in terms of conflict also. But if it's going to get done with the other
33 things the City has to do, that is the route they'll have to take. He would like to vote for a
34 moratorium with the understanding that if they go that route, they could possible be done
35 in two months, but he understands the limitations on that ambitious timeline. So in his
36 support of the traditional 10 and a half month moratorium extension, he would say his
37 hope would be that the moratorium is not continued again and that the City does take
38 advantage of the suggestions heard that evening and they come up with the best
39 ordinance possible.

40
41 Councilmember Leone said he was hesitant to take a project in under a theoretical
42 ordinance that does not exist. That creates problems for the staff in evaluating it for the
43 city and also what an outside consultant may recommend, and what the community may
44 want. Also it starts the clocking ticking from a due process standpoint. He would be

1 loath to take the application in now. It would not be a wise thing to do. He does agree it is
2 a good compromise to work on the ordinance while the moratorium is in place if the
3 potential applicant is willing to fund the review without any ties or implications to that
4 funding, where the billing goes through the City. Maybe a bid needs to be put out, and a
5 deposit made, and regular payments are made or the work stops. It needs to be arms
6 length, no implications, no pressure points along the way for the result to come out in one
7 direction or the other.

8
9 Mr. Kermoyan suggested regarding the time issue and due process, staff has taken the
10 position that the City doesn't have standards and needs to create standards. The other way
11 of doing it is the City saying they don't have standards, it can't be permitted, and the
12 applicant submitting his own text amendment to which the permit streamlining act
13 doesn't apply.

14
15 Councilmember Leone said he doesn't think zone text amendments are done in
16 consideration of the full impact on the entire town, they doesn't get the review that a full
17 ordinance would; this has broader implications for Sausalito than a gas station trying to
18 put up a sign for branding. That being said, he thinks they should stick with this process.

19
20 Mayor Kelly said he'd like to get this moratorium passed, and then work on getting a
21 good ordinance.

22
23 Vice Mayor Belser said this is the way to go, a consultant is the best idea because you get
24 the result faster, and 10 months is the maximum and perhaps that can be shortened. She
25 agrees with Councilmember Leone; she would be very reluctant to take in an application
26 while the ordinance is being developed.

27
28 Councilmember Albritton agreed with Vice Mayor Belser and Councilmember Leone
29 about not taking in the application now. He noted that other efforts of this type have
30 included a couple of members of the community in the discussions with the potential
31 applicant and with the staff.

32
33 Councilmember Leone said a good model for that is the Telecommunications Ordinance
34 and the way the City composed that review committee.

35
36 **Councilmember Leone moved, seconded by Councilmember Albritton, to adopt an**
37 **interim urgency ordinance of the City Council of the City of Sausalito extending the**
38 **moratorium adopted within the City of Sausalito by Ordinance No. 1186 on the**
39 **approval of any subdivisions, use permits, variances or any other applicable**
40 **entitlement which would allow for existing motels and hotels to be subdivided or**
41 **converted into condominiums for a period of ten months and fifteen days.**

42
43 **Councilmember Albritton noted that he seconded the motion with the**
44 **understanding that the City is going to try to complete the work sooner.**

1 **AYES: Councilmembers: Albritton, Leone, Vice Mayor Belser, Mayor Kelly**
2 **NOES: Councilmembers: None**
3 **ABSENT: Councilmembers: Weiner**
4 **ABSTAIN: Councilmembers: None**

5

6 **7. CITY MANAGER AND COUNCILMEMBER REPORTS**

8 **A. City Manager Pro Tem Reports – None**

9

10 **B. Councilmember Appointments and Councilmember Reports**

11 **1. Mayor Appointments of City Council Liaison to Citizen’s Oversight Committee**

12 Councilmember Leone was appointed as the Council’s representative on the task force.

13

14 **2. Mayor’s Appointment to some or all of the appointive positions on the Bicycle**
15 **and Pedestrian Task Force: 1 resident bike advocate, 1 resident pedestrian**
16 **advocate, 1 member of the business community**

17 This item was continued to a future City Council agenda.

18

19 **C. Councilmember Reports**

20 Councilmember Albritton noted Marin Transit has launched.

21

22 Councilmember Leone asked about the letter to the National Parks Service. The Council
23 at the last meeting determined that Councilmembers and members of the public could
24 submit suggestions to staff who would then congeal those into a coordinated response,
25 review them internally with the City Attorney and the planning department and then
26 submit that. He has some comments he will be submitting to the staff.

27

28 Councilmember Albritton said he’s been working with some members of the public and
29 they are presenting a draft.

30

31 Mr. Kermoyan noted the deadline is August 13, 2007.

32

33 **8. ADJOURNMENT**

34

35 **Councilmember Albritton moved, seconded by Vice Mayor Belser, to adjourn. The**
36 **motion was approved unanimously without a roll call vote. The next regular City**
37 **Council meeting will be held September 4, 2007.**

38

39 Respectfully submitted,
40 Tricia Cambron/ Minutes Clerk

41

42 **APPROVED:**

43