

Fairfax Town Council Minutes  
Regular Meeting at 6:30 pm  
Women's Club, 46 Park Road, Fairfax  
and via teleconference  
Wednesday, **May 3, 2023**

Mayor Cutrano called the Regular Meeting to order at 6:30 p.m.

Call to Order/Roll Call:

**COUNCILMEMBERS PRESENT:**

Bruce Ackerman  
Lisel Blash  
Barbara Coler  
Chance Cutrano  
Stephanie Hellman

**STAFF MEMBERS PRESENT:**

Heather Abrams, Town Manager  
Michele Gardner, Town Clerk  
Janet Coleson, Town Attorney  
Mark Lockaby, Building Official  
Loren Umbertis, Public Works Director  
Christine Foster, Deputy Town Clerk

Approval of Agenda

M/S, Coler/Hellman, Motion to approve the agenda.

AYES: Ackerman, Blash, Hellman, Vice Mayor Coler, Mayor Cutrano

Announcement of Closed Session Action

Mayor Cutrano reported there was nothing to report out of the Closed Session conducted prior to the Regular meeting.

Presentation

1. Presentation of Proclamation in Memory of Jean Berensmeier

Vice Mayor Coler read the Proclamation in Memory of Jean Berensmeier.

Mayor Cutrano opened the meeting to public comments.

Sierra Salin, Michael Mackintosh, and Frank Egger expressed their gratitude for Jean Berensmeier's work, and stated she will be missed.

Paul Berensmeier, Jean's son, discussed her many contributions, her work, and expressed his gratitude.

Open Time

Mark Bell was concerned about the cost of diversity training and the Housing Element update.

Frank Egger, Meadow Way, was concerned that emergency vehicles were not able to cross

Meadow Way bridge in its current state.

Todd Greenberg was concerned that the Town Council's closed sessions were not transparent.

Candace, Fairfax, was concerned about the Town's money management, the future of the Fairfax/San Anselmo Children's Center, and the lack of parking downtown.

Mallory Geithem was concerned people weren't being listened to and stated that bigger items should be at the beginning of the agenda.

Michael Mackintosh stated the Town was divided and suggested the Council slow down with the Housing Element update and rent control.

Liz Gottlieb, stated she was relatively new to Fairfax and wanted to get involved.

Kay discussed statistics she heard at the previous Council meeting and offered different ones.

Jody Timms, Chair of the Climate Action Committee, discussed upcoming events and activities.

Cindy Ross, Fairfax, stated people with multiple chemical sensitivities (MCS) should be acknowledged in the month of May.

Michael Sexton, Fairfax, was concerned about the Town governance, particularly Council meetings lasting until 2:00 a.m. He stated the Just Cause survey and workshop were not adequate.

Kathy Flores agreed with the previous speaker's comments.

Sierra Salin discussed his dissatisfaction with the Just Cause survey and workshop. He supported electrification and also conservation.

Rick Hamer had concerns about the meeting audio on Zoom.

Eva Chrysanthe recommended a recent article about Marin County and the housing crisis.

Coby Friedman was opposed to the rent stabilization and just cause eviction ordinances.

#### Consent Calendar

2. Receive Financial Statement and Disbursement Reports for March, 2023- Finance Director
3. Approve Minutes for the February 1 and February 15, 2023 Town Council meetings- Town Clerk
4. Receive written report on Councilmembers' assignments, committees, and activities in April, 2023- Town Clerk
5. Adopt Proclamation for a Day of Ukrainian Solidarity and Call for Peace- Mayor Cutrano
6. Adopt Proclamation for Asian American and Pacific Islander Month- Mayor Cutrano
7. Adopt Proclamation for Jewish American Heritage Month- Mayor Cutrano

- 8 . Adopt Resolution Authorizing the Temporary Closure of Certain Streets for the Fairfax Festival and Parade on June 10-11, 2023 and approve sponsorship of the closure- Town Clerk
9. Introduce Ordinance Amending Town Code Section 2.12.070(B)(3) to eliminate the requirement for Town Council ratification of appointment, removal or demotion of department heads by the Town Manager, and Finding the Action Exempt from CEQA- Town Manager
- 10 Adopt a Resolution Approving the List of Projects Funded by SB 1: the Road Repair and Accountability Act- Public Works Director
- 11 Receive Recreation and Community Services Department Quarterly Financial Report for the January through March 2023 period- Recreation Manager
12. Receive Climate Action Update- Climate Action Coordinator
13. Receive report regarding Traffic Improvement Project at Cascade Drive at Cypress Drive and Hickory Road to improve safety to vehicles accessing Cascade Drive- Public Works Director
14. Authorize the Town Manager to sign an amendment to the 1996 Revised Hazardous and Solid Waste Joint Powers Agreement County of Marin- Town Manager
15. Authorize the Town Manager to prepare and submit the Fiscal Year 23-34 Work Plan to Marin County for the use of the Town's Measure A Park Funds- Town Manager

Mayor Cutrano opened the meeting to public comments.

Michael Mackintosh was concerned about the number and importance of items on the Consent Calendar. He opposed item #9 and stated item #4 was incomplete.

Frank Egger, Meadow Way, stated there were too many items on the Consent Calendar. He opposed item #9.

Todd Greenberg echoed the previous speaker's comments, and stated item #4 was missing reports.

Mark Bell was concerned about the Town's finances. He opposed Item #9.

Candace Neal Ricker, Mallory Geitheim, Sierra Salin, Rick Hamer, Kathy Flores, and Deborah Benson, were opposed to item #9 and stated there were too many items on the Consent Calendar.

Eva Chrysanthe noted several of the Consent Calendar items were non-discussion items.

P.J. Feffer, speaking as an individual on his own behalf, referred to item #9 and noted the Town Council had the authority to undo any action taken by the Town Manager.

Mayor Cutrano closed the meeting to public comments.

M/S, Coler/Ackerman, Motion to remove #9 and place it at the end of the agenda.

AYES: Ackerman, Blash, Hellman, Vice Mayor Coler, Mayor Cutrano

M/S, Coler/Ackerman, Motion to approve Consent Calendar items, with the exception of item #9, and including the supplement to item #3.

AYES: Ackerman, Blash, Hellman, Vice Mayor Coler, Mayor Cutrano

### Regular Agenda

16. Renew Ordinance No. 862 Authorizing the Special or Military Equipment Use Policy and Equipment Inventory for the Fairfax Police Department, and Accept the Annual Report on Use of Military Equipment in 2022, Pursuant to California Assembly Bill 481

Town Manager Abrams presented the staff report. She answered questions from the Council regarding procurement of new equipment; a change in the use of equipment; the intent of renewing an ordinance; how long the department has had the equipment; complying with State Law; policies and obligations in terms of engaging with property owners when an incident takes place.

Mayor Cutrano opened the meeting to public comments.

Joe McGarry discussed an incident at Good Earth Natural Foods store that the police handled.

Michael Mackintosh supported the item and trusting police protocols.

Sandy Handsher did not support the police having military equipment.

Michael Sexton agreed with the comments made by Michael Mackintosh.

Eva Chrysanthe opposed the item.

Kay agreed with the comments made by Joe, Eva, and Sandy.

Chris P. stated the county had a history of racist policing.

Mayor Cutrano closed the meeting to public comments.

M/S, Coler/Ackerman, Motion to Renew Ordinance No. 862 Authorizing the Special or Military Equipment Use Policy and Equipment Inventory for the Fairfax Police Department and Accept the Annual Report on Use of Military Equipment in 2022, Pursuant to California Assembly Bill 481.

AYES: Ackerman, Blash, Hellman, Vice Mayor Coler, Mayor Cutrano

17. Receive Status Report on Long-Term Outdoor Dining Structures and Provide Direction to Staff

Building Official Lockaby presented the staff report. He answered questions from the Council regarding the requirement about no signs; “curbside pick-up” signs; gaps in compliance and selective enforcement; pushback on electric heaters; possible reduction in fees; the extension of parklets into neighboring properties; the use of sidewalks for tables; the opacity of windows; the distance from crosswalks; businesses that have not submitted an application and have not paid fees.

Mayor Cutrano opened the meeting to public comments.

Candace supported parklets but was concerned about parking, drainage, visual impacts, and rodents.

Todd Greenberg supported the Council supporting businesses and echoed the concerns of the previous speaker.

Mark Bell was concerned about the lack of parking spaces, sight lines, and the private use of public property. He supported increasing the fee.

Michael Mackintosh stated some businesses needed parklets but safety came first.

Mallory Geitheim was concerned about the parklets on Bolinas Road creating a safety hazard.

Brenna Gubbins, owner of Live Water Surf Shop, stated the arrangement for the parklet in front of her store had not been worked out, and she was waiting to hear from the Town.

Sierra Salin stated parklets cut down on walkability and made riding a bicycle dangerous.

Deborah Benson stated the parklets were useful during COVID but that time was over, and they created a rodent problem.

Eva Chrysanthe stated public transportation needed to be addressed.

Pete Gubbins stated the parklets were unsightly, impacted visibility, and were not needed in winter.

Mayor Cutrano closed the meeting to public comments.

The Council reached consensus that staff should be firmer with the businesses that still have not complied, by sending certified letters with a deadline of between 2 and 4 weeks, depending on the issue. If a business missed that deadline, staff would redtag and/or issue a citation.

18. Receive Presentation Summarizing Public Comments on Public Review Draft Sixth Cycle Housing Element, provide direction on any changes needed, Authorize Town Manager to send the updated Draft Sixth Cycle Housing Element incorporating those changes to the California Housing and Community Development Department (HCD)

Town Manager Abrams presented a report and a PowerPoint presentation.

Consultant Andrew Hill, representing Dyett and Bhatia gave a PowerPoint presentation.

Mayor Cutrano reviewed the 10:00 Rule.

M/S, Coler/Ackerman, Motion to continue with the agenda.

AYES: Ackerman, Blash, Hellman, Vice Mayor Coler, Mayor Cutrano

Consultant Hill and staff answered questions from the Council regarding modifications to the document; feedback from the subcommittee; the version sent to HCD; how public comments are incorporated; hillside development, open space, and how slope is determined; how properties are identified in the document; what “by-right” means; the two Town-owned sites on Forrest Avenue; if there is a model for clustering; programs and fees related to Accessory Dwelling Unit (ADU) development; if compliance includes the adoption of the Zoning modifications; deed-restrictions on ADUs; Appendix B, Chart B-27.

Mayor Cutrano opened the Public Hearing.

Rob Schwartz, owner of 615 Oak Manor Drive, stated the process was unclear. He supported preserving open space, protecting the ridgelines, and affordable housing. He discussed his property.

Frank Egger, Meadow Way, stated the sites and proposals were no good, and the Town should stand up to the state.

Michael Mackintosh stated a feasibility study was needed. He discussed bonds to fund improvements. He stated his property, the Marin Town and Country Club, could provide units.

Todd Greenberg stated this was a complicated process and was concerned they were behind schedule.

Mark Bell stated the recent housing laws were illegal. He was concerned that the proposal would allow multistory structures.

Candace, Monte Vista, stated ADUs were disincentivized by the recent just cause ordinance. She stated the Marin Town and Country Club was a viable option for development.

Mallory Geitheim opposed the proposed development at School Street Plaza. She wanted the Town to stand up to the State.

Susan Fisher asked why the Town did not ignore the State mandates.

Wendy stated a definition for "affordable housing" would be helpful.

Sierra Salin noted the planet was finite and had a growing population.

Kay asked about the projection for twenty ADUs and using ADUs for short-term rentals.

M/S, Coler/Ackerman, Motion to suspend the 11:30 p.m. rule  
AYES: Ackerman, Blash, Hellman, Vice Mayor Coler, Mayor Cutrano

Bob Pendoley, representing the Marin Environmental Housing Collaborative (MEHC), supported the School Street Plaza property in the Draft Housing Element.

Rick Hamer supported the previous speaker's comments and discussed the failure to organize a successful ballot measure to rezone the Marin Town and Country Club to help accommodate the RHNA housing units.

Jenny Silva, MEHC, supported the comments made by Bob Pendoley.

P.J. Feffer, speaking on his own behalf, stated progress was being made.

Mayor Cutrano closed the Public Hearing.

The Council discussed rezoning 615 Oak Manor, removing the Williams property (on Summit Road), more consistency in naming of properties, more clarity on the sites that are eligible for Program 2D, affordability, and School Street Plaza.

M/S, Coler/Blash, Motion to authorize the Town Manager to send the updated Draft Sixth Cycle Housing Element incorporating the changes discussed to the California Housing and Community Development Department (HCD).

AYES: Ackerman, Blash, Hellman, Vice Mayor Coler, Mayor Cutrano

The Council took a 2-minute break at 12:36 a.m.

19. This item is continued to June 7, 2023: 80 Crest Road: Appeal of a Planning Commission denial of a Height Variance for an unpermitted Ground Floor Level that would result in the height of the residential structure being approximately 50 feet: Assessor's Parcel No. 002-152-32: Residential Single-Family RS-6 Zone; Verle and Marlene Sorgen, appellants/owners; CEQA categorically exempt per Section 15301(e)(2)(1)

Mayor Cutrano stated this item has been continued to the June 7, 2023 Council meeting.

9. Introduce Ordinance Amending Town Code Section 2.12.070(B)(3) to eliminate the requirement for Town Council ratification of appointment, removal or demotion of department heads by the Town Manager, and Finding the Action Exempt from CEQA

Town Manager Abrams presented the staff report. Staff answered questions from the Council regarding the norm in Marin County; how the hiring process would work; if a Closed Session could be quickly scheduled so the Council could ratify a hire.

Mayor Cutrano opened the meeting to public comments.

Todd Greenberg opposed the ordinance.

Frank Egger, Meadow Way, opposed this ordinance.

Candace opposed this ordinance and asked for more transparency.

Mark Bell opposed the ordinance.

Michael Mackintosh stated it was the Council's job to hire people.

Rick Hamer opposed the ordinance.

Mayor Cutrano closed the meeting to public comments.

The Council discussed the need to balance the privacy of a job applicant with the needs of the Town, and the changing landscape of employment law. They discussed removal of the demotions and terminations language and keeping the requirement for the Town Manager to have served for 12 months prior for appointments to be ratified by the Town Council.

Town Attorney Coleson suggested removing the words "removal or demotion" and amending the ordinance to read: "...except the Town Attorney, *provided, however, that the appointment of department heads shall require ratification by the Town Council until the Town Manager has served in that position for twelve months.*"

M/S, Coler/Hellman, Motion to Introduce, waive first reading, and read by title only an Ordinance Amending Title 2, Town Manager, Town Code Section 2.12.070(B)(3), Powers and Duties of the Fairfax Town Code, Finding the Action Exempt from CEQA, with the amendments read into the record by the Town Attorney: "...*except the Town Attorney, provided, however, that the appointment of department heads shall require ratification by the Town Council until the Town Manager has served in that position for twelve months.*"

AYES: Ackerman, Blash, Hellman, Vice Mayor Coler, Mayor Cutrano

### Council Reports and Comments

Mayor Cutrano stated these reports were included in written form in the packets.

### Town Manager Report

Town Manager Abrams reported a tree had fallen near the Pavilion but was quickly removed.

The meeting was adjourned at 1:30 a.m. in memory of Susan Oberstein and Gary Graham.