

**TOWN COUNCIL
SPECIAL AND REGULAR MEETING
MINUTES**

On Wednesday, February 17, 2016, at 7:00 p.m., the Council held a special meeting at Tiburon Town Hall, 1505 Tiburon Boulevard, Tiburon, California.

CALL TO ORDER AND ROLL CALL – SPECIAL MEETING

Councilmember Doyle , Councilmember Fredericks, Councilmember O’Donnell, Vice Mayor Fraser, Mayor Tollini were all present, along with Town Attorney Stock and Town Manager Chanis.

CLOSED SESSION

- 1) CONFERENCE WITH LEGAL COUNSEL– ANTICIPATED LITIGATION Significant Exposure to litigation pursuant to paragraph (2) of subdivision (d) of Section 54956.9: One potential case

- 2) CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9: One potential case

ADJOURNMENT – to regular meeting

CALL TO ORDER- REGULAR MEETING

Mayor Tollini called the regular meeting of the Tiburon Town Council to order at 7:30 p.m. on Wednesday, February 17, 2016, in Town Council Chambers, 1505 Tiburon Boulevard, Tiburon, California.

ROLL CALL

PRESENT: COUNCILMEMBERS: Doyle, Fraser, Fredericks, O’Donnell, Tollini

PRESENT: EX OFFICIO: Town Manager Chanis, Town Attorney Stock, Director of Community Development Anderson, Director of Public Works/Town Engineer Barnes, Director of Administrative Services Bigall, Chief of Police Cronin, Town Clerk Crane Iacopi

ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION, IF ANY

Mayor Tollini said that no action was taken in closed session.

ORAL COMMUNICATIONS

None.

CONSENT CALENDAR

1. **Town Council Minutes** – Adopt minutes of January 20, 2016 regular meeting (Town Clerk Crane Iacopi)
2. **Town Audit Report** – Recommendation to accept and file the Town’s Fiscal Year 2014-15 Basic Financial Statements and Independent Auditor’s Report (Director of Administrative Services Bigall)
3. **Mid-year Budget Report** – Recommendation to accept Town mid-year budget review for Fiscal Year 2015-16 (Director of Administrative Services Bigall)
4. **27 Main Street (Sam’s Anchor Café)** – Adopt resolution of findings of appeal of Planning Commission decision to approve a 920 square foot canopy on a portion of an exterior deck for an existing restaurant (Community Development Department)
5. **Settlement Agreement** – Authorize execution of Release and Settlement Agreement between Union Pacific Railroad Company and the Town of Tiburon (Town Attorney Stock)

Council asked to remove Item Nos. 1, 2, 3 & 4 from the Consent Calendar for discussion.

MOTION: To adopt Consent Calendar Item No. 5 (agreement), as written.

Moved: Fraser, O’Donnell

Vote: AYES: Unanimous

[Items taken out of order for discussion]

Consent Item No. 4: 27 Main Street (Sam’s Anchor Café) – Adopt resolution of findings of appeal of Planning Commission decision to approve a 920 square foot canopy on a portion of an exterior deck for an existing restaurant (Community Development Department)

Councilmember Fredericks asked for clarification of the term “qualified prohibition” in the resolution. Director of Community Development Anderson said this referred to the rare instances that the restaurant might apply to the Town Manager for a special event permit, under Town policy.

MOTION: To adopt Consent Calendar Item No. 4 (resolution), as written.

Moved: Fredericks, seconded by Doyle

Vote: AYES: Unanimous

Consent Item No 1: **Town Council Minutes** – Adopt minutes of January 20, 2016 regular meeting (Town Clerk Crane Iacopi)

Councilmember O'Donnell asked for a correction on page 9, to add the words, "City of Belvedere", to his statement about how much the Town and City had contributed to the Yellow Bus Challenge.

MOTION: To adopt Consent Calendar Item No. 1 (minutes), as amended.

Moved: O'Donnell, seconded by Fraser

Vote: AYES: Unanimous

Consent Item No. 2: **Town Audit Report** – Recommendation to accept and file the Town's Fiscal Year 2014-15 Basic Financial Statements and Independent Auditor's Report (Director of Administrative Services Bigall)

Vice Mayor Fraser said he had some questions on pages 40-42 of the audit, concerning the numbers stated for the Town's unfunded pension liability, as well as reporting changes under GASB 68. Director Bigall said the auditor was present and able to answer these questions.

Town Auditor Ralph Marcello gave a brief summary of how CalPERS estimates its interest earned on pension funds over time. He said that CalPERS had historically estimated a 7.5% rate of return; if it earns more, it takes the difference and amortizes it over 30 years. Then, Marcello said, legislation reduced that period to 15 years, and now (under GASB 68), it is five years.

Marcello said PERS also takes into consideration the actuarial estimates for how long employees are expected to live (and receive a pension) after retirement. He said this number is estimated at 11-14 years.

Mr. Marcello went on to explain that the current CalPERS estimate (of pension liability) is based on fiscal year 2012-13, while the Town's report is based on fiscal year 2014-15. He pointed out the column for 2014-15 on page 41, which is based on the FY 2012-13 earnings. He said that in 2012-13, PERS earned 16% on its investments and this excess would be amortized over five years. He also said that in future, the audit reports will have up to 10 columns represented.

Marcello said the Town's unfunded pension liability is currently \$4.7 million, an amount he said should not be worrisome to the Town because it is 80% funded, if the Town is comfortable with this chosen percentage and range.

Marcello said in future audit reports, there will be a column for unfunded medical liability, as well. Vice Mayor Fraser asked him to comment on this; he referenced a percentage of covered payroll on one page of the audit.

Mr. Marcello said that this was an “old format” for other post-employment benefits (OPEB). He said it showed \$3.4 million would be paid out over the annuities’ lifetime. He said that while the report showed no assets set aside for this liability, he also noted the Town had the assets earmarked for OPEB but had not yet funded the trust.

Vice Mayor Fraser asked for an explanation of the [GASB] term, “percentage of covered payroll”. Mr. Marcello said he had no idea what this meant.

The Council thanked Mr. Marcello for his report.

MOTION: To adopt Consent Calendar Item No. 2, and to file the audit report, as written.

Moved: Fredericks, seconded by Fraser

Vote: AYES: Unanimous

Consent Item No. 3: **Mid-year Budget Report** – Recommendation to accept Town mid-year budget review for Fiscal Year 2015-16 (Director of Administrative Services Bigall)

Vice Mayor Fraser posed some questions and comments about the report. First he noted that that sales tax receipts were running 3% behind last year, however, he said that transient occupancy tax (TOT) was ahead of last year’s amount. He also said that permit fees and business license taxes were tracking behind the previous year’s calculations.

Vice Mayor Fraser asked whether sales tax receipt were categorized for better understanding. Director Bigall said they were not delineated when received from the State. However, she said that the Town could have this done. Vice Mayor Fraser said that the Town might benefit by this, as it has been involved for many years in supporting the revitalization of the downtown. He said with better information, the Town might be in a better position to advise landlords and property owners on how to view their opportunities for success here.

Ms. Bigall said that for under \$10,000, the Town could hire a consulting firm to provide reports on sales tax receipts by category; furthermore, she said the Town could select its categories of reporting. She said the information could be extracted, and that it was accurate.

Vice Mayor Fraser said that in a small community such as ours, there might be merit in doing this. For instance, he said it might identify what type of retail might be right for this location.

Councilmember Fredericks wondered if the business owners themselves might provide the Town with this data. Councilmember O’Donnell indicated that some business owners considered this kind of information to be private in nature.

Director Bigall said that the programming could be put into the coming year's budget. Mayor Tollini said that staff should bring an estimate and contract [with HDL] back to the Council.

Vice Mayor Fraser also asked about capital expenditures in the Mid-Year Budget Report. He asked if programming for the repair and replacement of an area of Paradise Drive, in the vicinity of the Caprice, was reflected in the budget. Director Bigall reported that it was included; she said \$135,000 for this project was included in "roadway maintenance".

MOTION: To adopt Consent Calendar Item No. 3 (mid-year report), as written.

Moved: Fredericks, seconded by Doyle

Vote: AYES: Unanimous

ACTION ITEMS

1. **Leaf Blower Regulations** – Review of existing town regulations pertaining to leaf blowers and hedge trimmers; Title VI, Chapter 30 of the Tiburon Municipal Code (Director of Community Development Anderson)

Director Anderson gave a brief background and summary of the item. He said that nearly 20 years ago, the Council had adopted its first ordinance regulating gas-powered leaf blowers and hedge trimmers in residential areas. He said at that time, there had been fairly significant public interest in limiting the noise and pollution caused by the use of this equipment. He also noted the regulations had been amended since that original adoption.

Anderson said the full text of the current regulations was attached for Council's review, along with a chart delineating hours and the types of equipment allowed, by zone (residential or commercial). He said that staff would like to hear the Council's thought and discussion, and possible direction on this matter.

Mayor Tollini opened the matter to public comment.

George Landau, Sugarloaf Drive, one of the original proponents of the ban on gas-powered leaf blowers, urged the Council not to erode the ordinance in any way through changes to location, type of equipment, or hours of use.

There being no further comment, Mayor Tollini closed the item to public comment.

Councilmember O'Donnell started the discussion and covered several areas of concern, the first being enforcement. He asked whether the Town had levied any fines for violations of the ordinance.

Chief Cronin said not during his tenure. He said that enforcement has been complaint driven; that if an officer receives a call, he or she goes to the site and asks the violator to abate the use.

He said that the officers usually issue a warning first, then a citation, but he said the latter is usually not necessary. Chief Cronin said there has been roughly one complaint per week. O'Donnell asked whether the complaints were about the times of use, or mechanism. Cronin said they were primarily about the noise.

Councilmember O'Donnell said that he was sympathetic to the issues of noise and times of use, and he would like to see greater enforcement of these violations. However, he said he was troubled by the differentiation between gas-powered and electric equipment. He said that he had talked with sales people and buyers at Home Depot who said that the [gas-powered] equipment was not as noisy as it used to be, nor as polluting. It appeared to him to be an imposition to ask homeowners and gardeners to use electric equipment, primarily because of the difficulty of traversing the topography of many Tiburon properties; nor was electric equipment as powerful or effective.

O'Donnell also said that the Town was held to a different standard and it seemed somewhat hypocritical to him. That, and the fact of topography, less efficient electrical equipment (he stated that most landscape crews still use gas-powered equipment anyway), and that the Town's ordinance is a "paper law", led him to think it should be repealed. He said that the hours of use and weekend bans should not be changed, however.

Councilmember Doyle said that he agreed with Councilmember O'Donnell on this matter. He said that based on his own experience, the topography of Tiburon made it challenging to use electric-powered equipment and pull unwieldy lengths of cord all over the place.

Councilmember Fredericks said that it is not at all clear that landscapers use the newer equipment referenced by Councilmember O'Donnell. She said she handed out the English/Spanish charts and was doing her part to inform people of the town's regulations in her neighborhood. She said the noise in her cul-de-sac from gas-powered equipment was a real concern. She warned of changing the balance that had been achieved by this regulation.

Vice Mayor Fraser said in thinking about this issue, he thought if the ordinance wasn't broken, why fix it.

Mayor Tollini said that she agreed with Councilmember O'Donnell about the discrepancy between rules for the town and rules for homeowners. However, she said her reasoning went to the opposite solution, that of going "all electric". She agreed that banning noise from this equipment was a good thing. She said that other towns and cities also had started using electric equipment for their crews.

Councilmember O'Donnell said that even under this scenario, the ban on gas-powered equipment would not be enforced. And he continued to state that many hedges and landscaping features lay in difficult to access terrain, making the use of electric equipment and cords prohibitive. He said that government simply shouldn't be telling folks what kind of equipment to use.

Councilmember Fredericks asked whether the Town's crews did a lot of leaf blowing near residential areas. Director of Public Works Barnes said the work was done in the Town's parks, primarily, and not in residential areas. He cited one instance where the crews had to blow leaves out of the drains in the Cove Shopping Center after it flooded, during an emergency. But usually the street sweepers performed that task, according to Barnes.

Councilmember O'Donnell said that because of the recent windy weather, homeowners would be blowing leaves out of their driveways in the coming days, and that this was not an example of emergency use. He said that is simply what this type of equipment is used for.

Vice Mayor Fraser said he works with a lot of service providers in his job, and he has noted that many of them have electric generation they can plug into right on their service trucks. He wondered whether the Town could look into that for its Public Works Department, if the majority of the Council wanted to pursue the use of electric equipment.

Mayor Tollini said she was not just referring to Public Works, rather, to everyone going electric including in commercial zones, as well.

Councilmember Doyle said that it would not be practical for the Town's crews to use electric equipment. He said it would require the use of generators and the like.

At the end of the discussion, the Council concluded that no formal action would be taken at this time on the leaf blower regulations.

TOWN COUNCIL REPORTS

Vice Mayor Fraser reported on the recent Marin Telecommunications Agency (MTA) retreat [Fraser is the town appointed representative to MTA]. He said that Tiburon and Belvedere were the last two cities in Marin who did not videotape their meetings. He said that in the interest of public access and transparency, the Council should consider videotaping its Council and other commission meetings. He said that the Community Media Center of Marin (CMCM) could provide services, through the Town's participation in MTA. He said he had provided the Town Manager with a copy of a recent proposal for the Town of Corte Madera. He suggested putting a discussion of a contract with CMCM on an upcoming Council agenda.

After a brief discussion, the Council directed staff to include this item in a larger discussion at the Town Council retreat, and to include improvement of the Town Council microphone system, and perhaps other ideas, as well.

TOWN MANAGER REPORT

Town Manager Chanis said that the Council retreat had been scheduled as a half-day meeting on Friday, April 1, at Servino's. He said an agenda would be developed and a discussion of technology would be included.

WEEKLY DIGESTS

- Town Council Weekly Digests February 5 & 12, 2016

ADJOURNMENT

There being no further business before the Town Council of the Town of Tiburon, Mayor Tollini adjourned the meeting at 8:15 p.m.

s/

ERIN TOLLINI, MAYOR

ATTEST:

s/

DIANE CRANE IACOPI, TOWN CLERK