

Fairfax Town Council Minutes
Regular Meeting
Fairfax Women's Club
Wednesday, April 6, 2011

The regular meeting was preceded by a special meeting closed session regarding labor negotiations with Town designated representative Michael Rock, Town Manager for Employee Organizations: SEIU, POA, and Management employees; 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
Mark Lockaby, Building Official
Roger Meagor, Ross Valley Fire Chief
Judy Anderson, Town Clerk

Mayor Bragman called the meeting to order at 7:00 pm.

Approval of Agenda and Affidavit of Posting

Mayor Bragman asked that the meeting be adjourned in memory of Charles McGlashan, the Marin County Supervisor who died unexpectedly.

M/S, Tremaine/Weinsoff, Motion to approve the agenda with the addition of the adjournment in Supervisor McGlashan's memory and with a change in the order of items to have the appointment of a Council representative to the Fire Operations 101 event on May 19, 2011 to be heard before the Council reports.

AYES: ALL

Announcement of Closed Session Action

Mayor Bragman announced that the Council had given direction to the labor negotiator and in regard to the performance evaluation but that no action was taken.

Mayor Bragman also announced that a ribbon cutting ceremony was held for the new pedestrian bridge on School Street before the meeting.

Announcements

Mayor Bragman made the announcements as printed on the agenda.

Vice Mayor Hartwell-Herrero announced the Teen Night scheduled for Friday, April 8th at the

Youth Center.

Open Time

Trevor Hughes, Porteous Ave., spoke about the contention regarding the possible re-opening of Deer Park School and how responsive the Town had been to the issues involved; noted that a School Board member had publicly announced that it was the fault of the Fairfax Town Council that Deer Park School was not re-opened; that the statement was unfortunate; that it was a complex situation; and that he wanted to set the record straight and thank the Council for their involvement and to state that the decision was not the fault of the Council.

Chelsea Donovan spoke against the proposed cell tower at Tamarancho; stated that it would be against green belt policy and rules for cell towers; that it was in the line of site for Bothin; that it would be in a high fire danger area; that she was pro-Tamarancho and pro good cell reception but that the size was obtrusive; that AT&T and others had expressed a desire to make it a co-site; and that the small shed and story poles didn't indicate the true size of the project.

Mark Fioria spoke in opposition to the proposed Cell Tower at Tamarancho. He stated that he was in favor of better cell reception but that the siting had been haphazard; that it would be much larger than the story poles indicated and included a six foot chain link fence, two structures and a large tank; and would become a location for other towers.

Nancy Morita, Iron Springs Road, thanked the Town Council for their support to stop the tower at Tamarancho; that it was not in compliance with the General Plan; that it would be a 50-foot tall, 16 foot wide metal structure, on top of a knoll in a high fire danger area. She explained that the microwaves emitted by cell towers interfered with bats' radar and that bats and wildlife should be protected. She further stated that the County seemed to be unaware that the tower would be visible for 360 degrees.

Mayor Bragman stated that individual Council members were not precluded from sending letters on the issue, but that the next Council meeting was scheduled for June 4th, after the County hearing prohibiting the Council from taking formal action on the issue.

Ed Tilton, Claus Circle, stated that his neighbors were concerned about the possible nightclub and recording studio at the Good Earth location and that he got the impression from the article in the newspaper that the Mayor supported the project.

Mayor Bragman stated that no application had been filed, that a public hearing would be held before any such use would be allowed, and that opinions would be formed after that process.

Dave Krall, Claus Drive, stated that he agreed with the previous speaker, that the Town would be taking a big chance with such a venue, and that such a use could have a major impact and could promote crime.

Councilmember Tremaine stated that it was just rumor and speculation until an application was filed; that there would be stringent public review of any such project; and that he didn't think the Mayor had expressed an opinion about the possible project in the newspaper article.

Interview and appointment of applicant to serve on the Youth Commission – *Town Clerk*

M/S, Hartwell-Herrero/Bragman, Motion to appoint Terra Clark to the Youth Commission.

AYES: All

Interview and appointment of applicant(s) to serve on the Parks and Recreation Commission for a full four-year term to April 30, 2015 – *Town Clerk*

M/S, Hartwell-Herrero/Bragman, Motion to appoint Richard Pedemonte to the Parks and Recreation Commission for a full four-year term to April 30, 2015.

AYES: All

Appointment of a Council representative to the Fire Operations 101 event on May 19, 2011 – *Fire Chief*

Fire Chief Meagor described the event and the request for a Council representative.

There was a consensus of the Council to have Vice Mayor Hartwell-Herrero represent Fairfax at the event with Councilmember Tremaine as the alternate and Councilmember Reed as the second alternate.

Council Reports and Comments

Councilmember Reed reported on his attendance at Ross Valley School Board meetings and with the Fairbuck group.

Councilmember Tremaine reported on the Fire Board and the Marin Energy Authority noting the devastating loss to the Authority due to the death of Charles McGlashan.

Councilmember Weinsoff reported on the Fire Board, the MCCMC Oversight Committee, the MCCMC Legislative Committee and the monthly MCCMC dinner.

Vice Mayor Hartwell-Herrero reported on her attendance at the monthly MCCMC dinner and at a luncheon regarding local energy efficiency and green energy projects for homeowners. She also reported on her attendance at the Youth Commission meeting, an additional teen meeting and a Community Development Block Grant meeting.

Mayor Bragman reported on his attendance at a California Public Utilities Commission meeting, at a Flood Zone Number 9 meeting, a Paramedic Authority meeting, and a Transportation Authority of Marin meeting. He also reported on a visit from a member of the Sister City/Peace Community in Colombia and a letter sent to Congresswoman Woolsey asking for action from Congress to end the violence in that community.

Town Manager's Report

Town Manager Rock reported on damage from the recent storms the weeks of March 14th and March 20th. He led a Council discussion about the damage and other public works projects.

Consent Calendar

Approval of Town Council minutes of February 16, 2011 – Town Clerk

Approval of Financial Statements for February, 2011 - Finance

Approval of a Memorandum of Understanding for the Fairbuck Project – Reed

Adoption of Resolution No. 11-16, Establishing a General Plan Implementation Committee and Setting the Membership and Terms – Planning

Adoption of Resolution No. 11-17, A Resolution of the Town Council of the Town of Fairfax Authorizing Temporary Closure of Broadway from Pacheco to Bolinas Road to Allow a Car Show on Sunday, September 11, 2011 – Town Clerk

Adoption of Resolution No. 11-18, A Resolution of the Town Council of the Town of Fairfax Authorizing Temporary Closure of Certain Streets and Portions Thereof, and the Closure of the Pavilion Parking Lot to the Public, to Allow a Town Parade on June 11, 2011 and Town Festival, Including an Eco-Fest, on June 11 and 12, 2011 – Town Clerk

Approval of Proclamation declaring National Library Week in Fairfax, April 10 – 16, 2011 – Town Clerk

Approval of letter of support for Environmental Protection Agency upgrades, Clean Air Transport rule (CATR) and Hazardous Air Pollutants (HAP) to protect clean air standards – Tremaine

Adoption of Resolution No. 11-19, A Resolution of the Town Council of the Town of Fairfax in support of SB 810 (Leno), Single Payer Health Care – Bragman

Approval of a Memorandum of Understanding between the Marin Agricultural Institute (Marin Farmers Market) and the Town of Fairfax for the 2011 Fairfax Farmers Market – Town Manager

Status report on the Non Motorized Transportation Pilot Program projects – Town Manager

Approval of Town Council Support of Marin Telecommunications Agency Plans to Convert existing Comcast Franchise to State DIVCA Franchise – Bragman

Adoption of Resolution No. 11-20, a Resolution of the Town Council of the Town of Fairfax Supporting the California Air Resources Board's Leadership in Promoting Clean And Energy Efficient Motor Vehicles, Energy Independence, Zero Emission Technologies and Improved Quality of Life In California – Tremaine

Peter Lacques, Live Oak Avenue, thanked the Council, especially Mayor Bragman who brought the issue forward, for supporting the single payer legislation with the resolution.

M/S, Reed/Tremaine, Motion to adopt the Consent Calendar as presented with the understanding that Councilmember Weinsoff would make some minor edits to the Fairbuck MOU.

AYES: All

Adoption of Resolution No. 11-21, a Resolution of the Town Council of the Town of Fairfax approving a garbage and recycling service rate increase in the Town of Fairfax – Town Manager

Town Manager Rock presented the staff report.

Councilmember Tremaine noted that the conclusion of the rate review report was double the rate increase being proposed; that there was a 24.23% cost increase with a 10% rate increase proposal; that Marin Sanitary had expanded the services provide with dual sort cans and food composting; stated that he was not sure why we weren't trying to make our partner in providing services whole instead of letting them continue to operate at a deficit; and that he didn't agree with a two-step process.

Councilmember Reed stated that one of the things that was not included in the calculation was the redemption value of the materials recycled and asked how much was gained through recycling.

Vice Mayor Hartwell-Herrero stated that her sense was that a new contract would address the rates in a different way; that the proposed increase was a show of good faith that the Council appreciated the service; and that the current rate was based mostly on hauling our landfill garbage and not on recycling.

Mayor Bragman stated that the Council had to consider the dire economic condition in the town when considering what rate to apply; noted that the Town did benefit from the 10% franchise fee received from Marin Sanitary; that he believed there was some artificiality to the review because it didn't include the revenue from the recycling in accordance with the existing franchise agreement; and that a new contract would address the recycling and food waste portions of the service. He further stated that it would be helpful to review the income from recycling over the last few years; that the financial condition of the ratepayers had to be considered; and that the terms of the agreement were going to be changing and the issue would be revisited as part of that process.

Mayor Bragman opened the public hearing.

Chris Lang, Canyon Road, stated that he had been a member of a Solid Waste Franchise Committee in the past; that Marin Sanitary had been a very good citizen supporting the Fairfax Festival and the Bicycle Coalition; that Fairfax got the best service in the County; that Marin Sanitary had been working with the town to reduce waste; and that the cost of gas had gone up dramatically further increasing the cost of providing the service.

George Bianchini, former Fairfax business owner, stated that he would leave Town if he was operating at the level of loss of Marin Sanitary; that they were running in the red; that it might be cheaper to operate in a different way but at a loss in the level of service; that other places in Marin were paying their whole share; that the request for a rate increase was reasonable and that he didn't understand why the Town wasn't paying them a fair price for the service.

Shemasatya, Wesson Lane, stated that the residents got tremendous service from the Garbarinos, service that continued to improve; that he worked in Southern Marin and that the service there was very sloppy; that she supported the increase and imposing it all at once; and that we needed to move forward toward zero waste, including recycling compostable corn products.

David Haskell, Glen Drive, member of the local task force on solid waste and the Chair of the Zero Waste Committee of the local chapter of the Sierra Club, stated that "zero waste" was not about managing waste but was about managing resources; that the system was wrong and allowed us to throw away as much as possible; that Marin Sanitary should pick up and process only; that the customers were paying for rubbish to go to the landfill; that the green waste picked up should be returned to the residents at no cost since it belonged to the residents; that the recycling revenue should also be returned to the consumer; that it was not the duty of the Council to make Marin Sanitary whole but to reduce our waste; and that the system needed to be fixed to get to zero waste.

Patty Garbarino, President of Marin Sanitary, introduced the Marin Sanitary staff present; stated that it shouldn't be called a "garbage bill" since so many other services were included; that it cost them three times as much to collect recyclables as they were worth; that they had explored and rejected "pay as you throw;" that Fairfax residents were paying less than what other members of the group were paying; that if the Council adopted the requested increase, the rates would be right in the middle while the cost of providing the service ranked third; that increases other than wages prompted the rate request; that they lost \$15,000-25,000/month; that they hadn't realized a profit in over a year; that a 10% increase would force them to consider cutbacks in service; listed the programs offered; noted that they had helped the Town to reach zero waste goals; and stated that the Town was crippling their ability to be sustainable and to get to zero waste.

Mayor Bragman requested information on the recycling cost and revenue.

Ms. Garbarino stated that there was no physical way to provide the information at the current time and that she would consider providing the information in return for a good faith effort on the new contract. She noted that it had been seven years, three Town Managers and 29 meetings without a contract.

Councilmember Weinssoff suggested that, if the information was vital, it could be presented at a meeting on the 14th and the discussion could be continued to that time.

Councilmember Tremaine asked to clarify the information that was being requested and suggested that the accounting wasn't done by jurisdiction so might be cumbersome to extract.

Ms. Garbarino stated that it would be time consuming to provide the information and that it wasn't done for other jurisdictions.

Mayor Bragman stated that they had duties under the franchise agreement that they were trying to meet and that they also had duties to the ratepayers; that he was comfortable granting the 10% increase and granting the other 10% after a new contract had been completed; acknowledged that it might be difficult to produce the requested information; stated that Marin Sanitary provided state of the art service, but that he felt a conflicting duty; that the increase would have Fairfax paying a higher rate than Ross; and that getting the data was important.

Councilmember Weinssoff stated that the Council had a fiduciary responsibility but that Marin Sanitary invested in low emission trucks and used union workers which were good things that increased their costs. He further stated that there were people who didn't throw anything away; that part of the conversation might have to be to advance zero waste in a different way; and suggested that the Council adopt the rate recommended in the independent study and to not expect Marin Sanitary to operate at a loss.

Councilmember Reed suggested that Marin Sanitary could probably estimate the tonnage for Fairfax; that it would be good to have a ballpark idea of the expense and income involved with the recyclables; that it would help with the element of trust and to move forward with a contract that served everybody; and stated that the Council had a responsibility to Fairfax residents to have it be fair.

Councilmember Tremaine stated that it was obvious to him that the Council was pushing Marin Sanitary to revamp the garbage service once again; that pushing the envelope meant that the service was going to cost more if they changed to "pay as you throw;" that it didn't make any sense; that Marin Sanitary was one business and they also had Marin Resource Recovery, a separate business; that Marin Sanitary felt punished; that what Mr. Bianchini had said was correct; that it was not right to hold them up as proposed; that they had been too good of a partner for such treatment; that he had fought to have Marin Sanitary serve the Town because the previous company had been awful; and asked who else would serve us; and stated that we needed to be good partners.

Mayor Bragman stated that it was the ratepayers' money being discussed; that he was willing to go along with the 10% increase to move forward; but that the Council should have all the facts and figures first.

Ms. Garbarino stated that they made money on just the service they provided; that they were a hauling company, a service related company; that the projected profit was not a guarantee; that they hadn't made a profit in five years; that the third party rate review should have provided the transparency and the trust the Council was looking for; that, looking at their history, the recycling costs and income had never been a factor; that the products were mostly sent overseas with

dramatically changing prices and they absorbed the risk of those costs; that the Fairfax service cost was more than Ross because they had to use more small trucks in Fairfax; and she noted that when the big storm happened, they had hauled off materials and had swept the streets with no charge.

Mayor Bragman re-opened the public hearing.

Kiki LaPorta, Glen Drive, stated that the Town had a wonderful opportunity to work with our garbage hauler to move toward zero waste; that Marin Sanitary provided great community service; that they were cost plus rates; that if the contract didn't cover the cost, the shortfall would be covered by the next increase; that their resource and recovery business did produce compost that would be great to get back; and that it was within the realm of this opportunity to reform in a new way to manage resources.

Peter Lacques, Live Oak Ave., stated that he believed in "Trust but Verify," a quote from Reagan; that it was important to come up with a contract that served Marin Sanitary and the citizens; and that information was missing. He encouraged the Council to require more transparency; stated that he would like to know that the rates were fair to everyone; suggested that the food to energy process might create cost savings for Marin Sanitary and recommended a provision in the contract to recover any of those cost savings; stated that new paradigms were coming; and that they needed to move forward with full information.

M/S, Hartwell-Herrero/Bragman, Motion to adopt Resolution No. 11-21, a Resolution of the Town Council of the Town of Fairfax approving a garbage and recycling service rate increase in the Town of Fairfax and agree to move forward as expeditiously as possible with a new franchise agreement by the end of the fiscal year.

Roll Call Vote:

Hartwell-Herrero: AYE; Reed: AYE; Tremaine: NO; Weinsoff: NO; Bragman: AYE

Mayor Bragman adjourned the meeting for a break from 9:20 p.m. to 9:37 p.m.

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

Mayor Bragman recused himself from the item due to legal services he had provided to Marin Alliance.

Planning Director Moore presented the staff report.

Councilmember Reed asked about how the ordinance would address the lack of parking on many of the designated parcels; about the provision to validate the client with a State identification card, a provision that wasn't included in any other ordinances; and asked if there was a way to tailor the permitting process so that long term businesses wouldn't be out-priced by potential clinics and forced to close.

Councilmember Tremaine stated that the small school in the middle of downtown eliminated many parcels for consideration and made the few available more valuable; that one of the things they had tried to do with the ordinance was to avoid a monopoly; noted that there wasn't a provision in the ordinance to prevent any one entity from having more than one dispensary in town; requested that such language be added; asked that the ordinance include language to

state that no dispensary could be transferred to anyone who already owned or had an interest in any dispensary in town; and he recommended that a limit of three dispensaries be allowed to operate at any one time.

Councilmember Weinsoff noted that Sebastopol, the same size as Fairfax, limited the number of dispensaries to two.

Vice Mayor Hartwell-Herrero stated that she had similar issues with the use of a State Identification card and saw it as a little heavy handed.

Vice Mayor Hartwell-Herrero opened the public hearing.

Matthew Widmyer, Cannabis Coordinator for UFW, stated that he strongly agreed with Councilmember Tremaine that there should be a two-part application process; described the process in Concord as an example; suggested a robust Request for Proposal application (RFP) process as used in Half Moon Bay and other communities; and offered to provide the town with RFP samples.

Councilmember Weinsoff asked about the possibility of having the applicant pay for staff time to process the application.

George Bianchini stated that Oakland charged \$5,000 just to apply to operate a dispensary and suggested a two-step process so that the Town would have more choice.

Lynette Shaw, Marin Alliance, stated that she had the first permit in the nation in 1997; that the IRS was on her case and was asking for the names and addresses of all the growers; that she spent all their money on the court case to protect all the dispensaries in the nation; expressed appreciation that the town was developing an ordinance; and thanked the town for their support.

Craig Litwin, Sebastopol, referred to a letter he had sent on the subject; stated that other jurisdictions determined the sites before they accepted applications; that the town might receive 50 to 100 applications that require a lot of effort to process; that they needed to have legitimate criteria to make determinations; that it was a new complex idea and that the Council should proceed carefully; that it was onerous to require a State identification card; and offered his expertise to answer questions at any time.

Vice Mayor Hartwell-Herrero closed the public hearing.

Planning Director Moore responded to some of the questions posed and statements made. He stated that parking had to be addressed on a case-by-case basis; that they were moving toward a comprehensive treatment of parking in the General Plan; that the town had limited staff to process applications; that the card issue had to be addressed; that the main issue was how many dispensaries to allow; and that the sooner the other two or three dispensaries could be cited in town the better.

Town Attorney Karpiak stated that State law required only the prescription but that the Planning Commission included the identification cards as a safe harbor provision. He further stated that a two-step process could be worked out through staff.

In response to a question, Planning Director Moore stated that the administrative process and the ranking didn't have to be in the ordinance; that it was a changing landscape; and clarified that the ordinance was codifying the commercial dispensaries in town, not the informal cooperatives in residential areas. Director Moore further explained that the town would ask

applicants to wait until they had a use permit before they secured a location; that he wanted to make the process as transparent and straightforward as possible; and that the sooner the number and the process were decided, the better.

Councilmember Reed stated that the RFPA process was different that a land use process and that the question was to determine who would be the best fit for Fairfax. He suggested that the RFPA process used in Morro Bay and Oakland be used.

Motion by Councilmember Tremaine to continue the public hearing on the ordinance and to direct staff to operate under the assumption of three dispensaries, to modify the card language, to add a provision about ownership of only one dispensary, and to outline the administrative review process, died for lack of a second.

Planning Director Moore suggested that the Council extend the moratorium on dispensaries to allow more time for staff to draft the language for the permanent ordinance.

M/S, Weinssoff/Reed, Motion to continue the public hearing on Ordinance No. 759 to the May meeting.

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

Introduction and First Reading of Ordinance No. 760, An Ordinance of the Town Council of the Town of Fairfax extending Interim Ordinance No. 753, an Interim Ordinance of the Town Council of the Town of Fairfax prohibiting the establishment of new medical marijuana dispensaries in any zoning district within the Town – Planning

Planning Director Moore presented the staff report.

Vice Mayor Hartwell-Herrero opened the public hearing.

George Bianchini recommended the extension of the moratorium.

Matthew Witmyre also spoke in support of the extension.

Vice Mayor Hartwell-Herrero closed the public hearing.

M/S, Weinssoff/Reed, Motion to continue the public hearing on Ordinance No. 760 to April 14th.

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

Agenda Review

The Council reviewed the remaining agenda items and reached a consensus to continue the items regarding the Smart Meter moratorium and the appointment of a representative to the Fire Operations and to hear the other items.

Discussion/Consideration of appointing Mayor Bragman and Vice Mayor Hartwell-Herrero as designated representatives of the Town pursuant to Government Code 54957.6 for the purposes of labor negotiations

M/S, Weinsoff/Reed, Motion to appoint Mayor Bragman and Vice Mayor Hartwell-Herrero as designated representatives of the Town pursuant to Government Code 54957.6 for the purposes of labor negotiations.

AYES: All

Discussion/Consideration of directing the Mayor to sign a letter on behalf of the Town Council transmitting a set of recommendations to the County and other elected officials in Marin County regarding the Analysis on the Impediments to Fair Housing Choice – Hartwell-Herrero

Roy Bateman, County of Marin Community Development Block Grant (CDBG) program, explained that the recommendations were drafted by Fair Housing of Marin; that CDBG was a federal program; described the impediments to fair housing; and recommended that the Council focus on the first three recommendations.

Vice Mayor Hartwell-Herrero stated that the deadline for comments had been extended to mid-May and noted that a couple of the recommendations were unreasonable for Fairfax with such a small staff.

Mayor Bragman stated that the Transportation Authority of Marin (TAM) had been the clearing house for the regional housing needs assessment and that TAM was trying to coordinate the effort with proposed transportation improvements over the next twenty years; that one quarter credit for senior housing in the affordable housing count should be changed to full credit; that there was a big push to fold housing into transportation; described the efforts of the Affordable Housing Committee in Fairfax that included a senior housing project; asked that the disparity in the credit given for senior housing be mentioned in the letter; that other jurisdictions should also be encouraged to address the lack of credit for senior housing; and noted that lawsuits had been filed in other jurisdictions regarding housing quotas.

Mr. Bateman stated that the Town had to vow to assert and reaffirm that they would affirmatively pursue fair housing.

Mayor Bragman stated that it was fair to state that the Town was actively pursuing affordable housing but noted that it was somewhat hypocritical that Housing and Urban Development (HUD) was criticizing agencies for not producing housing when the budget for HUD was shrinking.

Vice Mayor Hartwell-Herrero requested that the letter be re-worked and there was a consensus of the Council to do so and to have the edited letter on the Consent Calendar for the April 14th meeting.

Request for the Town Council to direct Staff to submit Applications to Transportation Authority of Marin for Metropolitan Transportation Authority Funding for Fairfax Projects - Bragman

Mayor Bragman described the three projects he recommended for funding by TAM and the urgency of the applications.

M/S Tremaine/Weinsoff, Motion to direct staff to prepare and submit the applications as requested.

AYES: All

The meeting was adjourned at 10:50 p.m. in memory of Charles McGlashan to April 14th at 7 p.m.

Respectfully submitted,

Judy Anderson, Town Clerk

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