

Fairfax Town Council Minutes
Regular Meeting
Fairfax Women's Club
Wednesday, August 6, 2014

The regular meeting was preceded by a Closed Session from 6:00 p.m. to 7:00 p.m.-

Conference with Legal Counsel- Anticipated Litigation
Government Code Section 54956.9(d)(2) and (e)(1): two cases

Conference with Legal Counsel- Existing Litigation: Government Code Section 54956.9(d)(1)
Egger, et al. v. Gardner, Marin Superior Court No. CV1401704

Conference with Labor Negotiator pursuant to Government Code Section 54957.6 Agency
designated representative: Garrett Toy, Town Manager
Employee: Police Chief

COUNCILMEMBERS PRESENT: Larry Bragman, Vice Mayor
Barbara Coler
Renee Goddard
John Reed
David Weinsoff, Mayor

STAFF MEMBERS PRESENT: Garrett Toy, Town Manager
Michele Gardner, Town Clerk
Janet Coleson, Town Attorney
Jim Moore, Planning Director
Mike Vivrette, Finance Director
Chris Morin, Police Chief

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

Approval of Agenda and Affidavit of Posting

M/S, Bragman/Reed, Motion to approve the agenda and the affidavit of posting.
AYES: Bragman, Coler, Goddard, Reed, Mayor Weinsoff

Announcement of Closed Session Action

Mayor Weinsoff announced the Council gave direction to staff and took no action.

Announcements

Mayor Weinsoff made the announcements as they appeared on the agenda. Councilmember Goddard announced the Streets for People Event on Sunday, August 31st. Councilmember Coler gave an update on the attempt to purchase Sky Ranch for Open Space.

Open Time

Ms. Valeri Hood, Dominga Avenue, stated the atmosphere of Council meetings had deteriorated to the point of disenfranchising the public. She noted there had been many closed sessions lately.

Mr. John Sergeant asked the Council and staff to put simplified language on the agenda. Town Manager Toy stated staff would try, but there were statutory requirements regarding the language.

Mr. Clayton Smith, Mill Valley, stated the Town Council had a responsibility to protect the public.

Presentations

Introduction and Oath of Office of new Police Officer Nicholas Acton- *Chief Morin, Town Clerk*

Police Chief Morin introduced Police Officer Nicholas Acton. Town Clerk Gardner administered the Oath of Office to Police Officer Acton.

Consent Calendar

Adoption of a resolution setting the Living Wage pursuant to the annual review requirement of Section 8.56.020 of the Town Code- Town Clerk

Approval of Financial Reports for June 2014- Finance Director

Approve minutes for the July 2nd, 12th, and 24th and Town Council meetings- Town Clerk

Appreciation of community contributions to the Sustainable Gardens at the Women's Club- Councilmember Goddard, Town Clerk

Reassignment of Town Council representative and alternate to the Association of Bay Area Governments- Town Clerk

Purchase of two Rectangular Rapid Flashing Beacon (RRFB) systems in an amount not to exceed \$18,150 for the Center Boulevard mid-block crossings- Town Manager

Approval of social security payments for part-time employees and the adoption of a resolution adopting a Part Time, Temporary, and Seasonal (PTS) 457 Deferred Compensation Plan for those PTS employees not covered under the Town's CalPERS Retirement Plan- Town Manager, Finance Director

Adoption of a resolution in support of a statewide and national ban on non-therapeutic uses of antibiotics in livestock production, and the Protection of Antibiotics for Medical Treatment Act/Prevention of Antibiotic Resistance Act (PAMTA/PARA)- Mayor Weinsoff

M/S, Coler/Goddard, Motion to approve the Consent Calendar as submitted.

AYES: Bragman, Coler, Goddard, Reed, Mayor Weinsoff

Council Reports and Comments

Councilmember Reed reported he attended a tour of the Girls Scout Camp with the Historical Society; worked on wrapping up the trail project; met with a representative of the Marin Conservation Corp. regarding local trails.

Councilmember Coler reported she attended the Fairfax Climate Action Committee meeting; the Fairfax Open Space meeting; met with a representative of the Marin Conservation Corp. regarding opening up some trails; an Association of Bay Area Governments (ABAG) Delegates meeting.

Councilmember Bragman reported he attended the Town Council meeting on the 24th.

Councilmember Goddard reported she attended the County Planning Commission meeting; participated in a conference call regarding the Coalition on Healthy Youth.

Mayor Weinsoff reported he attended a Flood Zone 9 meeting; the Chamber of Commerce Forum regarding the Americans with Disabilities Act (ADA); a Chamber of Commerce meeting; an art show given by the Artist in Residence; the retirement party for former Ross Valley Fire Chief Roger Meagor.

Town Manager Report

Town Manager Toy stated he had nothing to report.

Mayor Weinsoff provided an explanation of why the Council met in Closed Session: to discuss in confidence with the Town Attorney (who represents the Town Council) matters protected by law from public disclosure, such as litigation and certain personnel matters. He asked Town Attorney Coleson for the cost to date of litigation (a Closed Session item). Town Attorney Coleson stated the Town had spent approximately \$33,000 during the period of May, June, and July for the *Egger, et al. v. Gardner* matter (Petition for a Writ of Mandate). This did not include work pertaining to the referendum petition. The Mayor directed staff to present a monthly report of litigation costs.

Public Hearing

Adoption of Ordinance No. 781, an Interim Urgency Zoning Ordinance of the Town Council of the Town of Fairfax Prohibiting Approval of Formula Businesses and Formula Restaurants within the Highway Commercial (CH) Zoning District during the Pendency of the Town's Adoption of Permanent Zoning Regulations and Declaring the Urgency Thereof- *Town Manager*

Town Manager Toy presented a staff report.

Councilmember Goddard asked if the 45-day interim ordinance could be extended. Town Manager Toy stated "yes".

Councilmember Coler, referring to page 2 of the ordinance, the last "Whereas", suggested the following wording be added: "... while ensuring that *in-state* and out-of-state formula..."
Town Manager Toy stated that language could be added.

Mayor Weinsoff asked Town Attorney Coleson to explain the federal Dormant Commerce Clause.

Councilmember Bragman asked if the definitions were taken from the existing ordinance. Town Manager Toy stated "yes".

Mayor Weinsoff opened the Public Hearing.

There were no public comments.

Mayor Weinsoff closed the Public Hearing.

M/S, Bragman/Goddard, Motion to adopt Ordinance No. 781, An Urgency Zoning Ordinance of the Town Council of the Town of Fairfax Prohibiting Approvals of Formula Businesses and Formula Restaurants within the Highway Commercial (CH) Zoning District During the Pendency of the Town's Adoption of Permanent Zoning Regulations and Declaring the Urgency Thereof.
AYES: Bragman, Coler, Goddard, Reed, Mayor Weinsoff

Regular Agenda

Discuss/consider residents' petition regarding the noise ordinance- *Town Manager*

Town Manager Toy presented a staff report.

Councilmember Bragman asked if any inspections had been made of Deer Park Villa to see if sound abatement improvements had been installed. Town Manager Toy stated staff did confirm the sound wall and the green wall installation. Councilmember Bragman asked staff to follow up on the mitigation measures that had been discussed for the performance space area. Councilmember Reed stated vegetation would not do a lot in terms of mitigating noise but a wall would. Councilmember Goddard disagreed and stated a green wall could work well.

Mr. Bob Stempel stated the noise from Deer Park Villa continues to be a problem and the new sound wall was not effective. The Town Code stated that the ordinance should be enforced until modifications to the ordinance were complete. He disagreed that the ordinance was poorly written. He noted 60 residents had signed the petition.

A resident stated she lived near Deer Park Villa and the parties continued to be loud. She read Section 8.20.050 (4)(B)(1), "Correction for Character of Sound" and discussed her interpretation. She stated the ordinance needed to be enforced.

A resident stated she was happy that the Council was addressing this matter. Noise problems and volumes had gotten a lot louder.

Ms. Valeri Hood, Dominga Avenue, stated noise from Deer Park Villa had gotten louder. She supported a lower decibel level. Vegetation does not block sound.

Ms. Shelley Hamilton, Canyon Road, cited the 14th Amendment and stated they should be equally applying the law. She would like to see people work cooperatively to create better laws for everyone. She was interested in the ordinance's connection to the General Plan Noise Element.

Mr. Sierra Salin stated noise bounced around and moved in mysterious ways. Noise levels should be measured at the edge of the property where it came from and not the edge of the property of the person complaining.

Town Manager Toy responded to some of the issues brought up by the residents.

Police Chief Morin stated noise was an issue throughout Town: there had been 182 noise complaints in 2014 so far. He disagreed that the ordinance required the Chief to make any judgment. He had confirmed this with former Police Chief Hughes (36 years in Fairfax), who agreed that to enforce it differently in different situations would be capricious. He stated the Police Department enforced the letter and spirit of the ordinance and noted some of the sections were not clear. He agreed with the public comment that any noise level could offend. Officers logged every call and noise reading. He stated that Noise Zone B did not make sense for Deer Park Villa. He thought that the time limit should be earlier than 10 PM. The ambient noise level was louder now.

Councilmember Coler had questions about the table titled "Exterior Noise Limits".

Councilmember Bragman stated he did not understand why the Deer Park neighborhood was considered "multiple dwellings" and called out for a higher decibel level, and that "daytime limits" should not go until 10:00 p.m. They might be able to reach some middle ground by changing this limit. He did not want to raise the decibel levels in Town.

Staff was directed to call Deer Park Villa to initiate a conversation about changing the ordinance, changing the noise zone, changing the daytime limit, and mitigation efforts, in an effort to find some middle ground. Staff was to report back by October.

Second reading, by title only, and adoption of Ordinance No. 780 to repeal Ordinance No. 778, a zoning

ordinance that amended Town Code Chapters 5.52, 17.012, 17.020, 17.092, 17.096, and 17.104, and added Chapter 17.130, rezoned all parcels then-zoned Highway Commercial (CH) to Central Commercial (CC) Zone, rezoned APN 002-112-13 and 001-104-12 from Limited Commercial (CL) to Planned Development District (PDD); rezoned APN's 174-070-17 and 174-070-50 from UR-7 to PDD, added a Public Domain (PD) Zone, rezoned selected parcels to Public Domain (PD), provided for the supremacy of the Zoning Map over the text in event of discrepancy, corrected typographical errors, and updated the Town Zoning Map to reflect these zoning changes, in its entirety. CEQA: exempt per 14 C.C.R. Section 15061(b)(3) - *Town Manager*

Town Manager Toy presented a staff report. He clarified that all Ordinance No. 780 did was eliminate Ordinance No. 778.

Town Manager Toy further clarified the process moving forward. The Planning Commission would hear and then make a recommendation regarding amending the General Plan:

- To correctly list the Jehovah Witness property as UR-7 on the General Plan Map. It is incorrectly listed as Planned Development District (PDD).
- To correct the densities for UR-7 and UR-10 in the General Plan tables.

The Planning Commission recommendation would then go to the Town Council to approve at a Public Hearing.

Mayor Weinsoff opened the meeting to public comments.

Ms. Jessica Green, Ridgeway Avenue, signed the petition because she was against building. The Council could have rescinded the ordinance and saved the \$33,000 in legal fees.

Ms. Valeri Hood, Dominga Avenue, was concerned about the wording in the ordinance and did not think it repealed Ordinance No. 778. They should follow the referendum and take a break for a year. The community outreach meetings should not be run by the Planning Commission. She would like the record cleared on the Wall property.

Ms. Yvette Wakefield, Alhambra Circle, stated all the potential development was bad because it would not help people with incomes below \$24,000.

Mr. Jim Rice, Laurel Drive, stated the [referendum] petition was not to correct typos and mistakes but rather to lower the housing density. He stated densities should be set after plans are reviewed. He asked what the County's rezoning plans are for the unincorporated areas near Fairfax.

Mr. Sierra Salin stated out of 130 noise complaints only one citation was issued. He was concerned about impacts to the planet.

Mr. Clayton Smith, Mill Valley, stated he was suspicious of typographical errors in the ordinance and the Town should seek a refund from the consultants.

Mr. Christopher McManus, Fairfax, stated he supported the wording in Ordinance No. 780 and noted it was important to keep an open door to the General Plan and Housing Element.

Mr. Bruce Ackerman, Valley Road, supported the language in Ordinance No. 780. He believed that Ordinance No. 778 was hastily put together and that there were some errors. He stated the need to trust each other and the process. He believed in planning and a long term view, not taking applications on a piece-meal basis.

Ms. Wendy Kallins, Forest Knolls, thanked the Council and staff for patiently working through this process. The wording in Ordinance No. 780 satisfied the need to correct the errors and inconsistencies in the General Plan. She supported the Housing Element to put an end to urban sprawl, noting that was green planning.

Ms. Shelley Hamilton, Canyon Road, stated she appreciated the work the Council had done in coming up with

a solution that was appropriately justified. She felt they could now openly discuss the core issues at hand, and find common ground in an authentic process.

A citizen referred to the August 21 “workshop” regarding the School Street Plaza site and stated she objected to the implication that the site was an “empty space waiting to be filled” as there were a number of businesses that have been there for years, and who did not want to be replaced by other people.

Mr. Frank Egger, Meadow Way, stated the Council had held ten Closed Sessions to discuss the referendum, subsequent litigation, and Ordinance No. 778. The Brown Act did not allow the Council to meet in Closed Session to wordsmith an ordinance. The Council had two options: repeal Ordinance No. 778 or place the ordinance on the ballot.

Mr. James Bitter, Mill Valley, stated he saw a new dynamic of the State legislating land use in ways that usurp local government control. He did not support using consultants.

Lisel, Pacheco Avenue, stated she was happy about with the General Plan, the community investment in it, and commitment to the democratic process to develop an informed electorate.

Mr. Scott Valentino, Fairfax, stated that living in Fairfax for him was about a deeper connection with neighbors than he got in a city. The General Plan was a very complex matter. He saw the Council and Commission listened and tried to solve problems, and it was time to trust and defer to them.

Hannah, Porteous Avenue, stated affordable housing should be a priority. The level of growth was minuscule and driving up rents. She urged the Council to look at second units, junior units, rent control, etc.

Mayor Weinssoff closed the meeting to public comments.

Councilmember Bragman stated Ordinance No. 780 repealed in its entirety Ordinance No. 778, as required by the Elections Code. The findings were to protect the Town from litigation for violating the General Plan. He stressed that it was an unconditional repeal and that they needed to move on and not nit-pick the ordinance. He discussed the need for affordable housing and reiterated his commitment to building it.

Councilmember Reed agreed with the Vice Mayor’s comments. He noted that the findings in Ordinance No. 780 strengthened it.

M/S, Coler/Goddard, Motion to waive second reading and adopt Ordinance No. 780, an Ordinance of the Town Council of the Town of Fairfax to Repeal Ordinance No. 778.

AYES: Bragman, Coler, Goddard, Reed, Mayor Weinssoff

Mayor Weinssoff rearranged the order of the agenda.

Discuss/consider a Fairfax Rent Control Ordinance and residents’ petition for a One-Year Moratorium on Rent Increases- Vice Mayor Bragman

Councilmember Bragman stated the Affordable Housing Committee should take up this issue before it came back to the Council.

Town Manager Toy noted that the County would be looking a rent control.

Ms. Margaret Honey, Fairfax property owner, asked when the issue would be discussed. Mayor Weinssoff stated the Council would probably discuss this issue in October, after the Sept. 24th Affordable Housing Committee meeting.

Ms. Gail Conley stated she owned a duplex and did not support rent control. She did not want interference in

the marketplace. She was in favor of affordable housing but not with large complexes as the vehicle.

Lisel stated there were a number of ways to set up rent control. She noted rent control was not affordable housing but did provide some relief.

Mr. John Fitzpatrick, Hickory Road, stated he kept his rents very low and but worried that rent control would trap him. He did not want a politician to decide how much rent he could charge.

Ms. Joan Burgarella, Scenic Road, stated she agreed with the comments made by Mr. Fitzpatrick. She kept her rents low but might need to raise them quickly. She asked the Council to speak to landlords in San Francisco.

Ms. Honey stated rent control and affordable housing were two separate issues. Rent control was built-in age discrimination because there was more turnover with younger renters.

A San Rafael resident and landlord stated this issue needed to be looked at from both the landlord and the tenant's perspectives. Landlords were also sometimes on fixed incomes.

Mr. Roland Lee stated affordable housing and rent control were different issues. He was not in support of rent control, noting it devalued property.

The Council took a 10-minute break at 10:20 p.m.

Councilmember Bragman referred to the memo in the packet which included an explanation of some of the limitations of rent control. He stated that the Council would not implement any policies that would unduly burden small landlords.

Designate Councilmembers to author ballot arguments and rebuttals, if needed, for the renewal of the Special Municipal Services Tax (a.k.a. Measure I) and designate co-signators for said arguments and rebuttals- *Town Manager*

Town Manager Toy presented a staff report.

Councilmembers Coler and Bragman volunteered to work on the ballot arguments and rebuttals.

M/S, Coler/Bragman, Motion to designate Councilmembers Coler and Bragman to work on the ballot arguments and rebuttals for the renewal of the Special Municipal Services Tax (a.k.a. Measure I).

AYES: Bragman, Coler, Goddard, Reed, Mayor Weinsoff

Introduction and first reading, by title only, of Ordinance No. 783, an Ordinance of the Town Council of the Town of Fairfax Amending Title 8 ("Health and Safety") of the Town Code to Add Chapter 8.14 ("Collection, Recycling, and Disposal of Waste Generated from Construction, Demolition, and Renovation Projects"). CEQA: exempt per 14 C.C.R. Section 15061(b)(3) and 15308- *Town Manager*

Town Manager Toy presented the staff report.

Councilmember Goddard referred to page 4, paragraph "1", and asked for clarification about the "financial incentive". Town Manager Toy noted this wording referred to a penalty for non-compliance.

M/S, Goddard/Coler, Motion to introduce and waive first reading of Ordinance No. 783, an Ordinance of the Town of Fairfax Amending Title 8 ("Health and Safety") of the Town Code to Add Chapter 8.14 ("Collection, Recycling, and Disposal of Waste Generated from Construction, Demolition, and Renovation Projects")

AYES: Bragman, Coler, Goddard, Reed, Mayor Weinsoff

Introduction and first reading, by title only, of Ordinance No. 784, an Ordinance of the Town Council of the Town of Fairfax Amending Title 8 (“Health and Safety”) of the Town Code by Adding Chapter 8.19 (“Paper Bag Reduction”) To Reduce Paper Bag Waste By Imposing a Ten Cent Charge at the Point of Sale. CEQA: exempt per 14 C.C.R. Section 15061(b)(3) and 15307, and 15308- *Town Manager*

Town Manager Toy presented a staff report.

Councilmember Coler referred to the ordinance and suggested the following amendment: “The Town Council may increase the ten cent (\$0.10) minimum charge by resolution *on an annual basis or less frequently.*”

Ms. Cindy Swift, Fairfax, stated she was opposed to mandating such a charge. She noted the ordinance imposed a charge for a “reusable bag”. Councilmember Goddard stated that section should be deleted.

Town Manager Toy stated staff would clean up the language and bring it back to the Council.

Discuss/consider revisions to sign ordinance regarding non-commercial signs- *Councilmember Coler, Town Manager*

Town Manager Toy presented a staff report.

Mayor Weinsoff asked staff to bring suggested language back to the September meeting.

M/S, Bragman/Coler, Motion to adjourn the meeting at 11:01 p.m.

AYES: Bragman, Coler, Goddard, Reed, Mayor Weinsoff

Respectfully submitted,

Toni DeFrancis, Recording Secretary