

Minutes of the Special and Regular Meeting of March 13, 2007
One Twin Pines Lane, Belmont, California

SPECIAL MEETINGS

CLOSED SESSION - 6:00 P.M.

- A. Conference with Labor Negotiator, Jack Crist, pursuant to Government Code Section No. 54957.6: AFSCME

Attended by Councilmembers Warden, Dickenson, Lieberman, Mathewson, Feierbach, City Manager Crist, City Attorney Zafferano, Human Resources Director Sam, and Labor Negotiator Fran Buchanan. City Clerk Cook was excused from attending.

ADJOURNMENT at this time, being 7:20 P.M.

Terri Cook
City Clerk

This meeting not tape recorded or videotaped.

REGULAR MEETING
CALL TO ORDER 7:30 P.M.

ROLL CALL

COUNCILMEMBERS PRESENT: Lieberman, Dickenson, Warden, Mathewson, Feierbach
COUNCILMEMBERS ABSENT: None

Staff Present: City Manager Crist, City Attorney Zafferano, Community Development Director de Melo, Police Chief Mattei, Human Resources Director Sam, Public Works Director Davis, City Clerk Cook.

PLEDGE OF ALLEGIANCE

Led by City Clerk Cook

REPORT FROM CLOSED SESSION

City Attorney Zafferano stated that there were no reportable actions from the closed session held earlier.

AGENDA AMENDMENTS

Mayor Feierbach noted that Item 8-A (Appointment of Parks and Recreation Commissioners) would be taken out of order, immediately following the Consent Calendar.

CONSENT CALENDAR

Approval of Minutes of the Special and Regular Meeting of January 23, 2007, and Special Meeting of January 25, 2007

Acceptance of Written Communications: 1) Received March 7, 2007 from State Water Resources Control Board, Notice for Public Comment for the SF Bay Region to Establish Mercury Fish Tissue Objectives, etc.

Approval of Resolution 9868 Approving the Filing of the Safe Routes to Transit (SR2T) Grant Application in the Amount of \$750,000 for the U.S. Highway 101 Bicycle/Pedestrian Bridge Project, City Contract Number 433

Approval of Resolution 9869 Advising South Bayside Waste Management Authority (SBWMA) that the City of Belmont be included as a Bid Alternate in the SBWMA's Collection Agreement Request for Proposal (RFP) Process and the City of Belmont is Investigating Collection Alternatives

Approval of Resolution 9870 Amending the Banner Policy

Approval of Resolution 9871 Amending the Fiscal Year 2007 Budget and Approving a Revision to Revenue and Supplemental Appropriation and Amending the Permanent Staffing Plan

ACTION: On a motion by Councilmember Warden, seconded by Councilmember Mathewson, the Consent Calendar was unanimously approved by a show of hands.

COMMISSION, COMMITTEE, AND COUNCIL INTERGOVERNMENTAL ASSIGNMENT UPDATES, AND STAFF ITEMS (Item taken out of order)

Appointments to the Parks and Recreation Commission

City Clerk Cook distributed the ballots for the Youth seats. It was noted that Incumbent Christopher Lyon received sufficient votes to retain his seat, but there was a tie vote for the remaining seat. City Clerk Cook distributed a second round of ballots, the results of which were announced that Lauren Moissiy received sufficient votes to be appointed to a one-year term.

City Clerk Cook distributed ballots for the Adult seats. It was noted that Incumbents Margo Cheechov, Rich Bortoli, Walt Shjeflo, and new applicant Dianthe Harris all received sufficient votes to be appointed to two-year terms.

ACTION: On motion by Councilmember Mathewson, seconded by Councilmember Warden, Resolution 9866 Appointing Christopher Lyon and Lauren Moissiy to one-year terms as Youth Parks and Recreation Commissioners was unanimously approved by a show of hands.

ACTION: On motion by Councilmember Warden, seconded by Councilmember Mathewson, Resolution 9867 Appointing Margo Cheechov, Rich Bortoli, Walt Shjeflo, and Dianthe Harris to two-year terms as Adult Parks and Recreation Commissioners was unanimously approved by a show of hands.

OLD BUSINESS

Discussion and Direction regarding Ordinance Regulating Secondhand Smoke

City Attorney Zafferano provided information outlining the legal basis for the regulation of second-hand smoke. He noted there is no constitutional right to smoke, and smokers are not a protected class. Cities and other jurisdictions can regulate smoking if the regulation or prohibition is not inconsistent with State law. People cannot engage in activities if it is injurious

to others, even if the activity is legal. He noted that cars and factories are already regulated by the State.

City Attorney Zafferano reviewed Belmont's current smoking regulations, which outlines where smoking is allowed and where it is not. He reviewed the main provisions of the draft ordinance as provided by the Public Health Institute. He outlined alternatives for the Council to consider for regulating smoking on streets and sidewalks, as well as in multi-unit housing, including condominium and townhomes. He outlined situations where smoking would be allowed under the proposed ordinance. Council could consider a prohibition of smoking in vehicles if they are being used for employment purposes, and clarified that there is no proposal for regulating smoking in private passenger vehicles. He outlined enforcement options, and reviewed issues to be addressed.

In response to Council questions, City Attorney Zafferano clarified that a prohibition on the sale of cigarettes could violate International Commerce laws, but he noted that the City can restrict the time, place and manner of such sales.

Mayor Feierbach stated that public testimony would be taken at this time, and that no decisions would be made at this evening's meeting.

R. Mark Korwald, Belmont resident, stated that he respects rights as long as they do not infringe on other rights. He supports the ban.

Chris Middleton, American Hotels/Holiday Inn Express, expressed concern regarding the effect that such a ban would have on the hotels and the potential loss of revenue from transit occupancy taxes. People might go to hotels in neighboring cities instead.

Mary Morrissey-Parden, Belmont business owner, applauded the City's efforts but expressed concern about a shot-gun approach. The Chamber of Commerce was not consulted, and the City should engage in dialog regarding this topic. Economic development could be impacted by a ban.

Becky Husmann, on behalf of some residents at Bonnie Brae Terrace, noted that the Bonnie Brae residents present at the meeting support any prohibition to be considered by the Council. She noted that there is no enforcement of the current smoking regulations at Bonnie Brae.

Serena Chen, American Lung Association, expressed support for the ban. She outlined the number of complaints her organization has received regarding second-hand smoke.

Patricia Dixon, Redwood City resident, expressed support for the ban. She presented copies of an article she wrote in the newspaper regarding this topic. She suffers from effects of second-hand smoke.

Risa Horowitz, Belmont resident, expressed support for the ban. She suffers from asthma which is related to exposure to second-hand smoke. People will come to Belmont if it becomes a no-smoking city.

Peter Markovich, Belmont resident, stated he was disappointed because he suggested that the Council ask the community regarding this subject, which was not done. He concurs that the situation at Bonnie Brae is important to address. Most people in Belmont do not support a total ban, which would also restrict workers, construction, and could affect our transit occupancy taxes. There are other more important health issues.

Zelko Zivkovic, Belmont resident, expressed concern for what other bans may be forthcoming after this. She recommended that the City Council not accept tax dollars from cigarette sales.

Sheila Strand, Belmont resident, lives in an apartment and says her husband has cancer. They have sealed the vents and have kept the windows closed all winter because of second-hand smoke, but she expressed concern regarding the upcoming summer season when she will need to open windows. She recognizes smokers have rights.

Judy King, Belmont resident, stated that the Council was asked to declare second-hand smoke a public nuisance, but not asked to ban smoking. She has spoken to others regarding this issue, including nonsmokers, who do not support the ban. The City could experience a loss of tax revenue. She recommended that the Council declare second-hand smoke a public nuisance and revisit the issue in one year like they have done with other ordinances.

Krista Kuehnhackl, Belmont resident, stated that a ban on smoking is too extreme. She supports both smokers' and nonsmokers' rights. There is a need for clarification regarding some of the definitions in the proposed ordinance, and there is a need for reasonable regulations.

Loring DeMartini, Belmont business owner, stated that he does not like smoking, but restrictions will have a negative effect on restaurants and businesses in that it will drive business away.

Margo Cheechov, Belmont resident, stated that the proposed solution is out of proportion to the original request. Many people do not support the proposed ban.

Mary Pack, Belmont resident, expressed concerns regarding the cost to enforce the proposed ban. She was told the City would not enforce the ordinance. This would pit neighbor against neighbor. She did not elect the City Council to deal with issues such as this. She has an allergy to pine trees but has not requested that the City cut down all the pine trees. She recommended that this matter be put to a vote of the people.

Pam Clarke, Belmont resident/Belmont business owner, stated she has banned smoking on her school campus for the past 25 years. Her teachers smoke off premises. She would lose staff if this ban were to go into effect. She recommended having a dialog with business leaders regarding this matter.

Catherine Derringer, Tri-County Apartment Association, stated that her organization would like to work with the City to address issues regarding liability should the ban be enacted.

Dian Kiser, California Clean Air Project (CCAP)/American Lung Association, stated that the Air Resources Board declared second-hand smoke a contaminant, which has led cities to initiate various levels of smoking bans. Her organization receives calls requesting referrals to smoke-free multi-unit housing. She described the free smoking cessation workshops that are offered to smokers.

Narinder Dhaliwal, CCAP, noted that Councilmembers have stated that sometimes cities need to take actions to protect their citizens. People are asking for smoke-free living. She stated that some cities have set aside a percentage of apartments as no-smoking.

Linda Civitello-Joy, Breathe California, stated that her organization receives calls regarding second-hand smoke issues. Breathe California offers cessation classes and nicotine patches.

Dorothy Vura-Weiss, San Mateo County Asthma Coalition/Health Department, outlined death rates due to various diseases. She supports a smoking ban in apartment buildings.

Evelyn Long, American Cancer Society, offered her organization's support regarding this issue.

Becky Sha, Tobacco Use Prevention Education (TUPE), stated her organization works with para-educators regarding smoking issues, and provides adult cessation workshops.

Jim Kelly, American Cancer Society, helps cancer survivors and talks to kids about the danger of smoking. He supports the ordinance, but noted a gap, since it does not address smoking addictions. He suggested that smokers work with each other to avoid smoking around others.

Gabriella Lemus, expressed support for the ban. She noted that clean air is important.

Amanda Cue, San Mateo County Tobacco Coalition, stated that Belmont could set an example for other cities in San Mateo County, and an example for young people. She supports the ordinance.

George Hubbard, Belmont resident, supports the ordinance and the rights of nonsmokers. There should be no grandfathering clause or grace period, as these will not help existing issues.

Catherine Barber, Belmont resident, stated that she chooses businesses that prohibit smoking. She supports smokers' rights to smoke where the smoke does not affect others. There is a need for balance for smokers, and she expressed concern regarding a complete ban in apartment buildings.

Doug Mottern, Belmont business owner, stated that he spent money on permits for the area of his business that allows smoking. Outside smoking should not be banned. He expressed concern regarding the effect this ban would have on businesses.

Ron Denman, Chamber of Commerce President, expressed concern regarding the restriction of personal freedoms. The Chamber actively supports businesses, and there is a need for a level playing field with other cities. He noted that condominium owners have the same ownership

rights as single-family homeowners. He recommended the Council declare second-hand smoke a public nuisance, with provisions for recourse.

Jeff Morino, Belmont resident, supports the ban, but not all the provisions as outlined. He supports the ban in parks and fairs, but not on sidewalks. He recognizes the issue regarding apartment buildings.

Chris Wozniak, Belmont resident, expressed support for a ban in private, shared ventilated areas, and a ban in public areas and on the street. Belmont being a no-smoking city may be attractive for outsiders.

Suzanne Francis, Belmont resident, supports the ordinance but expressed concerns regarding some of its provisions. There is a need for balance. She also expressed concerns regarding the affect on condos and townhouses, and noted that some of the single-family homes on Hastingsshare a common wall. She noted that some single-family homes are close together.

Leah Cowan, Notre Dame de Namur University student, stated that the City should consult University students when considering this ordinance.

Dave Bauer, Belmont resident, supports smoking cessation, but expressed concerns regarding the effect a ban would have on businesses. This could also impede rights in one's home.

Ryan Butler, Belmont resident, stated that he enjoys clean air in restaurants and bars. People should go outside to smoke. This is beyond a neighbor-to-neighbor issue.

Edward McGraw, Belmont business owner, stated he is against a total ban. He expressed concern that people will go to businesses in other cities should this ordinance pass.

Mayor Feierbach thanked everyone for their comments.

ADJOURNMENT at this time, being 10:15 P.M.

Terri Cook
City Clerk