

Fairfax Town Council Minutes  
Regular Meeting  
Fairfax Women's Club  
Wednesday, March 2, 2011

The regular meeting was preceded by a special meeting closed session regarding pending litigation, Fairfax v. Berg; and Performance Evaluation, Town Manager.

Call to Order/Roll Call:

**COUNCILMEMBERS PRESENT:**

Larry Bragman  
Pam Hartwell-Herrero  
John Reed  
Lew Tremaine  
David Weinsoff

**STAFF MEMBERS PRESENT:**

Michael Rock, Town Manager  
Jim Moore, Planning Director  
Jim Karpiak, Town Attorney  
Laurie Ireland-Ashley, Finance Director  
Chris Morin, Chief of Police  
Roger Meagor, Ross Valley Fire Chief  
Judy Anderson, Town Clerk

Mayor Bragman called the meeting to order at 7:25 pm.

Approval of Agenda and Affidavit of Posting

Councilmember Weinsoff noted that some of the items did not have staff reports and/or supporting documentation to facilitate discussion; that the public could not become familiar with items that did not have information included in the packet ahead of time; and that the Town Council stood for greater transparency and should make a better effort to inform the public about items to be discussed.

M/S, Tremaine/Reed, Motion to approve the agenda with the item regarding the Marin Sanitary contract to be heard before the Consent Calendar and the item about the use of Open Space funds to be heard right after the update on the Berg litigation.

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

Announcement of Closed Session Action

Mayor Bragman announced that the Council had discussed the status of the Fairfax v. Berg case, had decided to go forward with the appeal to be paid for without the use of General Fund monies, and that no action had been taken on the personnel matter.

Announcements

Mayor Bragman made the announcements as printed on the agenda. He also announced an evening with a visitor from the Town's sister peace community from Columbia at the Community Church the following Tuesday and an all Board and Commission dinner sponsored by the Fairfax Volunteers on Thursday, March 3<sup>rd</sup>. Vice Mayor Hartwell-Herrero announced that the Teen Night had been rescheduled for March 25<sup>th</sup> and that there was a newly created vacancy

on the Youth Commission. Councilmember Weinsoff announced that the Documentary Film Festival would be held on April 1, 2 and 3 at the Fairfax Theater.

### Open Time

Andrea Summits, Deer Park Neighborhood, stated that she had a child at Manor School and also had twins that would soon attend Manor; that the School Board had decided to address the overcrowding in the district by expanding each of the existing schools; that 2 or 3 options would be discussed at the School Board meeting the following Thursday; that the District was going to re-assign Fairfax children to other schools including Brookside, Upper Brookside and Wade Thomas; and expressed hope that the Town Council would pay attention to the issue.

Councilmember Bragman stated that he would try to attend the next School Board meeting on the 10<sup>th</sup>; that he hoped another Council member would also be able to attend; that the School Board would be discussing redistricting and sending Fairfax children to San Anselmo schools; and that the decision had been made to increase the capacity at the existing schools which necessitated moving children to San Anselmo.

Rose Taber, Hillside Avenue, stated that Spirit Rock was planning an expansion and that she thought that it would impact Fairfax.

Mayor Bragman agreed that the proposed project would impact traffic in Fairfax and asked that the matter be placed on the April agenda for discussion.

### Presentation from HF&H Consultants on proposed solid waste rate increase - Marva Sheehan

Marva Sheehan, HF&H Consultants, presented the background of the rate review process, a summary of the findings and basis for the proposed 25.96% rate increase, and led a discussion of the review. She reported that they worked for the Marin Franchisors Group made up of several towns; that a detailed review was done every third year (2010, 2013); and that an index review was done in other years (2011, 2012).

Mayor Bragman asked about a tiered rate system; about the impact on the cost if Fairfax were to be a full partner of the Franchisors Group; what rates were charged in other locations; about revenue sharing; whether the rate increase accounted for an expanded food waste program, and about senior and/or low income rates.

Ms. Sheehan noted that the service was more encompassing than just garbage and that the amount of garbage picked up didn't change the set costs.

Vice Mayor Hartwell-Herrero stated that she wanted the contract to move toward zero waste.

In response to a question from Vice Mayor Hartwell-Herrero about what creative things were being done in other jurisdictions, Ms. Sheehan stated that some did revenue sharing, some with revenue sharing only beyond a certain point, but that most contracts included some kind of sharing. Ms. Sheehan also acknowledged that the omission of the twenty gallon can in the rate comparison provided was an oversight.

Councilmember Reed stated that there was a difficult conundrum with people trying to buy less and throw less away but, like the water district, less use promoted higher costs; that it wasn't possible to control how much people threw out, but that perhaps there could be a different schedule of how often garbage was picked up.

Ms. Sheehan stated that there were State regulations that governed the frequency of pickups.

She further stated that there was currently an integrated system with recycling, green waste and garbage and that a lot of public education was needed.

Mayor Bragman ascertained that the proposed rate increase included expanding the food waste program; that Fairfax had very few residents using the large cans; and that the rate increase included a senior and low income rate.

Vice Mayor Hartwell-Herrero asked about the cost of the various materials picked up; landfill, green waste and recycling.

Ms. Sheehan explained that the number of routes and the number of customers was available, but not a breakdown of the type of materials picked up.

Mayor Bragman requested information about the franchise rates charged by other jurisdictions.

Mayor Bragman opened the discussion to the public:

Mark Bell, Dominga Ave., stated that a lower rate for a 20-gallon can should be made available; that Marin Sanitary was still running trucks for less garbage, but was using less fuel and causing less strain on their workers; and that there were fewer workers but less lifting so that Workers Compensation costs should have been lower too.

Fred Ezazi, owner of School Street Plaza, stated that his tenants were forced to put everything in the garbage because green waste was not picked up very often; that recycling and green cans should be as large as the garbage cans; that they should all be picked up on the same day; and that they were trying to reduce the garbage created. Ms. Garbarino provided Mr. Ezazi with her contact information.

Sierra Salin, Cascade Drive, stated that Marin Sanitary was doing a good job but that the Town should get rid of garbage service and let residents deal with their own stuff on their own property.

Pam Meigs, Cypress Drive, suggested that if you were a single person or next to another single person, you could share a can.

George Bianchini, former owner of Broadway Video, stated that the former garbage company had trucks that leaked hydraulic fluid and that Marin Sanitary was much more responsible.

Jory Prum, Wreden Ave., stated that residents were not allowed to share a garbage can; that each address was required to have a garbage can; but that sharing would be a nice alternative.

Mimi Newton, Mono Ave., stated that the Conservation Element of the General Plan provided a rigorous schedule for getting to zero waste.

Patty Garbarino, President of Marin Sanitary, stated that they thought it was possible to get to zero waste; that Title 14 and the Fairfax Town Code required each living unit to have garbage service every 7 days; that she supported redoing the garbage bills; that they tried to keep the rates as low as possible; noted that one of their workers had been injured which raised their Workers Comp insurance rates; and that she was proud of the service that Marin Sanitary provided.

Mayor Bragman asked if the low income program had been advertised.

Ms. Garbarino stated that their low income rates followed the PG&E lifeline rate; that elderly and

senior rates were honored but were being phased out and replaced by low income rates; and that the PG&E lifeline rate was already in place and quantifiable.

Pam Meigs, Cypress Drive, stated that she didn't understand why cans couldn't be shared. Ms. Garbarino offered to email the provisions of Title 14 to the Town for distribution.

Michael Mackintosh, Pastori Ave., stated that he was very pleased with the service from Marin Sanitary and their professionalism; described the assistance they had provided for his special disposal problems; and stated that he was very glad that they were our carriers.

Sierra Salin, Cascade Drive, stated that it was a shared cost for the whole community and it was important that it was equitable and fair.

Mayor Bragman closed the public hearing. .

There was a consensus of Council to consider the proposed rate increase at the April meeting.

#### Discussion of status of the solid waste and recycling contract with Marin Sanitary Service – Zero Waste Committee

Mayor Bragman stated that Marin Sanitary was operating under a very old franchise agreement; that it had been written in a very different environment; that a green waste program and zero waste goals had subsequently been developed; that Vice Mayor Hartwell-Herrero's presence on the Council had prompted a fresh look at the agreement; that he and the Vice Mayor had become members of the Zero Waste Committee; that they were partners in the enterprise because it was a franchise for Fairfax; that there should be a decent rate of return for Marin Sanitary; that Fairfax received franchise fees and road impact fees from Marin Sanitary; that they also wanted to protect ratepayers and a good franchise agreement for the Town; that Marin Sanitary had taken proactive steps and was forward thinking; that he was, as a member of the committee, looking at other agreements; that it was a complex issue; and that they were proceeding carefully because it would be a ten-year agreement.

In response to a question from Councilmember Weinsoff, Mayor Bragman stated that he anticipated voting on a contract before the end of the year. Councilmember Weinsoff stated that it should be completed by the end of the fiscal year.

Councilmember Tremaine stated that the contract should be completed sooner; that perhaps the committee approach wasn't working; that the Town wasn't being a very good partner with Marin Sanitary; and that the delay was making it difficult for Marin Sanitary to implement the programs that the Town wanted; and that the Town was paying 25% less than the cost of providing the service according to the outside audit presented.

Vice Mayor Hartwell-Herrero stated that she was hoping to raise the rates and provide a little more time to complete the contract.

Patty Garbarino, Marin Sanitary, stated that they hadn't realized a profit in over four years; that they had provided service for seven years without a contract; that they had been negotiating all that time with different town managers and different people on the Council; that they had lost \$357,000 with the delay; that no bank would allow them to finance with such a contract; that the contract would last two more years; and that they were anxious to move forward with the contract.

Mayor Bragman stated that the revenues had been set by the Town Council and that the rates could be raised without finishing the contract; and that the rates were a separate issue from the

contract.

Councilmember Tremaine stated that it was being made more complicated than it needed to be and that a business agreement could be in place and that the contract could evolve.

Vice Mayor Hartwell-Herrero stated that the Town had a goal of zero waste by 2020; that they were trying to create something visionary that couldn't be done with the existing contract; and that they were trying to get a contract by July first.

Patty Garbarino, Marin Sanitary, stated that they planned to help get Fairfax to zero waste; that they had all the tools in place, and that she was looking forward to July first.

Mayor Bragman opened the discussion to the public.

Jory Prum, Wreden Ave., stated that the Town received about the same amount in franchise fees from Marin Sanitary as in business license fees the previous year.

### Council Reports and Comments

Councilmember Weinsoff reported that he had attended three MCCMC meetings: the pension committee, the legislative committee, and the regular dinner meeting.

Vice Mayor Hartwell-Herrero reported on the February Teen Night; on a meeting with the Food Bank representatives, and on the zero waste committee.

Councilmember Reed reported on meetings on the Fairfax currency project and on the letter he and Mayor Bragman had sent to the County of Marin on the Sir Francis Drake project near Samuel Taylor Park.

Councilmember Tremaine reported on the February meeting of the Marin Energy Authority.

Mayor Bragman reported on the activities of the Marin Telecommunications Agency. He also reported on the planned San Francisco Food Bank project at the Community Church.

### Town Manager Report

Town Manager Rock reported that the pedestrian bridge by the tennis courts was almost complete and suggested a ribbon cutting for the opening of the bridge before the Council meeting scheduled for March 16<sup>th</sup>.

### Consent Calendar

**Approval of Town Council minutes of January 12 and February 2, 2011 – Town Clerk**

**Approval of Financial Reports through January, 2011- Finance**

**Report on the status of the presence of perclorethylene (PCE) at the Fair Anselm retail center – Town Manager**

**Adoption of Resolution No. 11-03, Approving a Job Description and Salary Schedule for the Chief Building Official/Public Works Manager position – Town Manager**

**Adoption of Resolution No. 11- 09 a Resolution of the Town Council of the Town of Fairfax adopting overall financial policies – Finance**

**Adoption of Resolution No. 11-10, a Resolution of the Town Council of the Town of Fairfax adopting a reserve policy – Finance**

**Adoption of a Proclamation declaring April as Fair Housing Month in Fairfax – Clerk**

**Adoption of Resolution No. 11-12, a Resolution of the Town Council of the Town of Fairfax Authorizing Temporary Closure of Certain Streets and Portions Thereof, to allow a Little League Opening Day Parade on Saturday, March 12, 2011 – Town Clerk**

**Adoption of Resolution No. 11-13, a Resolution of the Town Council of the Town of Fairfax Honoring Fairfax Library Branch Manager Gail Wiemann on the occasion of her retirement – Town Clerk**

**Adoption of Resolution No. 11-14, a Resolution of the Town Council of the Town of Fairfax in support of Wisconsin Public Workers Union - Bragman**

M/S, Tremaine/Reed, Motion to approve the Consent Calendar with the removal of the item regarding the termination of the MOU with San Anselmo for discussion.

AYES: All

Mayor Bragman adjourned the meeting for a break from 9:15 p.m. to 9:30 p.m.

Approval of the termination of the MOU with San Anselmo for recreation program support – Clerk

Vice Mayor Hartwell-Herrero stated that she had spoken to the Town Clerk during the break and was reassured that the insurance requirements were in place for Fairfax to assume the responsibility for the recreation programs.

M/S, Hartwell-Herrero/Weinsoff, Motion to approve the termination of the MOU with San Anselmo for recreation program support.

AYES: All

Introduction and First Reading of Ordinance No. 759, an Ordinance of the Town Council of the Town of regulating the location, number and operation of medical marijuana dispensaries in the Central Commercial (CC), Highway Commercial (CH), Limited Commercial (CL) Districts of the Town

Mayor Bragman recused himself because of pro bono work he had done for Marin Alliance.

Planning and Building Services Director Moore presented the staff report. He noted that the residential language and the 100-foot language had been deleted from the draft ordinance. He explained that the new State law restricting dispensaries near schools coupled with the small commercial areas in Fairfax provided a limited number of potential sites. He noted that, if a school closed in the future, it could open up more possible sites.

Issues raised during the discussion included the difference between cooperatives and dispensaries; the possible conflict with State and Federal law; the definition of “school” for the purposes of the ordinance; the appropriate number of dispensaries for Fairfax; parking restrictions; cultivation sites; non-profit versus for profit dispensaries; and the use permit process for marijuana dispensaries;

Matthew Witmyer, Chief of Staff of MEDICO, a cannabis cooperative in West Marin, suggested

that the Town change the wording to “not for profit” instead of “non-profit;” because cannabis dispensaries and cooperatives could not qualify as 501(c)(3) organizations because it was a Federal tax designation and cannabis was against Federal law. Councilmember Tremaine noted that the wording in the ordinance stated “shall not make a profit.”

Mr. Witmyer explained the definitions for cooperatives, collectives and dispensaries; stated that that local jurisdictions did not have to enforce federal guidelines according to recent court cases; and thanked the Town Council for taking up the issue.

Dan Rush, Cannabis Division Director for United Food and Commercial Workers Union of California; Local 5, stated that he was honored to be a part of the process in many areas in the state; that his union was the largest food processing and agriculture workers union in the country; that he had worked on ordinances around the State and offered his assistance; that he was committed to the industry; that he promoted good working conditions as well as a good environment for the patients and the community; that their collective bargaining agreements set standards for the industry; that he was working on State legislation to make the operations legal in the State; that there were serious dedicated workers in the industry; and that Medico was their flagship employer.

Craig Litwin, former council member from Sebastopol, also a city with around 7500 residents, stated that he had worked on the original dispensary ordinance; that he was available to help Fairfax; suggested that the town look at a competitive application process if competition was a motive for the ordinance; and asked that they consider not using the State ID card process because of the expense and problems that had arisen with its use in other jurisdictions; and suggested that the definition of “school” be clarified with reference to the Montessori School mentioned in the discussion.

Rose Taber, Rainbow Fabrics, stated that they shouldn’t limit the number; that if applicants could meet the criteria, they should be allowed; that businesses changed so the ordinance shouldn’t be too restrictive as to location; and suggested that language be included in the ordinance to prevent hanging around the dispensary.

Larry Bragman, Hickory Road, urged the Council to take their time with the ordinance; related his experience working with the Marin Alliance when it first opened and the extensive process involved; commented on the patient records portion of the ordinance noting that a State ID card required payment of a \$100 license fee; that a confidentiality presumption needed to be included in the section because confidential medical records were involved; that language might be created to allow the Town to use a medical auditor; that there should be a yearly criminal background check of employees that was verified annually; that the Council should consider putting in some kind of living wage language in the ordinance; that the Council should decide whether there should be special fees for operation besides the use permit fee and the taxes; that medical marijuana shouldn’t be marginalized but that it was a unique business; that it was not like other businesses so the competition issue wasn’t really relevant; that there already was competition; that there would be traffic issues; asked that the Council use their discretion prudently and think about the broader picture; and that they shouldn’t feel rushed.

Mimi Newton, Open Space Committee Chair, stated that she was interested in the tax revenue side of the issue and asked if any of the sales tax could be applied to a specific purpose.

Lynette Shaw, Marin Alliance, thanked the Town for supporting medical marijuana over the years; stated that she was glad to think that the Town might be relaxing some of the requirements; and thanked the Council for their compassion.

Councilmember Tremaine suggested that the ordinance be brought back for introduction with

the changes requested. He asked for clarification of the kindergarten issue.

Planning Director Moore stated that the ordinance didn't specifically state which parcels would qualify as medical marijuana dispensary sites and that the State legislation regarding schools near dispensaries would come up in the application process.

Town Attorney Karpiak noted that the moratorium was due to expire on May 16<sup>th</sup> and that the Town could receive an application under the current rules and recommended that they consider extending the moratorium if necessary.

77 Porteous Avenue; Application # 10-32, Request for a driveway width Variance to construct a 33-foot wide driveway to provide the required three on-site parking spaces for a new single-family residence; Assessor's Parcel No. 002-082-26; Residential RD 5.5-7 Zone; Scott Hurd, applicant/owner; CEQA categorically exempt, § 15303(e); Adoption of Resolution No. 11-15, a Resolution of the Town Council of the Town of Fairfax granting a driveway variance for a project located at 77 Porteous Avenue - Planning

Planning Director Moore presented the staff report.

Mayor Bragman opened and closed the public hearing when no speakers came forward.

M/S, Tremaine/Reed, Motion to approve the Resolution as presented.

AYES: All

Discussion/Consideration of terminating Agreement with Muni Services for administering the Business License Program – Finance

Mayor Bragman presented an overview of the topic and the history of the business license change to an outside contractor. He stated that there had been a consensus of the Council to approve of the outsourcing of the business license process with the motive to save business people money and to save the Town money; that the Council had missed the bigger issues including that the merchants didn't want the Town to outsource or corporatize the process; that they had gone forward with tunnel vision to meet a deadline and had adopted the wrong model for the community; that they now needed to terminate the contract with Muni services and review the process; that we were in a wave of democracy all over the world that included Fairfax; that they had learned a valuable lesson; and that they would engage the community and the Chamber in future decisions.

Mayor Bragman opened the discussion to the public.

Jory Prum, Wreden Ave., gave a presentation of the business license process to date and research that he had done. He presented a business license cost analysis. He questioned how the decision was made; stated that the Town Council had acted correctly based on the information presented to them; questioned the calculation of the fully burdened hourly rate used in the process; and stated that the Town needed to make it more efficient.

Mayor Bragman asked Mr. Prum to bring his information back when the Council discussed what to do next with the business license process.

Rose Taber, Rainbow Fabrics; stated that the work that Jory Prum had done on the subject was fantastic and that she was glad that a lesson had been learned.

M/S, Bragman/Reed, Motion to terminate the contract with Muni Services for the processing of

business licenses.

AYES: All

Councilmember Weinsoff asked that direction be given to staff to consult businesses and the Chamber in the future when any item related to the business community was being considered.

Mr. Prum asked if businesses could pay their business license fees at Town Hall without the \$25 administrative fee.

Update on Marin Superior Court No. CV 086177, Town of Fairfax v John and Marlia Berg - Bragman

Town Attorney Karpiak presented the staff report. He referred to a memo from John Sharp, the attorney handling the matter, about the status of the appeal of the decision against the Town in the case. He reviewed the history of the case going back two years when the suit was first filed. He noted that the Council had made the decision to pay for the appeal with private funds, not from the Town's general fund, and explained that the case was discussed in closed session to protect the Town's legal strategy.

Mayor Bragman stated that when the Town purchased the property it was for the public benefit and for the people of Fairfax; that it was reasonable access to the property that was sought; that it would have had a much greater access and use if it had been developed as planned by the Bragados; that the Town was asking for reasonable pedestrian access during daylight hours as opposed to access to three or four homes on the property; that it needed to be revisited; and that the residents who contributed generously to the purchase deserved to have access to the property.

Councilmember Tremaine stated that it would be important for the community to come together on the appeal as they did not want to further burden general fund monies.

Mayor Bragman opened the discussion to the public.

Pam Meigs, Cypress Drive, recapped the points she had made in a letter she had written to the newspaper; stated that she had helped start the Open Space Committee and was honored that the Town had looked at the bigger picture; noted that at some point the property ownership would change; and that the Open Space Committee should use whatever funds they had available to secure access to the Egger Grove.

Michael Mackintosh, thanked the Town Council for talking about the issue in public as he had requested; that from his point of view, the Town was being a bully and was spending money without the permission of the people; and that the public should have been given an opportunity to speak to whether they wanted the money to be spent on the issue. He stated that the Town could not afford such a lawsuit.

Mayor Bragman stated that the tragedy was that all the resources that had been spent to secure what was rightfully the Town's could have been used to enhance the property instead of being used to secure reasonable access.

Councilmember Weinsoff stated that he understood that the Appeals Court had a mediation program that would provide another opportunity to try to reach an agreement.

Mimi Newton, Mono Ave., Chair of the Open Space Committee (OSC), stated that the issue had been raised repeatedly at their publicly noticed meetings; that they were supportive of an

appeal; that they had voted at their last meeting to allocate \$15,000 of their funds to the appeal; that they had worked very hard to help pay for the acquisition of the Egger Redwood Preserve; and asked for the Council's and the public's support of their April 12<sup>th</sup> fund raiser at Iron Springs.

Ryan O'Neil, Madrone Road, co-chair of OSC, quoted "long after the price is forgotten, the quality remains;" stated that if the Town fought for the access and won, the property would be there for future generations; that OSC events and fund raisers had brought all the factions of the town together; and that he didn't want to lose sight of why the money was being spent.

Frank Egger, Meadow Way, described other access issues in San Anselmo, around Loma Alta and at the Bennett House on Claus Drive. He stated that four generations had hiked on the Egger Grove property and had gone there unimpeded; that it had been called "Dense Forest" in the past; that it had been purchased by donations; that there were four listed species on the land; that it was unincorporated land; that access had been blocked when the gates were installed and signs posted; that the Berg decision affected other cities; that he pledged \$1,000 for the appeal; and stated that he would help raise funds in the community.

The meeting was adjourned at 11:48 p.m.

Respectfully submitted,

Judy Anderson, Town Clerk