

**TOWN COUNCIL
MINUTES**

CALL TO ORDER

Mayor Berger called the regular meeting of the Tiburon Town Council to order at 7:30 p.m. on Wednesday, October 5, 2005, in Town Council Chambers, 1505 Tiburon Boulevard, Tiburon, California.

ROLL CALL

PRESENT: COUNCILMEMBERS: Berger, Fredericks, Gram, Slavitz

ABSENT: COUNCILMEMBERS: Smith

PRESENT: EX OFFICIO: Town Manager McIntyre, Town Attorney Danforth, Planning Manager Watrous, Director of Public Works/Town Engineer Echols, Director of Administrative Services Bigall, Town Clerk Crane Iacopi

Prior to the regular meeting, beginning at 6:15 p.m., the Council met in closed session to discuss the following items:

CLOSED SESSION

**CONFERENCE WITH LEGAL COUNSEL -
(Section 54956.9(a))**

Town of Tiburon v. Sylvia

**CONFERENCE WITH LEGAL COUNSEL – THREATENED LITIGATION
(Section 54956.9(b))**

Threatened Litigation by County of Marin

**PUBLIC EMPLOYEE PERFORMANCE EVALUATION
(Section 54957)**

Title: Town Manager
Town Attorney

ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION, IF ANY

Mayor Berger said that no specific action was taken in closed session. He also announced that Vice Mayor Smith was present during the closed session but had to leave prior to the beginning of the regular meeting.

ORAL COMMUNICATIONS

Town Manager McIntyre introduced Dave Bernardi, Interim Director of Public Works. He said that Mr. Bernardi had served as Public Works Director for the City of San Rafael for 25 years, and had most recently been the manager of the Marin Builder's Association.

The Town Manager said that Mr. Bernardi was now a senior project manager at Harris & Associates, and that he would have office hours in Tiburon on Tuesdays through Thursdays. Later, McIntyre said that Bernardi would become the Deputy Town Engineer once the Director's position was filled on a permanent basis.

McIntyre said that Mr. Bernardi brought a wealth of knowledge and contacts within the County of Marin to his position with the Town.

CONSENT CALENDAR

1. **Approval of Town Council Minutes** – September 21, 2005
2. **Recommendation by Director of Public Works/Town Engineer** – Accept Trestle Glen Bicycle and Pedestrian Pathway Improvements as Complete
 - a) A Resolution of the Town Council of the Town of Tiburon
Accepting Trestle Glen Pedestrian Pathway Phase 1 Project
3. **Recommendation by Director of Public Works/Town Engineer** – Adopt Town Policy Regarding Street Repairs in Conjunction with Rule 20B Utility Undergrounding Projects
4. **Recommendation by Director of Public Works/Town Engineer** – Adopt Town Policy for Fences Constructed in Public Right-of-Way
5. **Recommendation by Town Manager** – Recognition of Town Employees Kevin Bryant and Pat Echols upon their Departure – *(to be presented at Council meeting)*
 - a) A Resolution of the Town Council of the Town of Tiburon
Commending Advance Planner Kevin Bryant for his
Distinguished Service to the Town of Tiburon
 - b) A Resolution of the Town Council of the Town of Tiburon

Commending Director of Public Works/Town Engineer
Patrick Echols for his Distinguished Service to the Town of Tiburon

6. **Recommendation by Town Manager** – Authorize Request for Proposal to Retain Consultant for Organizational and Operational Review and Analysis of the Belvedere-Tiburon Joint Recreation Department
7. **Recommendation by Town Attorney** – Accept Moitoza and Las Lomas Lanes as Public Recreational Trails and Rights-of-Way for Purposes of Maintenance by Town
 - a) A Resolution of the Town Council of the Town of Tiburon
Accepting Moitoza and Las Lomas Lanes

Prior to entertaining a motion to adopt, Mayor Berger read the resolution commending Patrick Echols, Consent Calendar Item No. 5, aloud.

MOTION: To approve Consent Calendar Item Nos. 1 through 7, above.
Moved: Fredericks, seconded by Slavitz
Vote: AYES: Unanimous
ABSENT: Smith

REGULAR AGENDA

8. **Recommendation by Director of Administrative Services** – Adoption of Town Risk Management Program and Policy
 - a) A Resolution of the Town Council of the Town of Tiburon
Adopting a Risk Management Program

Director Bigall gave the Council an overview of the Town’s risk management program. She said that the Town’s liability insurer, ABAG Plan Corporation, recommended adoption of a formal policy in order to restate the Town’s commitment to its risk management program.

In addition to the liability portion of the program, Ms. Bigall said that the Town was self-insured for worker’s compensation insurance through the Bay Cities Joint Powers Insurance Authority. She said the Town had a low claims history, due in part to the Town’s proactive process of conducting safety meetings and safety trainings for all town employees.

Finally, Ms. Bigall said that while the Town did not have a formal position of “risk manager” in the past, this title would be assigned by the Town Manager upon adoption of the recommended policy.

Mayor Berger asked whether the Town had entertained any comparisons of its insurance programs with other carriers.

Town Manager McIntyre said that the Town was a founding member of the ABAG plan, which was due in large part to the difficulty that cities experienced in the past in finding commercial liability underwriters. Likewise, he said that the Bay Cities JPA was formed by the cities after the collapse of the Marin cities' plan.

Mr. McIntyre said that the Town had not gone out to market largely because these plans had such positive results and that some cities who had left the [ABAG] plan had returned.

Mr. Marcus Beverly, representing the ABAG Plan, said that some members purchased additional liability insurance in excess of what was offered by ABAG. He said that ABAG had market clout with its 32 members.

Mr. Marcus presented an overview of the Town's insurance and claims history with the ABAG Plan with a powerpoint presentation that showed the success of the town's participation. He said that adoption of a formal risk management policy would position the Town to be eligible for additional grant funding and programs. He thanked the Council for its continued participation.

Town Manager McIntyre reiterated some of Mr. Marcus' statements about best practices and pointed out examples of the Town's sidewalk maintenance and tree ordinances. He said that Town staff would also implement ABAG's recommendations for a playground and sidewalk inspection policy, and a vehicle policy, which would net the Town two \$5,000 grants.

Mayor Berger opened and closed the public hearing. There was no public comment.

MOTION: To adopt the policy and resolution, as recommended.

Moved: Slavitz, seconded by Gram

Vote: AYES: Unanimous

ABSENT: Smith

9. Recommendation by Director of Public Works/Town Engineer – Adoption of Hazard Mitigation Plan

- a) A Resolution of the Town Council of the Town of Tiburon Adopting the Association of Bay Area Government's Report *Taming Natural Disasters* as the Town of Tiburon's Local Hazard Mitigation Plan

Director of Public Works/Town Engineer Echols reported that the Town should have a FEMA-approved local hazard mitigation plan in order to recover costs for clean-up and restoration in the event of a local disaster. He said that this could be accomplished by "annexing" to ABAG's plan with a section to address Town specific issues.

Director Echols said that the local annexation portion of the plan had been developed by his department, the Tiburon Police Department and the Advance Planner. He said that it had been

pre-approved by FEMA. In addition, Mr. Echols said that he had applied to the State Office of Emergency Services for a grant for broom abatement and clearing of the fire roads in the Tiburon open space.

Mayor Berger opened and closed the public hearing. There was no public comment.

Mayor Berger asked some questions about the local annex portion of the document. Specifically, the Mayor asked about the creation of as an additional “ways out” of Tiburon (Item No. 2, page 2--example, Hacienda Drive). Mr. Echols said that the recommendation was for improvements to existing ways out.

Mayor Berger also asked about moving up in priority the procurement and use of barges for emergency evacuation. Councilmember Fredericks said that any specific plans should be reviewed by the Disaster Advisory Council; she also commented that it was difficult to care for the local population without offering shelter to surrounding municipalities, at this time.

Director Echols commented that the through the use of mutual aid, the Town might have an existing “fleet” at its disposal through the existing ferry services.

MOTION: To adopt the resolution and program, as recommended.
Moved: Slavitz, seconded by Gram
Vote: AYES: Unanimous
ABSENT: Smith

PUBLIC HEARING

10. Recommendation by Town Attorney and Director of Community Development – Economic Exception Ordinance

Second Reading and Adoption of Ordinance

- a) An Ordinance of the Town Council of the Town of Tiburon Adding a new Article VII to Title IV, Chapter 16 of the Tiburon Municipal Code regarding Economic Exceptions

Council waived further comment on the Town Attorney’s staff report.

Mayor Berger opened and closed the public hearing. There was no public comment.

MOTION: To read ordinance by title only.
Moved: Fredericks, seconded by Slavitz
Vote: AYES: Unanimous
ABSENT: Smith

Mayor Berger read, “An Ordinance of the Town Council of the Town of Tiburon adding a new Article VII to Title IV, Chapter 16 of the Tiburon Municipal Code regarding Economic Exceptions.”

MOTION: To adopt ordinance, as presented.
Moved: Slavitz, seconded by Fredericks
Vote: AYES: Berger, Fredericks, Gram, Slavitz
ABSENT: Smith

11. Recommendation by Town Attorney and Director of Public Works/Town Engineer – Town Ordinance pertaining to Encroachments in Public Right-of-Way

Introduction and First Reading of Ordinance

- a) An Ordinance of the Town Council of the Town of Tiburon Repealing existing Chapter 19 (Encroachments) of the Tiburon Municipal Code and replacement with a new Chapter 19 (Encroachments, General) and adding a new Chapter 19A (Use of Public Right of Way) to the Tiburon Municipal Code

Town Attorney Danforth said that the new ordinance would protect the public rights of way from unregulated encroachment, especially by utilities such as telecommunications companies. She said that a similar ordinance had been adopted by the County of Marin in 2002, and that the cities of San Rafael, Mill Valley, and Larkspur had also adopted such an ordinance.

Ms. Danforth said that the ordinance would supplement the Town’s existing ordinance; an example was that the new ordinance would require an applicant to enter into an agreement with the town which would provide indemnification to the town as well as require notification to other potential users to the public right of way.

Councilmember Fredericks asked whether there was an existing encroachment [permit] process for utility companies within the Town’s rights of way. The Town Attorney said that the Town did have a process but that the new one went further in protecting the Town.

Mayor Berger commented that the current [encroachment permit] process was more “resident-based,” rather than being geared for utility company projects.

Director of Public Works/Town Engineer Echols said that interest in such an ordinance arose during the “dot com” era when a number of companies applied to the City of San Rafael for permission to tear up city streets in order to install new fiber optic networks. He said that the local cities and towns wanted better control of the time, place, and manner in which this kind of work took place, as well as the ability to charge fees for the permits.

Councilmember Fredericks concurred, stating that this was also a subject under consideration by the League of California Cities' state policy committee on telecommunications. She asked whether fees could be charged to existing franchisees, as a result of adoption of the new ordinance. Town Engineer Echols said that the Town would be able to do so, under the new ordinance.

Ms. Fredericks also asked whether any changes would be needed to the Town's zoning ordinance, stemming from adoption of the new ordinance. Town Attorney Danforth replied that no changes to the Town's zoning ordinance would be required.

Councilmember Gram asked whether the ordinance could be challenged in court. Ms. Danforth said that it could, but that the terminology used in the new ordinance was applied to any facility in the public right of way, not just telecommunications facilities, in order to avoid litigation.

Mayor Berger asked whether there was any provision for [removal of] abandoned facilities. Town Engineer Echols said that this could be made part of the encroachment agreement, under the new ordinance.

Mayor Berger opened and closed the public hearing. There was no public comment.

MOTION: To read ordinance by title only.
Moved: Slavitz, seconded by Fredericks
Vote: AYES: Unanimous
ABSENT: Smith

Mayor Berger read, "An Ordinance of the Town Council of the Town of Tiburon Repealing existing Chapter 19 (Encroachments) of the Tiburon Municipal Code and replacement with a new Chapter 19 (Encroachments, General) and adding a new Chapter 19A (Use of Public Right of Way) to the Tiburon Municipal Code."

MOTION: To adopt ordinance as written.
Moved: Slavitz, seconded by Fredericks
Vote: AYES: Berger, Fredericks, Gram, Slavitz
ABSENT: Smith

COUNCIL AND COMMITTEE REPORTS

None.

WRITTEN COMMUNICATIONS

Town Council Weekly Digest – September 23, 2005

Town Council Weekly Digest – September 30, 2005

Town Manager McIntyre said that Project Coordinator Bassett would keep the Council “in the loop” with a monthly report on the undergrounding projects in the Town Digest. He said that these reports would also be mailed to residents in the districts.

Councilmember Slavitz also asked for updates in the Digest on the MMWD pipeline replacement project.

Mr. McIntyre said that the Council would meet at and receive a tour of the Tiburon Emergency Operations Center before the next Council meeting.

Councilmember Fredericks asked staff to look into placing Council staff reports on the Town’s website.

ADJOURNMENT

There being no further business before the Town Council of the Town of Tiburon, Mayor Berger adjourned the meeting at 8:27 p.m., to the next regular meeting scheduled for October 19, 2005.

MILES BERGER, MAYOR

ATTEST:

DIANE CRANE IACOPI, TOWN CLERK