

MINUTES OF THE
REGULAR MEETING – CITY COUNCIL
February 01, 2011

City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

I. CALL TO ORDER:

Mayor Patterson called the meeting to order at 7:20 p.m.

II. CLOSED SESSION:

III. CONVENE OPEN SESSION:

A. ROLL CALL

All Council Members were present.

B. PLEDGE OF ALLEGIANCE

Lisa Wolfe led the Pledge of Allegiance.

C. REFERENCE TO THE FUNDAMENTAL RIGHTS OF THE PUBLIC:

IV. ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:

A. ANNOUNCEMENTS

1. Announcement of action taken at Closed Session, if any.

2. Openings on Boards and Commissions:

Sky Valley Open Space Committee: One full term to January 31, 2015

Civil Service Commission: One full term to January 31, 2015

Building Board of Appeals: Three full terms to January 31, 2015

Solano Transportation Authority Pedestrian Advisory Committee: One full term to January 31, 2014

3. Mayor's Office Hours:

B. APPOINTMENTS

- 1. Appointment of Council Member Tom Campbell to the City Council Appointment Sub Committee for a one-year term ending January 31, 2012.**

RESOLUTION 11-9 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF COUNCIL MEMBER TOM CAMPBELL TO A CITY COUNCIL APPOINTMENT SUBCOMMITTEE FOR A ONE-YEAR TERM ENDING JANUARY 31, 2012

Public Comment:

Rick Ernst - Mr. Ernst requested clarification on how the openings on boards and commissions were posted.

On motion of Mayor Patterson Council adopted the Resolution, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Hughes, loakimedes

Noes: (None)

C. PRESENTATIONS

D. PROCLAMATIONS

V. ADOPTION OF AGENDA:

On motion of Vice Mayor Schwartzman, seconded by Council Member Hughes, Council adopted the Agenda, as presented, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, loakimedes

Noes: (None)

VI. OPPORTUNITY FOR PUBLIC COMMENT:

A. WRITTEN COMMENT

Ms. McLaughlin reviewed the written comments that were submitted to Council.

B. PUBLIC COMMENT

John Van Landschoot - Mr. Van Landschoot inquired whether there would be opportunity for public dialogue at the upcoming budget workshops. Mayor Patterson confirmed there would be.

Anthony Shannon - Mr. Shannon expressed support for the bicycle racks that were recently installed in the Downtown Area

VII. CONSENT CALENDAR:

Council pulled item V.II.A for discussion.

On motion of Vice Mayor Schwartzman, seconded by Council Member loakimedes, Council adopted the Consent Calendar, as amended, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, loakimedes

Noes: (None)

A. Approval of Minutes of the Special and Regular meetings of January 18, 2011

Mayor Patterson stated there were comments submitted by Ms. Dean regarding the minutes of the regular meeting of January 18, 2011. Council could discuss the comments tonight, or they could take the comments under consideration and get back to Ms. Wolfe, and then take action at the next Council meeting.

Council Member Hughes suggested Council submit their comments to Ms. Wolfe, and take action on the minutes at a future meeting.

The minutes of the regular City Council meeting of January 18, 2011 were continued to February 15, 2011.

Council Member loakimedes disclosed exparte communications.

The minutes of the Special City Council meeting of January 18, 2011 were approved as presented.

B. ACCEPTANCE AND NOTICE OF COMPLETION FOR THE 2010 STREET RESURFACING PROJECT

RESOLUTION 11-10 - A RESOLUTION ACCEPTING THE 2010 STREET RESURFACING PROJECT AS COMPLETE INCLUDING CHANGE ORDER NOS. 1-3, AUTHORIZING THE CITY MANAGER TO SIGN THE NOTICE OF COMPLETION, AND AUTHORIZING THE CITY CLERK TO FILE SAME WITH THE SOLANO COUNTY RECORDER

On motion of Vice Mayor Schwartzman, seconded by Council Member loakimedes, Council adopted the Resolution, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, loakimedes

Noes: (None)

C. Approval to waive the reading of all ordinances introduced and adopted pursuant to this agenda

VIII. PUBLIC HEARINGS:

A. APPROVAL OF THE AGREEMENT WITH ALLIED WASTE FOR THE SOLID WASTE, RECYCLING AND GREEN WASTE FRANCHISE AGREEMENT AND DIRECTION TO AMEND THE MUNICIPAL CODE RELATED TO MANDATORY COMMERCIAL/INDUSTRIAL RECYCLING

RESOLUTION 11-11 - A RESOLUTION AWARDING THE SOLID WASTE, RECYCLING AND GREEN WASTE FRANCHISE AGREEMENT TO ALLIED WASTE AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONTRACT ON BEHALF OF THE CITY

Heather McLaughlin, City Attorney, reviewed the staff report.

Mr. Richard Tagore-Erwin, Consultant, reviewed a PowerPoint presentation titled 'Collection Service Agreement with Allied Waste Systems, Inc.'

Council Member Campbell and Mr. Tagore-Erwin discussed the issue of bundle service, fees, and the issue of free bulk pickup.

Vice Mayor Schwartzman reviewed the events over the past few years that led to the current agreement being drafted.

Council Member loakimedes discussed the task assigned to the subcommittee, the issue of zero-waste, and the contract being a good thing for everyone.

Council Member Campbell, Vice Mayor Schwartzman, and Council Member loakimedes discussed the franchise extension fee, CPI, and how the negotiated rates will compare to other cities negotiated rates.

Council Members Hughes, Schwartzman, and loakimedes discussed feedback received from the commercial businesses regarding the mandated recycling, fees in the agreement, additional revenues, street sweeping fee reductions, and the addition of services to the City.

Council Members Campbell and Schwartzman discussed the issue of street sweeping fees.

Public Hearing Opened

Public Comment:

Tom Gavin - Mr. Gavin spoke in support of the proposed agreement.

Jim Trimble - Mr. Trimble spoke in support of the proposed agreement.

Lochlin Caffey - Mr. Caffey spoke in support of the proposed agreement.

Dennis Lowry - Mr. Lowry discussed concern regarding the increased costs, revenues, vehicle impact fees (designating those funds specifically to the streets - not towards benefits and salaries), and the need for a better breakdown of fees on customer's bills.

Council Member Campbell discussed concern regarding the need to ensure certain fees are not passed on to the consumers.

Steve Moore - Mr. Moore spoke in support of the proposed agreement.

Kathy Kerridge - Ms. Kerridge spoke in support of the proposed contract. She requested reports about how much recycling is being diverted be posted on the City's website. She would like some assurances regarding the e-waste recycling program (to ensure it is being done safely in the U.S. and not overseas).

Constance Beutel - Dr. Beutel spoke in support of the proposed agreement.

Gary Heppell, Benicia Chamber of Commerce - Mr. Heppell spoke in support of the proposed agreement.

Nancy Martinez, Benicia Main Street - Ms. Martinez spoke in support of the proposed agreement.

Dana Brock - Ms. Brock spoke in support of the proposed agreement.

Susan Street - Ms. Street clarified the revenue the City would receive, service enhancement features, and how possible increases to condominium associations would be handled.

Eldon Peterson - Mr. Peterson spoke in support of the proposed agreement.

George Oaks - Mr. Oaks expressed concern regarding the recycling bags blowing away and littering the City, and possible space issues for the additional recycling bins. He spoke in support of the proposed agreement.

Paul Morsen - Mr. Morsen discussed how the contract would hold up against the mandates that would be coming up in future years. He discussed how the proposed rates compared to other communities. He discussed how the proposed agreement could work for condominium complexes. The waste company would need to work with the condominium complexes on education.

Mayor Patterson and Mr. Morrison discussed the issue of performance measures.

Vice Mayor Schwartzman and Mr. Morrison discussed the issue of diversion and recycling.

Mayor Patterson and Staff discussed the issue of cart locations.

Rick Ernst - Mr. Ernst discussed the issue of composting. He would like to see a zero-waste program in Benicia.

Council Member Campbell clarified that the agreement addressed the issue of composting.

Fred Railsback - Mr. Railsback spoke in support of the proposed agreement.

End of Public Comment

Public Hearing Closed

Mayor Patterson acknowledged the hard work done by the subcommittee. She and Staff discussed the need for performance measures (link the performance measures to the rates), ensuring BUSD cooperates with the recycling program, and whom the recycling liaison would report to in the City.

Mayor Patterson summarized the issues raised by Council and the public:

- Vehicle impact funds - designated to the streets
- Ensuring the stream of the franchise fees, and recycling fees, goes directly to City services (accounting issue that could be dealt with in the budget)
- The need for clarification on the CPI - that it is not a discretionary index, but an established index
- The reports be posted so the public could view them
- E-waste - no matter where it is - that it is treated in an environmentally appropriate manner (Mr. Argente clarified how Allied Waste handled the E-waste program)
- Litter pickup (of the provided recycling bags) (Mr. Argente clarified how the bags provided by Allied Waste were issued/handled.)
- Close working relationship between Allied Waste and the Benicia Sustainability Commission - public outreach
- Where the extra recycling carts would be placed

Mr. Argente discussed the issue of commercial food waste recycling.

Mayor Patterson asked Mr. Argente about doing two street sweepings back-to-back, in order to remove the organic materials from the streets prior to the rainy season (to protect the drainage systems). Mr. Argente confirmed that could be

done.

Council Member Campbell discussed the garbage rates in Walnut Creek.

Ms. McLaughlin reviewed the changes to the agreement:

- Direction to Staff to address the recycling fees to City services (not staff cost - not being inserted into the agreement, but the issue would be part of the budget study sessions)
- Putting the reports on the City's website (to be reflected in the agreement)
- E-waste recycling - putting the cradle to grave information into the contract
- Community outreach program (Allied will submit a program to the City by May 1, 2011)
- Direction to Staff to ensure that the Sustainability Commission, and any other appropriate commission or group could look at the issue (including BUSD)
- Performance measures (Staff indicated that along with placing the reports on the City's website, and the liquidated damages provision in the agreement, the performance measures were powerful)

Council Member Campbell recognized the successful negotiations, but expressed his desire to put the contract out to bid to ensure it is the best bid for the City.

Council Member Ioakimedes clarified the bid was not a blind bid. He discussed the original direction to the subcommittee.

Vice Mayor Schwartzman discussed the original direction to Staff and the subcommittee.

After the break, Ms. McLaughlin clarified that, as part of its discussion, Council had given direction to Staff to prepare an ordinance to mandate commercial and industrial users use Allied Waste for recycling.

On motion of Vice Mayor Schwartzman, seconded by Council Member Ioakimedes, Council adopted the Resolution, as amended, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Hughes, Ioakimedes

Noes: Campbell

B. MEDICAL MARIJUANA DISPENSARIES BAN

ORDINANCE 11- - AN ORDINANCE ADDING A NEW CHAPTER 9.60 (MEDICAL MARIJUANA DISTRIBUTION FACILITIES) TO TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE), A NEW CHAPTER 17.102 (MEDICAL MARIJUANA DISTRIBUTION FACILITIES) TO TITLE 17 (ZONING), AND

AMENDING SECTIONS 17.24.020, 17.26.020, 17.28.020, 17.32.020, 17.36.030, 17.40.030, AND 17.46.010 OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE

Mayor Patterson clarified the public hearing process.

Public Comment:

Rick Ernst - Mr. Ernst requested clarification on the agenda item, and the recommendation made by the Planning Commission regarding the issue.

Heather McLaughlin, City Attorney, reviewed the staff report.

Council Member Campbell and Staff discussed how the cost of purchasing medical marijuana compares with the street cost.

Proponent:

Ricki Ingersoll - Ms. Ingersoll discussed the positive aspects of medical marijuana. She discussed the issues of safety, cost, and health benefits. She urged Council not to proceed with the proposed ordinance.

Opponent:

None

Public Hearing Opened

Public Comment:

Craig Litwin - Mr. Litwin spoke in opposition of the proposed ordinance.

Jim Trimble - Mr. Trimble spoke in support of the proposed ordinance.

Kris Krane - Mr. Krane spoke in opposition to the proposed ordinance.

Abe Gardner - Mr. Gardner spoke in opposition to the proposed ordinance.

Richard Heyer - Mr. Heyer spoke in support of the proposed ordinance.

Rick Ernst - Mr. Ernst inquired about the cost of the police 'sweeps', and whether those costs would be covered in the proposed ordinance.

Public Comment Closed

Public Hearing Closed

Council Member Hughes discussed various concerns regarding medical marijuana dispensaries (adequacies of controls, crime, and the message the City could be sending to the youth). He discussed the recommendation made by the Planning Commission.

Council Member Campbell discussed concerns regarding the effects medical marijuana dispensaries could have on other businesses.

Vice Mayor Schwartzman discussed concerns regarding the process for obtaining medical marijuana cards, his belief that medical marijuana did have a purpose, the ability to craft an ordinance that could minimize the concerns raised, and the need for dispensaries to be heavily regulated if it is ever approved in the City. He discussed the recommendation made by the Planning Commission. He suggested giving the issue back to the Planning Commission for further review.

Council Member Ioakimedes and Staff discussed the issue of a ban on top of a moratorium, the current moratorium, ensuring there is not a lapse in time where there are no regulations on the issue, putting a sunset date in the ordinance, restrictions that could be put in the ordinance, and incorporating Alcoholic Beverage Control standards in the ordinance. He discussed the need to keep the current status quo, but the need to do more research so Council could come to a more informed decision.

Mayor Patterson discussed giving direction to Staff to design a stakeholder process (get a retired police officer, medical practitioners, patients, etc.), meet quickly, and come back with a plan on February 15, 2011 to discuss the issue.

Ms. McLaughlin discussed the need to address the issue properly. Staff could not address the issue properly by February 15, 2011. She discussed the timing of introducing and adopting an ordinance. If it was not introduced tonight, there could be a lapse in regulations. If it were introduced and adopted, Council could then give Staff direction to put together a public outreach program, and have community workshops to see what the sentiment of the community is, then, send it back to the Planning Commission.

Mayor Patterson clarified that it needed to be a stakeholder process.

Mr. Kilger agreed with Ms. McLaughlin. Staff would not be able to do a proper process by February 15, 2011. He suggested putting the controls in place, then coming up with a way to have some assurances (by motion or direction to staff) the issue will be taken care of in a reasonable amount of time (one-year review).

Vice Mayor Schwartzman suggested introducing the ordinance tonight, start a

stakeholder process to seek input, and possibly putting the issue to a vote of the people in 2012.

Council Member Ioakimedes asked if a whereas could be added to the ordinance indicating Council's intent regarding the stakeholder/outreach process. Ms. McLaughlin confirmed that could be done.

Mayor Patterson suggested the following language: 'whereas the City seeks to have more information that may lead toward reconsideration of this ordinance.'

Mr. Kilger discussed the issue of Staff time, and the time needed for the current budget process. Mayor Patterson suggested the issue be revisited in nine months.

Council Member Hughes discussed not putting a specific time limit on the issue. He made a motion to introduce the ordinance as presented.

Mayor Patterson discussed the recent vote by the Planning Commission, and the need to place a time limit on revisiting the issue.

Council Member Hughes discussed Council's ability to bring an issue back for discussion at any time.

Council Member Ioakimedes discussed the need to put a time limit on bringing the issue back for discussion.

Vice Mayor Schwartzman suggested placing the issue on Council's policy calendar.

Mayor Patterson and Staff discussed giving direction to Staff to place the issue on the policy calendar. She asked Staff if they would be able to look at the issue, address it with the Planning Commission, do the stakeholder and outreach process, and come back to Council in a year, and still be able to get all their other work done. Mr. Knox expressed concern regarding the time required to address current budget issues, and concern regarding staff time and resources.

Mr. Kilger suggested Council give direction to Staff, independent of the ordinance. He recommended introducing the ordinance, then directing Staff to come back with a recommended course of action. He asked that Staff be given the opportunity to put a strategy together (in 90 days or so).

Mayor Patterson clarified the whereas that was suggested earlier was not part of the motion. She clarified that the action taken tonight would not be a moratorium. It would be an introduction of an ordinance.

Council Member Hughes clarified that his motion did not include direction to

Staff.

Mayor Patterson asked for a general consensus of the Council regarding Mr. Kilger's suggestion for direction to Staff. Council Members Campbell, Hughes, Ioakimedes, and Schwartzman voted in favor of putting the issue on the policy calendar, and Mayor Patterson voted against it.

On motion of Council Member Hughes, seconded by Vice Mayor Schwartzman, Council approved the Introduction and First Reading of the Ordinance, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, Ioakimedes

Noes: (None)

1. Supplemental Report - MEDICAL MARIJUANA DISPENSARY BAN

IX. ACTION ITEMS:

X. INFORMATIONAL ITEMS:

A. City Manager Reports

XI. COUNCIL MEMBERS REPORTS:

XII. ADJOURNMENT:

Mayor Patterson adjourned the meeting at 11:39 p.m.