

Fairfax Town Council Minutes  
Regular Meeting  
Fairfax Women's Club  
Wednesday, January 12, 2011

The regular meeting was preceded by a special meeting closed session regarding: Conference with Legal Counsel re Anticipated Litigation (two cases).

Call to Order/Roll Call:

**COUNCILMEMBERS PRESENT:** Larry Bragman  
Pam Hartwell-Herrero  
John Reed  
David Weinsoff

**COUNCILMEMBERS ABSENT:** Lew Tremaine

**STAFF MEMBERS PRESENT:** Michael Rock, Town Manager  
Jim Moore, Planning Director  
Jim Karpiak, Town Attorney  
Laurie Ireland-Ashley, Finance Director  
Roger Meagor, Ross Valley Fire Chief  
Judy Anderson, Town Clerk

Mayor Bragman called the meeting to order at 7:05 pm.

Approval of Agenda and Affidavit of Posting

M/S, Weinsoff/Hartwell-Herrero, Motion to approve the agenda and the affidavit of posting.

AYES: Bragman, Hartwell-Herrero, Reed, Weinsoff  
NOES: None  
ABSENT: Tremaine

Announcement of Closed Session Action

Mayor Bragman announced that the Council had conferred with legal counsel regarding anticipated litigation in two cases and that direction was given to staff and Counsel but that no action had been taken.

Announcements

Mayor Bragman made the announcements as printed on the agenda.

Mayor Bragman suggested a brief silence to honor the six people who died in Tucson the previous week. He quoted from a speech given by President Kennedy when he announced Martin Luther King's death in 1968 and suggested that the silence was to contemplate the compassion and tolerance that was needed for our democratic traditions to endure.

Open Time

Yvette Wakefield, Main Court, requested that two items be placed on the next Council agenda, geoen지니어ing and the proposed ban on incandescent light bulbs. She stated that CFL bulbs were dangerous, contained mercury, were toxic waste and would be the only ones allowed after

the ban in 2014. She asked that one of the Council members support the placement of the requested items on the agenda or she offered to produce the necessary petitions to add the items to the agenda.

#### Presentation regarding Fairfax Local Currency Project - Reed

Councilmember Hartwell-Herrero recused herself because of her position as Executive Director of Sustainable Fairfax, a sponsor of the project.

Councilmember Reed introduced the topic and explained the potential benefits of the program.

Polla Pratt, an expert in Local Economic Development and David Bernard, Environmental Forum of Marin, presented a film clip from a television news story about a similar program in West Marin. They gave a brief overview of local currencies; outlined the benefits of establishing a local currency program; addressed potential concerns; explained the proposed collaboration, the organizational structure and the launch process; and asked that the Council support the "FairBuck" project.

Mayor Bragman expressed concern about the legality of the program and requested verification of the legality.

Councilmember Weinsoff asked for the source of the requested \$4,000 contribution from the Town.

Mayor Bragman stated that it seemed appropriate to use the expected return of the Town's investment in the Marin Energy Authority to fund the Town's share of the program.

There was a consensus of the Council to continue the item to the next meeting to receive more information about the program.

#### Presentation from Marin Sanitary Service regarding food waste and other programs – Patty Garbarino

Patty Garbarino, President of Marin Sanitary Service, introduced her staff and reviewed the history of the organization started in 1956. She provided an overview of the many programs offered by her company. She described the efforts of Marin Sanitary to partner with the environmental community to avoid landfill costs and to provide a cleaner environment and the company's alignment with the Zero Waste Plan. She presented the results of a recent Waste Audit that concluded that approximately 75 to 80% of the waste from residential/commercial could be recovered; that enhanced commercial recycling could potentially increase overall diversion by 6%; and that an organics collection program for residential/light commercial sources would have the potential to increase overall diversion by approximately 6 to 10%. She also described the emphasis on commercial recycling and the outreach efforts to increase participation and a pilot program allowing residential customers to include food waste with yard waste that had been started in limited select areas including Fairfax. The operation of their organic composting facility in Zamora, California was explained and it was noted that it was the only permitted site with available capacity to compost food and green waste.

Councilmember Weinsoff reported on the dramatic reduction in the waste his family produced as a result of the food waste program offered.

Councilmember Weinsoff ascertained that the contract with Marin Sanitary had not been finalized.

Mayor Bragman noted that the Zero Waste Committee needed to meet and that they could then start up negotiations with Marin Sanitary again in the next couple of months.

Ms. Garbarino stated that what set Fairfax apart was that the Town received all of their available services at the lowest rate in Marin but that updates to the contract were needed.

Councilmember Hartwell-Herrero commended them for their efforts, especially their advocacy program for producer responsibility; asked for suggestions on ways they could help influence policy on the issue at the local and State level; and noted that SB1016 addressed the issue. She acknowledged the difficulty of reaching diversion goals as an affluent community.

Councilmember Reed stated that the educational component of the programs was vital and that we needed to get to where our grandparents were with the use of resources.

#### Interview and appointment of candidate to the Design Review Board for a full three-year term to January 31, 2013

Neither candidate was present at the meeting and the item was continued.

#### Interview and appointment of Planning Commission Candidates for two full four-year terms to December 31, 2014 and for two full four-year terms to January 31, 2015

Town Clerk Anderson presented the staff report.

All applicants were present.

Mayor Bragman expressed appreciation to the four incumbents for the work they did on the Planning Commission and stated that they were dedicated, qualified and diligent and had all done commendable work in a difficult job.

M/S, Weinsoff/Hartwell-Herrero, Motion to appoint Shelley Hamilton and Brannon Ketcham for four-year terms to December 31, 2014 on the Planning Commission and to appoint Morgan Hall and Shelby LaMotte for four-year terms to January 31, 2015 on the Planning Commission.

AYES: Bragman, Hartwell-Herrero, Reed, Weinsoff  
NOES: None  
ABSENT: Tremaine

Planning Director Moore noted that Brannon Ketcham had been elected as Chair of the Commission and Shelley Hamilton as Vice Chair at the last Planning Commission meeting.

#### Council Reports and Comments

Councilmember Reed reported that he had not attended any meetings at the Town's expense since the last Council meeting. He reported that he had met with Circle Bank and was disappointed that they wouldn't be opening a branch in Fairfax; that he had met with Michael Mackintosh, owner of Marin Town and Country Club, and his consultant, Angelina Frost, who had been working to put together some kind of plan for the Club noting that he had been approached because of his experience doing charrettes; and reported on his work with the free tax service provided through the Fairfax Library.

Councilmember Weinsoff stated that he had no meetings to report.

Vice Mayor Hartwell-Herrero reported on two "Open Mic" nights at the Youth Center and stated that the First Friday youth events were being held with the help of Jack Irving and had been very successful. She reported that she had also attended the Chamber's holiday dinner.

Mayor Bragman reported that he had attended the January 4<sup>th</sup> meeting of the Board of Supervisors when they passed the plastic bag ban. He also reported that Marin Telecommunications was trying to finance and organize a discount program for the elderly and disabled, a program that was not renewed by Comcast in the most recent franchise agreement. He explained that the program would be offered at a very low cost to the community with minimal loss of franchise fees.

Michael Mackintosh, Pastori Avenue, asked about the closed session items. Town Attorney Karpiak explained why the discussions were not disclosed in open session. Mr. Mackintosh expressed disappointment that the Town was a plaintiff in the Berg case.

#### Town Clerk Report

Town Clerk Anderson presented a report on her recent attendance at the League of California Cities sponsored "Election and New Law" Workshop.

#### Town Manager Report

Town Manager Rock presented a report that air, soil, and groundwater testing activities were to be done at Fair Anselm Center by the California Department of Toxic Substances Control (DTSC) the week of January 24, 2011. He explained that, once the investigation was complete, DTSC would determine a suitable cleanup remedy.

Mayor Bragman asked that the information about the testing be placed on the Town's Web site.

#### Consent Calendar

**Approval of Town Council minutes of November 17, and December 1, 2010 – Town Clerk**

**Adoption of Resolution No. 11-01 of the Town Council of the Town of Fairfax, Reciting the Fact of the General Election Held on November 2, 2010, Declaring the Result and Such Other Matters as Provided by Law – Town Clerk**

**Authorization for Mayor Bragman to send a letter to the Department of Justice commenting on the need to strengthen ADA protections for electromagnetically sensitive individuals – Bragman**

**Authorization for the Town Manager to sign an Agreement with the American Red Cross for use of the Pavilion as an emergency shelter - Town Manager**

M/S, Reed/Hartwell-Herrero, Motion to adopt the Consent Calendar with the removal of the Financial Reports and the letter to the California Public Utilities for discussion.

AYES: Bragman, Hartwell-Herrero, Reed, Weinsoff  
NOES: None  
ABSENT: Tremaine

**Authorization for a Letter Recommending Three Candidates for appointment to the California Public Utilities Commission – Bragman/Reed**

Councilmember Weinsoff stated that he had asked that the item be discussed because he didn't think the Council should endorse candidates and that he wasn't comfortable endorsing candidates who hadn't requested his endorsement. He stated that he was willing to support green energy policies without endorsing candidates.

Mayor Bragman explained that the placement on the agenda was prompted by the appointment of Nancy McFadden as the new Chief of Staff and that she came from PG&E and had worked on the Proposition 16 campaign against clean energy; that change was needed at the California Public Utilities Commission (CPUC); that the CPUC had endorsed the policies of the utility companies and did not support alternative energy; that if the CPUC went corporate the fossil fuel based energy policy would continue; and that it was essential to get people on the Commission who would move toward a sustainable energy policy. He provided brief backgrounds of the candidates and noted that Supervisor McGlashan had announced his candidacy at the last Board of Supervisors' meeting.

Vice Mayor Hartwell-Herrero, stated that there was a big difference between candidates running for office and appointees, so that she was comfortable with the recommendations for appointment.

Councilmember Weinsoff stated that he had been persuaded by Vice Mayor Hartwell-Herrero's remarks that the endorsements were appropriate.

Mayor Bragman opened the discussion to the public.

Michael Mackintosh, Pastori Ave., requested that, if the Town was successful with the collaboration with San Anselmo on the Pastori Pipe project, any funds returned to the Town from San Anselmo be placed in the Measure K account.

M/S Reed/Hartwell-Herrero, Motion to authorize the letter as requested.

AYES: Bragman, Hartwell-Herrero, Reed, Weinsoff  
NOES: None  
ABSENT: Tremaine

#### Approval of Financial Reports through November, 2010 - Finance

Mayor Bragman requested clarification about the revenue detail for ERAF and Vehicle Licensing fees and asked about monthly payments for IT services.

Town Finance Director Ireland-Ashley offered to provide the information regarding IT costs to the Council via email.

Mayor Bragman asked about the funding for the Pastori project and the status of the project.

Town Manager Rock described efforts to have San Anselmo contribute to the outfall project since their storm drain fed into the system. He stated that no agreement had yet been reached.

Michael Mackintosh, Pastori Ave., stated that he was hopeful that any funds returned from San Anselmo would go to replenish the Measure K fund.

Mayor Bragman stated that the only agreement that had been discussed was to possibly trade undergrounding money for disposing of San Anselmo's runoff.

Mr. Mackintosh stated that \$960,000 had been spent on the Pastori pipe project to date.

M/S, Hartwell-Herrero/Reed, Motion to approve the Financial Reports as presented.

AYES: Bragman, Hartwell-Herrero, Reed, Weinssoff  
NOES: None  
ABSENT: Tremaine

Second Reading and Adoption of Ordinance No. 756 an Ordinance of the Town Council of the Town of Fairfax adopting 2011 Building Codes – *Building*

Town Attorney Karpiak presented the staff report.

Mayor Bragman opened the public hearing.

Councilmember Reed referred to the section of the building code regarding septic systems that required approvals from different agencies for the installation of compostable toilets. He suggested that the requirements were cumbersome and that perhaps the code could be changed to relax those requirements.

Town Attorney Karpiak stated that to amend the ordinance would require a new introduction and first reading and that findings would have to be made that there was a public health benefit or a public safety reason for such a change.

Councilmember Weinssoff reported that a county-wide green building ordinance would be brought forward to the cities in Marin and that amendments would be necessary to the Town building code for that ordinance.

Mayor Bragman noted that the current Town Code included a provision that required sewer hookups for living units within a certain number of feet of the existing sewer lines.

Mayor Bragman closed the public hearing.

Mayor Bragman adjourned the meeting for a break from 8:55 to 9:10 p.m.

Second Reading and Adoption of Ordinance No. 757 an Ordinance of the Town Council of the Town of Fairfax adopting 2011 Fire Codes – *Fire Chief*

Fire Chief Meagor presented the staff report.

Mayor Bragman opened the public hearing.

John Owens, Frustuck Ave., ascertained that the 2010 building code was being adopted in 2011.

M/S, Reed/Hartwell-Herrero, Motion to waive further reading and to read the title only of Ordinance No. 757, an Ordinance of the Town Council of the Town of Fairfax adopting the 2011 Fire Code.

AYES: Bragman, Hartwell-Herrero, Reed  
NOES: Weinssoff  
ABSENT: Tremaine

M/S, Hartwell-Herrero/Reed, Motion to adopt Ordinance No. 757, an Ordinance of the Town Council of the Town of Fairfax adopting the 2011 Fire Code.

AYES: Bragman, Hartwell-Herrero, Reed  
NOES: Weinsoff  
ABSENT: Tremaine

Adoption of Resolution No. 11-02 of the Town Council of the Town of Fairfax in support of a local currency project – Reed

Councilmember Hartwell-Herrero recused herself because of her position as the Director of Sustainable Fairfax, a sponsor of the project.

Councilmember Reed presented the report and agreed to continue the item to the February meeting.

Mayor Bragman stated that an agreement was needed with the currency board; that how the money would be spent should be outlined; and that the legal issues had to be clarified.

There was a consensus of the Council to continue the item to February.

Mayor Bragman opened the discussion to the public.

Yvette Wakefield, Main Court, stated that it seemed like a wonderful idea, that a similar program was working in West Marin; expressed disappointed that it was not more of a local thing; that the board was small and that having citizen members should be considered; and asked whether or not the board meetings would be public.

David Bernard stated that he envisioned three voting members so that the organizations putting forward the money would have input on the decisions made.

Councilmember Reed stated that the questions raised would be addressed at the February meeting and noted that the Town of Fairfax was not the lead agency for the project.

Discussion/Consideration of the establishment of a General Plan Implementation Committee (GPIC) and a Climate Action Committee – Planning

Planning Director Moore presented the staff report.

Town Council discussed the report and the options presented.

Councilmember Hartwell-Herrero expressed support for the two different committees and staff's suggested makeup of the committees.

Councilmember Reed stated that he thought more than one General Plan Advisory Committee member might be interested in participating on the GPIC.

Mayor Bragman opened the discussion to the audience.

Michael Mackintosh stated that he hoped the Town Council would take the recommendations of Planning Director Moore and move it forward to complete the very important project of implementation of the General Plan.

There was a consensus of the Council to direct staff to return with resolutions to form the committees as recommended.

Discussion/Consideration of possible guidelines for Medical Marijuana Dispensaries - Planning

Planning Director Moore presented the staff report. He stated that the Planning Department

was expecting a number of applications when the moratorium on new dispensaries ended and that the goal was to have the criteria in place for review of those applications. He explained that recent legislation provided that no dispensary could be located within a 600-foot radius of any public or private school. Staff recommended that dispensaries be located only in commercial zones, not abutting residential areas, with a minimum distance between dispensaries of 150 feet; that only two dispensaries be allowed in Fairfax; and that a use permit be required. Director Moore led a Council discussion of the issues.

Mayor Bragman opened the discussion to the audience.

Yvette Wakefield, Main Court, stated that she was starting a medical marijuana cooperative; that the Town could be denying her rights to not allow it; and that she was doing it because she couldn't afford the prices charged by Marin Alliance.

Matthew Witemyre, UFCW Union representative, Local 5, stated that he had provided assistance to the City of Oakland; that Local 5 represented food and commercial workers; that their collective bargaining agreements could be used as the standard; that the union could make the community safer; that unionization would develop a commercial standard to bring cannabis out of the underground and into a legitimate business environment; offered his assistance; and provided the Clerk with his contact information.

Ryan Indigo Warnum, stated that he lived and attended graduate school in San Francisco; that he had been a patient and patient advocate for over ten years; that he was a lifelong member of NORMAL, the National Organization for the Reform of Medical Marijuana law; that he was a member of a small patient collective in Fairfax; cautioned the Council to be wary of awarding an exclusive contract to anyone because competition was the cornerstone of the American economy; that the Council had an opportunity to set the standards for the County of Marin; that sensible regulations would be in compliance with State law and would also benefit the patients; that competition encouraged affordability; that the fees charged by the Town should be significantly high to cover the costs; and that the qualifications of the applicants should be carefully reviewed with background checks and periodic reviews.

Jeff Sutter, Marin resident, offered to assist the city with any security issues with the ordinance.

Councilmember Hartwell-Herrero stated that she would like to review parcels that were abutting residential areas and were in the Commercial zone and noted that the State had severely limited the options so that other sites should be explored.

Planning Director Moore offered to expand the possible commercial locations when the draft ordinance was presented to the Planning Commission.

#### Discussion/Consideration of short-term reorganization of Town staff – *Town Manager*

Town Manager Rock presented the staff report.

Mayor Bragman ascertained that Building Official Lockaby was interested in assuming the additional role of Public Works Manager as part of the short-term reorganization.

Mayor Bragman opened the discussion to the public.

John Owens, Frustuck Ave., stated that former Lead Worker Adams had served as the backup for the Building Inspector; that the current building official had no current backup; and stated that the Town couldn't afford to hire staff but was spending money on frivolous lawsuits.

Mayor Bragman stated that the Berg case was still pending; that he didn't think it was a "frivolous lawsuit;" that it wasn't taken lightly; that the defendants were not going to recover their costs; that no award of attorney's fees had been made; and that he didn't think the fees could be recovered under the statute.

Town Attorney Karpiak clarified that the tentative ruling called for reimbursement of the defendants' costs included filing fees, not legal fees.

Michael Mackintosh, Pastori Ave., suggested that the current Town staff be used to best serve the Town for any consolidation of departments. He also asked that more money not be spent on consultants.

Mayor Bragman stated that they were trying to maximize the use of the current staff.

Ryan O'Neil, Madrone Road, Open Space Committee (OSC) co-chair and founding member, stated that it wasn't true that most of the people didn't even know about the Egger Grove property; that many people had contributed to the purchase of the property; that every residence in the Town had received a mailer from the OSC about the property; and that defending our open space and access to open space were important to our Town.

Councilmember Weinsoff agreed with Mr. O'Neil and quoted Michael Sherwood, an environmental lawyer, who said "A right unprotected is a right you don't have." He stated that it was incumbent on the Council to protect access to the open space purchased by many citizens of Fairfax.

#### Discussion/Consideration of Council Committee Assignments – Town Clerk

There was a consensus of the Council to continue this item to the next regular meeting when all Council members would be present.

The meeting was adjourned at 10:40 p.m.