

**MINUTES
CITY COUNCIL – REGULAR MEETING
TUESDAY, MARCH 3, 2009 - 7:00 P.M.
CALISTOGA COMMUNITY CENTER**

CALL TO ORDER

Mayor Gingles called the Regular Session to order at 7:04 p.m.

In attendance were the following: Councilmember Placido Garcia, Councilmember Gary Kraus, Councilmember Karen Slusser, Vice Mayor Michael Dunsford and Mayor Jack Gingles.

Also present were, City Manager James McCann, Public Works Director/City Engineer Dan Takasugi, Planning and Building Director Charlene Gallina, Senior Planner Ken MacNab, Senior Civil Engineer Jim Smith, Assistant City Attorney Ben Winig, City Clerk Susan Sneddon and Administrative Secretary Lorie Goldbeck.

ACTION OUT OF CLOSED SESSION

Mayor Gingles announced that there was no Closed Session held this evening.

ORAL COMMUNICATION

None provided.

ADOPTION OF MEETING AGENDA

It was **MOVED** by **Vice Mayor Dunsford** and **SECONDED** by **Councilmember Kraus** to approve the Council Meeting Agenda. The Motion was carried unanimously.

PROCLAMATION

- 1) **Proclamation honoring March as American Red Cross Month.**

Mayor Gingles read the proclamation honoring March as American Red Cross Month and presented it to Jeff Farmer, Board Chair of the Napa County Red Cross Chapter.

Jeff Farmer, Board Chair for the Napa County Red Cross Chapter, thanked the City Council for the proclamation and briefly spoke about upcoming events.

Joan Rocha, Board Member for the Napa County Red Cross Chapter, informed Council of a disaster preparedness event held at Rancho de Calistoga on February 21st that had a great turnout.

CONSENT CALENDAR

- 2) Accounts payable for the period ending Thursday, February 26, 2009. (\$598,858.33)
- 3) Minutes of the February 17, 2009, regular City Council meeting.
- 4) Adoption of Ordinance No. 656 amending Title 13, Public Services, Chapter 13.08.270 Sewer Service - Reimbursement Agreement of the Calistoga Municipal Code, to remove sunset timelines for repayment.
- 5) Adoption of Resolution No. 2009-012 accepting as complete the Busk Nuisance Abatement Project and authorizing the City Clerk to file a Notice of Completion.
- 6) Adoption of Resolution No. 2009-013 approving Amendment No. 2 in the amount of \$113,852 to the Consultant Services Agreement with TRS Consultants, Inc. for additional construction management and inspection services for the Calistoga Community Pool Facility Project, and authorizing the City Manager to execute the Agreement (Authorizing Agreement No. 349 Amending Agreement No. 292).
- 7) Adoption of Resolution No. 2009-014 authorizing Amendment No. 8 to the Professional Services Agreement with Paulett Taggart Architects in an amount not to exceed \$19,500 for additional architectural and related services for the Calistoga Community Pool Project (Authorizing Agreement No. 350 Amending Agreement No. 0105).

It was MOVED by Kraus and SECONDED by Councilmember Garcia to approve Items No. 1, 2, 4, 5 & 6 on the Consent Agenda; and No. 3, the February 17, 2009, Minutes as amended. The Motion was unanimously carried by the following vote:

AYES: Councilmembers Kraus, Garcia, Slusser, Vice Mayor Dunsford, Mayor Gingles

NOES: None

ABSTAIN/ABSENT: None

GENERAL GOVERNMENT

- 8) **Presentation regarding upcoming opportunities for Calistoga to participate in two special projects for the State Water Project – North Bay Aqueduct Alternate Intake Project and Delta Habitat Conservation and Conveyance Plan.**

City Manager McCann stated that this presentation is a continuing effort to keep the City Council and the community informed of various components of our water system.

Senior Civil Engineer Smith gave a brief description of the context of the presentation. The presentation includes new and complicated subjects that are brought to Council as informational items to educate Council about current opportunities, benefits and costs. He stated the City has the opportunity to join special projects as part of our participation in the State Water Project. Napa County Principal Water Resources Engineer Felix Riesenbergs is available to answer any questions as well as city staff. It is anticipated that this issue will be brought back to City Council for direction at the March 17, 2009, meeting.

Napa County Principal Water Resources Engineer Felix Riesenbergs gave a presentation to the Council regarding the current North Bay Aqueduct and Delta Water Conveyance Programs. He explained that both long term programs are very complex and that the Napa County Flood Control and Water Conservation District oversees the State Contract. It is their responsibility to give information to each city in Napa County who will then need to decide if they feel this is a worthwhile endeavor. At the District level, they feel that it is important for Napa County to be involved.

Councilmember Kraus commented that one of the reasons for the peripheral canal is to provide earthquake protection that could change the water system and cause both Northern and Southern California to lose their water supply and does not feel that \$34,000 is much of Southern California's share but more to protect our interests and water supply.

Napa County Principal Water Resources Engineer Felix Riesenbergs responded that from a security, reliability and public safety aspect, the peripheral canal makes a lot of sense just from an earthquake preparedness perspective. If a disaster strikes and levies fail, the absence of water delivery would have a drastic impact on the entire State economy.

Senior Civil Engineer Smith advised Council that they will be asked to make a decision on the Delta Habitat Conservation Plan this month and a decision on the Alternate Intake could be deferred to a later date or, if Council prefers, both items can be brought back for Council's decision at the March 17, 2009, meeting.

It was agreed by Council to hear both items at the next Council meeting.

9) Discussion and direction regarding the option to purchase property within the City's affordable housing stock — 1807 Aurora Drive.

Councilmember Kraus stated that he will not participate in the discussion of this item as he lives within 500 feet of the subject; he then stepped away from the dais.

City Manager McCann introduced the item and noted that Andrea Clark, from the City of Napa Housing Authority has put together a summary and is in attendance to answer any questions the Council may have. He then gave a description and background on the City's affordable housing program.

Council discussion ensued regarding this matter. There was agreement that this is a great program but also concern about the current real estate market, the possibility of utilizing all of the \$590,000 in unencumbered Housing funds. There was discussion about the City's options, timing and ability to retain the property, the return of investment to the Affordable Housing Trust Fund and the opportunity to apply the recently adopted Local Preference Policy. Concern was expressed about the lack of a formal appraisal for the property.

City Manager McCann responded that while we do not have a formal appraisal, he has discussed this with a local realtor and believes that the estimate is a fair market value.

Mayor Gingles asked if this could be addressed at a later date.

City of Napa Housing Authority Administrative Assistant Andrea Clark responded that it could be brought back before Council before March 25th for a decision.

Vice Mayor Dunsford believes that the property should be sold and the City should recover their investment. He feels that the newly formed Housing Element Committee should research these types of issues and provide direction to Council based on market research and opinions. He agrees and recognizes the need for housing.

Mayor Gingles asked if the Council would like to consider the options and take action at the next Council meeting.

Public Comment – Cindy Mewhorter, 1807 Aurora Drive property owner addressed Council, noted that it is a great house and a great neighborhood. She asked if there was an option to rent the property in the event that it does not sell.

City Manager McCann stated that per the provisions of the contract, it is required that the owner occupy the property.

It was agreed by Council to continue this item to the March 17, 2009, meeting.

Councilmember Kraus rejoined the meeting.

10) Consideration of a Resolution confirming the Mayor's appointment to the Housing Element Update Committee and to the Community Resources Commission.

Mayor Gingles introduced the Resolution and invited the applicants in attendance to address Council. He publicly thanked Ingeborg Alexeeff for her contribution and excellent work for the City during her service on the Napa County Grand Jury.

Ingeborg Alexeeff, 2550 Greenwood Avenue, addressed the Council and stated that she is a retired resort owner and has been a resident of Calistoga since 1977. She has been in real estate since 1962 and became a real estate broker in San Francisco 1965. She and her late husband were the owners of the Hideaway Hot Springs Resort. She would like to continue to volunteer her time to the County and community.

Brian Brewster, 1309 Foothill Blvd., addressed the Council and stated that he has been a resident of Calistoga for two years and feels the City of Calistoga is a great place for residents and tourists. He feels that the people of Calistoga should be a part of the decision processes as they know the culture of Calistoga. He is originally from San Francisco and received his Bachelor's degree from Morehouse College in Atlanta, and his MBA from Clark Atlanta University. He feels that fresh opinions give the City some vibrancy that it may not otherwise have.

Don Montez stated that he was previously the Chair of the Planning Commission and worked on General Plan update. He is familiar with City planning, is a long time resident and would like to continue to volunteer his services and make the Housing Element Update Committee work a success.

Mayor Gingles entered into record an email from Matthew Moyer that stated his desire to participate in the challenge of moving the City forward while maintaining its core values and views. He believes he can bring good insight to the Housing Element Update Committee and good ideas for General Plan updates for future generations.

City Manager McCann stated that three residents to be appointed are recommended to have a demonstrated interest in real estate or land development and one a community at large member. He noted that the

staff report indicates there are two openings and should state three openings.

Mayor Gingles recommended that Councilmembers Garcia and Slusser serve as the two members from the Council, and Paul Coates and Clayton Creager serve as the two Planning Commissioners. His nominations for the three remaining seats were Stephanie Duff-Ericksen, Matthew Moye and Don Montez. He thanked Ingeborg Alexeeff and Brian Brewster for their interest and noted that we will hold their applications. He then made a nomination of Rita Squire to the Community Resources Commission.

Councilmember Kraus pointed out that we accepted the application from Rita Squire but recognizes that she does not reside within the City limits of Calistoga which is the reason for the current opening on the Community Resources Commission.

Rita Squire, applicant for the Community Resources Commission addressed the Council and stated that she does live in Franz Valley, but has lived in Calistoga since 1974 and has been very active in the Community. She stated that she was not certain whether or not living outside the City limits would be a consideration.

City Manager McCann requested a ten minute recess to address this issue, but believes that the Community Resources Commission membership requires that the members reside within the limits of the Calistoga Joint Unified School District.

Mayor Gingles approved the ten minute recess. The meeting was called back to order at 8:37 p.m.

City Manager McCann reported that pursuant to Municipal Code, Section 2.23.020, Membership, states that the Community Resources Commission shall consist of seven members appointed by City Council none of whom shall hold any paid office or employment in the City government, and all of whom shall reside within the boundaries of the Calistoga Joint Unified School District. The majority of the Commission members shall be residents within the City of Calistoga. He noted that the Commission Chair, Karen Chang, lives in the County and the remaining members live in the City limits and if Ms. Squire were appointed, the majority would still be City of Calistoga residents.

Vice Mayor Dunsford interjected and proposed a different slate of candidates for the Housing Element Update Committee to Matthew Moye, Stephanie Duff-Ericksen and Brian Brewster. He believes there is a need to engage new, energetic residents to be involved and that Brian would make a good contribution to the Committee. He noted no disrespect for Mr. Montez and believes he did a good job on the Planning Commission but reiterated a need to allow new people involved in City Government.

Mayor Gingles asked the Council if they approved Vice Mayor Dunsford's recommendations for the Housing Element Update Committee.

It was **MOVED** by Mayor Gingles and **SECONDED** by Councilmember Slusser to adopt **Resolution No. 2009-015** to confirm the Mayor's appointments to the Housing Element Update Committee and to the Community Resources Commission as follows: Councilmembers Garcia and Slusser, Commissioners Coates and Creager and Community at Large members Stephanie Duff-Ericksen, Matthew Moyer and Brian Brewster for the Housing Element Update Committee and Rita Squire for the Community Resources Commission.

The Motion was carried as follows:

AYES: Mayor Gingles, Councilmembers Slusser, Kraus, Garcia, and Vice Mayor Dunsford

NOES: None

ABSTAIN/ABSENT: None

11) Consideration of a Resolution approving an amendment to the Professional Services Agreement with Calistoga Affordable Housing Inc.

Mayor Gingles introduced the item and noted that Council received **Communication "C"** from Jim and Linda Hunter and requested this be recorded in the minutes. Council also received **Communication "A"** from GagenMcCoy which includes reference to Cottage Glenn which is not an issue before Council this evening. As a courtesy to the City Council, Mayor Gingles requested to know who the members of the Citizens for Responsible Development (CRD) are by way of bylaws or minutes.

City Manager McCann reported that suspension of the Professional Services Agreement with Calistoga Affordable Housing was requested by Council at the January 20, 2009, City Council meeting. Council directed staff to work with the City Attorney's office to revise the document and eliminate areas that presented real or perceived conflict.

Mayor Gingles opened the item for public comment.

Gagen, McCoy, McMahon, Koss Markowitz & Raines, Attorney Brian Mulry, introduced himself and addressed the Council. He indicated that he would be happy to provide list of members of the Citizens for Responsible Development (CRD) and will provide that to City staff. Their firm clearly believes that a conflict of interest clearly exists in the proposed amendment to the Professional Services Agreement. The

scope of services show that Calistoga Affordable Housing is providing services to the City and advising the City on the Housing Element.

Councilmember Kraus interrupted and stated that Vice Mayor Dunsford was sending a text message and he believes this to be a violation of ethics.

Gagen, McCoy, McMahon, Koss Markowitz & Raines, Attorney Brian Mulry continued, stating that Section 6, Interest of Consultant, merely daylight the issue that a potential for a conflict of interest exists. Under the original Professional Services Agreement it states that Calistoga Affordable Housing is not to own any property or have any interest in property in the City while engaging in this contract. One issue with the Scope of Services as amended is that it removed certain wording that they will no longer be drafting ordinances and requested clarification as to whether they have previously drafted ordinances. Secondly, they are providing policies, strategies and other information to City staff on the Housing Element which they will be subjected to when they present their development. This has not been alleviated by proposed amendments. The Scope of Services also states that Calistoga Affordable Housing is to advise City staff on affordable housing development projects within the City which they currently have and will be advising on competing developments and perhaps their own. Also noted that they have contacted various City attorneys and each one stated that the original conflict of interest provision is what should be included with all City contracts. Other cities contract's conflict of interest provisions state that they are not to consult with any developers within their City or bring projects in their own financial interest within the City.

Mayor Gingles closed public comment.

Mayor Gingles questioned whether Assistant City Attorney Ben Winig has reviewed the proposed Professional Services Agreement and Scope of Work and asked him to report on the issue.

Assistant City Attorney Ben Winig reported that it was clear that the provision in Section 6 which required that the Consultant not have or obtain an ownership interest which may affect the services of the Consultant under the Agreement was breached. This needed to be remedied by either terminating or amending the contract. As amended, the proposed Professional Services Agreement may have an appearance of a conflict, but in terms of a legal conflict which would bring the Political Reform Act into play, the duties that Calistoga Affordable Housing have carried out have not risen to the level of City or Public Official which would bring a legal conflict.

Mayor Gingles indicated that he would like continue this item and asked for clarification on whether Mr. Fiddaman's role as a member of the Napa County Planning Commission would be considered a Public Official. He

added that he is very uncomfortable with the appearance of a conflict of interest.

Assistant City Attorney Ben Winig responded that Mr. Fiddaman would be deemed a Public Official for that particular jurisdiction but does not believe that an individual takes the place of the organization which is the consultant.

Councilmember Kraus noted that he agrees with the Mayor and is also uncomfortable with the current draft. He believes that Calistoga Affordable Housing can provide many valuable services without the appearance of a conflict, such as housing conversion, mortgage default and referrals and feels that the fees to the City for these services are very reasonable. He would prefer to see all provisions that are advisory in nature eliminated. He sees all items in Section B of the revised Scope of Work to have a potential for conflict.

Councilmember Slusser stated that she has similar concerns and that the community is at unrest over the perceived conflict and recommended that the City contract these services to an outside agency so the Housing Element is not compromised and that no appearance of a conflict is possible.

Vice Mayor Dunsford expressed concern that if the City contracts with an outside agency they will have no understanding of Calistoga's needs.

Councilmember Garcia pointed out that the Council is not against Calistoga Affordable Housing but agrees that the contract is not clear. They have a good reputation in the City and he would like to continue the relationship if a contract can be agreed upon. He asked that benefits to Calistoga residents be considered.

Calistoga Affordable Housing Executive Director Erika Sklar, addressed the Council and noted that the initial contract had great emphasis on general services provided and that Calistoga Affordable Housing would not be providing any kind of advice other than what would be provided in a public setting. She also requested assistance, direction and input with modification of the contract to address the appearance of conflicts.

Calistoga Affordable Housing Board Member Larry Kroman addressed Council and stated that he sees the survey as more of a statistical demographic study. While he agrees that there could be a perception of conflict, the City Council and Calistoga Affordable Housing have the same interests in mind.

Tom Balcer, 1705 Michael Way, addressed the Council and stated that there are many people involved in the Citizens for Responsible

Development and that they could compile a list of names but would prefer not to do that.

Mayor Gingles recommended that the item be tabled and requested staff to further amend the agreement and bring back to the Council for discussion.

Vice Mayor Dunsford feels that it would be a loss for Calistoga. He would like staff to consider other agencies but keep the relationship with Calistoga Affordable Housing to provide their valuable input so that needs specific to Calistoga are considered.

City Manager McCann confirmed direction from Council to amend the contract further, consider outside agencies and bring the item back to Council on March 17, 2009.

- 12) Consideration of a Resolution approving the plans and specifications for the Calistoga Fire Station Seismic Retrofit and Rehabilitation Project, authorizing the advertising for bids, directing the City Manager to negotiate a Lease Agreement for the use of property as a temporary facility during rehabilitation efforts, and authorizes a budget adjustment of \$249,007 from the Public Safety Fund.**

Vice Mayor Dunsford announced that he will not participate in discussion of this item because his business is within 500 feet of the Fire Department is located.

City Manager McCann pointed out that this item was on the February 17, 2009, and it was agreed by all that it was best to continue the item and review with Councilmember Kraus and Fire Chief Steve Campbell. He feels that Councilmember Kraus' concerns have been addressed.

Councilmember Kraus reiterated that he strongly supports this project. He discussed the American Recovery and Reinvestment Act which includes approximately \$210 million designated exclusively for Fire Stations and feels there is a potential for grant funding. He requested that Council drop the budget adjustment portion of the Resolution for future discussion after grant funding is sought from the Federal Government.

City Manager McCann noted that staff is actively pursuing grant funding. He explained that approval of plans and specifications and authorization to seek bids and negotiate the temporary location lease is needed and authorization for funding will be needed when bids are received.

Councilmember Kraus would like to make a motion to approve the resolution with removal of the budget adjustment.

City Manager McCann stated that the title of the resolution would be amended and lines 49 to 51 be deleted.

It was **MOVED** by Councilmember Kraus and **SECONDED** by Councilmember Slusser to adopt **Resolution No. 2009-016, as amended**, approving the plans and specifications for the Calistoga Fire Station Seismic Retrofit and Rehabilitation Project, authorizing the advertising for bids, directing the City Manager to negotiate a Lease Agreement for the use of property as a temporary facility during rehabilitation efforts.

The Motion was carried as follows:

AYES: Councilmembers Kraus, Slusser Garcia, Vice Mayor Dunsford and Mayor Gingles.

NOES: None

ABSTAIN/ABSENT: None

CITY MANAGER REPORTS

City Manager McCann reported on the following:

- Continuing on the discussion and observance of water supply, we are still in a drought condition. Kimball Reservoir is at 100% of capacity and we were able to install flash boards in the spillway early this month which helped to capture 60 acre feet more water. We have advertised and provided notice, pursuant to Council's direction, of the Stage 1 voluntary water conservation measure. The Governor has called attention to water supply concerns and has urged Californians to conserve water. We will follow that for direction, if any, from the State. The department of Water Resources did the snowpack measurement and found it to be at 81% of normal. They will continue to monitor and update through early April.
- We are currently working on a Community Alert protocol in an effort to get pertinent information to the public in a timely manner. He announced that the public can sign up for the City's electronic notification systems for agendas, public notices and news on our website or by calling City Clerk, Su Sneddon.
- The Federal Stimulus Bill, also known as the American Recovery and Reinvestment Act of 2009, is out and he has requested that Department Heads study it carefully to look for funding opportunities. One application has been filed requesting \$6 million for water facility improvements and we will be looking at others as well for Fire Station and Geothermal improvements.
- The Chamber of Commerce Mustard Festival event is being held this Saturday and Sunday.

- The Community Enrichment Grant process is happening now and applications are being submitted. The Napa Valley Community Foundation is another opportunity with a fund for Calistoga and St. Helena at a level of approximately \$50,000 for local serving projects focused on teen and youth development. He urged people that have an interest to contact City Clerk Su Sneddon who can provide contact information to the Napa Valley Community Foundation.

COUNCIL REQUESTS AND IDEAS FOR DISCUSSION

Councilmember Garcia requested that all important public notices also be translated and posted in Spanish to keep the Latino community informed. He also asked that more support and flexibility be offered to those opening new businesses in town.

Councilmember Kraus mentioned local happenings in the City regarding drunken and rowdy behavior. He feels that it is a good idea to increase police foot patrol.

Vice Mayor Dunsford asked that when the Calistoga Affordable Housing issue is brought back to Council, he would like to know about any increase in fees and delays in acquiring services and information.

Mayor Gingles made comment on the following:

He concurs with Councilmember Garcia regarding local businesses facing unnecessary obstacles and difficulties. He discussed an issue about a local business wanting to move to a different location and asked that the item be brought to Council if not resolved by the next Council meeting.

There was a downpour of rain over the weekend during the marathon which turned out about 2300 people. He noted that this was the worst in 27 years, with little volunteerism and problems with organization. He commended city staff on a job well done. He has requested that Solage be included and involved in the process as they have been very helpful.

He would like to hold a monthly “soup kitchen” for the senior community and invite speakers to discuss issues such as foreclosures, grief control, and financial help and offer seniors a place to go and someone to talk to.

CITY COUNCIL ADJOURNMENT

Mayor Gingles adjourned the meeting at 9:55 p.m. to the next scheduled regular meeting to the Calistoga City Council, on Tuesday, March 17, 2009, Calistoga Community Center, 1307 Washington Street, 7:00 p.m.

Respectfully submitted:

Prepared by: Lorie Goldbeck, Administrative Secretary

Approved by: Jack Gingles, Mayor