



**MILLBRAE CITY COUNCIL
MINUTES
February 14, 2012**

CALL TO ORDER MILLBRAE CITY COUNCIL

Mayor Colapietro called the meeting to order at 7:04 p.m.

ROLL CALL: Mayor Marge Colapietro, Vice Mayor Gina Papan, Councilmembers Nadia V. Holober, Wayne Lee, and Robert G. Gottschalk

PLEDGE OF ALLEGIANCE TO THE U.S. FLAG

1. **CEREMONIAL/PRESENTATION**

- Presentation by State Senator Leland Yee, Ph.D.

State Senator Leland Yee briefed the Council on:

- Status of the State budget;
- November ballot measures;
- Redevelopment update and obligations to be addressed by the Successor Agencies;
- High Speed Rail update;
- Introduction of new office staff members: Dan Lieberman was promoted to District Director to lead office staff, Claudia Lopez is the staff member for the northern part of County and Kevin Fong is the staff member for the southern part of County and the liaison for Millbrae.

The Council thanked Senator Yee for his presentation.

2. **AGENDA OVERVIEW/STAFF BRIEFING**

- Informational Report Regarding Bills, Claims, and Payroll

City Manager Marcia Raines reviewed the agenda items and noted the removal of the word “substantially” from both the staff report and Resolution for agenda item 7.

- Report out from Closed Session of January 24, 2012

City Attorney Joan Cassman stated that the Council had met in Closed Session and discussed the matter of anticipated litigation. Staff advised the City Council of pending and potential claims. Council gave direction to staff and no formal action was taken.

3. **APPROVAL OF MINUTES**

- Regular Meeting of January 10, 2012

Upon a motion/second by Papan/Lee, the minutes of the January 10, 2011 meeting were unanimously approved.

4. **ORAL REPORT FROM CITY COMMITTEE/COMMISSION CHAIRS**

- NONE

CITIZEN COMMUNICATION

Wynn Grich, Hayward resident, spoke on the effects of hydraulic fracking and the chemicals used to release natural gases in the ground that contaminate the drinking water.

CONSENT CALENDAR

Mayor Colapietro requested that items 8 and 9 be pulled for discussion.

Councilmember Holober requested that item 6 be pulled for discussion.

5. Investment Report as of December 31, 2011
7. Resolution No. 12-06 Accepting as Complete the 25 Via Cannon Retaining Wall Improvement Project, Bid No. 610 and Filing Notice of Completion

Upon a motion/second by Papan/Lee items 5 and 7 were unanimously approved.

6. Adoption of a Single Use Carryout Bag Ordinance No. 742
 - Waive 2nd Reading
 - Adopt Ordinance

Councilmember Holober requested that Item 6 be pulled for discussion as she is concerned about the exemption to businesses for hardships by City Manager. Some regulations or wording should be put in place.

City Attorney Joan Cassman stated that the Ordinance goes into effect September 1st and regulations could be put together and brought back to Council.

Councilmember Holober stated that the addition of a statement that exemptions will not apply until regulations are put in place could be sufficient.

Mayor Colapietro stated that this issue was addressed at last meeting and that the Council sets policies and it is up to the City Manager to carry out those policies as part of managing the City is carrying out this Ordinance. No change should be made.

Councilmember Papan stated that the Ordinance is modeled after San Jose and San Francisco, and it is good enough for Millbrae. She is comfortable with the City Manager taking on this role and this can be adjusted later if issues arise.

Councilmember Lee inquired if a business had an issue with the City Manager's decision could the business appeal the decision to the City Council?

The City Attorney stated that there is no appeal process in the Ordinance.

Councilmember Gottschalk stated that there is no reason to delay the ordinance as it will go into effect on September 1st. There should be some parameters with guidelines, and he would like to see some provision that regulations are in place.

Councilmember Holober stated that the Council requested the single use bag ban. A sentence can be added that states no exemptions to take place until some regulations are in place. Staff would not be required to come up with the regulations until a business comes forward for an exemption. Under section 6.05.030 on page 4 of the Ordinance add the following wording: “no such exemption shall be granted until such regulations are in place to guide the City Manager and/or designee in applying this exemption.”

No public comment for this item.

Upon a motion/second by Holober/Lee, Council amended the ordinance as specified above by the City Clerk by a vote of 4:1. Councilmember Papan dissented.

Upon a motion/second by Papan/Holober Ordinance 742, adoption of a Single Use Carryout Bag Ordinance was unanimously adopted.

8. Resolution No. 12-07 to Extend the Water Pollution Control Plant Renovation Project Contracts with West Bay Builders, URS Corporation, and Kennedy Jenks

Public Works Director Ron Popp presented the report and provided Council with background on the Water Pollution Control Plant Renovation Project. City staff has spent time and money documenting the project and the construction contractor West Bay Builders. It is now estimated that the project will be completed by May/June 2012. West Bay Builders’ subcontractors have delayed this project and the contractor is notifying staff that they are not responsible for these delays. The City is focused on completing the project and staff is trying to reach an agreement with West Bay Builders. If the City can reach a reasonable settlement with the contractor it will be in the City’s best interest. Staff will not make the decision on the settlement; this would be the decision of the Council. Mr. Popp stated that he was scheduled to have an informal meeting with Paul Thompson, President of West Bay Builders, on the following day.

There was Council discussion and a few Councilmembers felt that it was not acceptable for Mr. Popp to have the informal meeting alone with Mr. Thompson when so much money was involved.

Council requested the following information:

- Was the bid submitted by West Bay Builders underbid;
- Why did the City accept the lowest bid;
- What percentage of the project is complete;
- Rewrite the liquidated damages clause;

Staff responded:

- West Bay Builders met all the requirements on paper when they submitted their bid;
- The City accepted the lowest bid because we are required to go with the lowest responsible bid. We knew that West Bay Builders did not have the qualifications and they were a litigious company. At the time the bid was awarded, the City was under a time crunch to get the contract awarded in order to receive Federal stimulus money. We could not reject the low and high bids. If the City rejected West Bay Builders’ bid, we would have been confronted with litigation over the rejection of bid. If time had not been an issue, the City would have rejected all bids and re-bid the project. As a result, the City retained consultants (URS and Kennedy Jenks) to watch over the project. These consultants brought various issues and problems to staff’s attention;

- The project is 90% complete. If the City were to file against the surety, it would take an additional 2-3 years to complete the last 10% of the project. The City would need to bid out that portion of the project and retain a new contractor;
- The liquidated damages clause cannot be changed after the bid is awarded.

Staff reiterated that the funding requested is for the extension of the contracts with URS and Kennedy Jenks and that the City needs their oversight on this project.

No public comment for this item.

Council agreed to cut the \$1.5 million in half to \$750,000 and to have staff return at a future meeting to discuss the remainder of the project funding.

Upon a motion/second by Papan/Colapietro Council moved to cut funds in half by a vote of 4:1. Councilmember Lee dissented.

9. Resolution No. 12-08 Adopting Tentative Agreement between the City of Millbrae and the Millbrae Police Officers Association Regarding the Transfer of Law Enforcement Services to the County of San Mateo

Kelly Tuffo, of Liebert, Cassidy and Whitmore, stated that the resolution before Council is to approve the Tentative Agreement between the City of Millbrae and the Millbrae Police Officers Association regarding the transfer of law enforcement services to the County of San Mateo.

Mayor Colapietro thanked Ms. Tuffo for the report.

Councilmember Holober had a question regarding officers not offered employment with the County. As long as the officers meet the minimum standards and do not have any pending disciplinary or criminal charges they will be employed. Are there any officers with pending disciplinary or criminal charges?

The City Attorney noted that there are none.

Ms. Tuffo noted that there are two pending disability retirements and under this agreement they would be excluded from the severance pay.

Council Holober inquired about the severance language on page 2, paragraph 4 of the agreement. It states that those who do not meet the County's minimum requirements will be laid off by the City.

The City Manager stated that to the best of our knowledge, staff expects that everyone will meet these requirements.

Councilmember Holober inquired if someone could decide to not release all claims and sue the City.

Ms. Tuffo stated yes, they could sue. If a severance issue came up, each individual would have to decide if they were going to release all claims in exchange for the severance or if they were not willing to release all claims and sue.

Councilmember Holober asked about the language regarding the release of any and all claims and is it broad enough to include both the City and the County. We would not want a situation where the claims are released against the City but not the County and the City would have to pay the litigation costs against the County.

Ms. Tuffo stated that the County is not a party to this agreement.

The City Clerk read into the record the following statement from former Mayor and Councilmember Daniel F. Quigg. He was unable to attend the Council meeting but requested that his comments be entered into the record:

“I am in support of the tentative agreement between the City of Millbrae and the Millbrae Police Officers Association. The negotiations between the City and our employees have been very fair in the Memorandum of Understanding. This item warrants unanimous approval from the full Council to move this item to closure.”

No public comment for this item.

Upon a motion/second by Papan/Holober Resolution No. 12-08 adopting a tentative agreement between the City of Millbrae and the Millbrae Police Officers Association regarding the transfer of law enforcement services to the County of San Mateo was unanimously adopted.

PUBLIC HEARING

NONE

OLD BUSINESS

10. Resolution Authorizing Execution of the Transfer Agreement between the City of Millbrae and the San Mateo County Sheriff’s Office

Chief Raffaelli presented the report which recommended that the City Council approve the resolution authorizing the City Manager to execute the Transfer Agreement between the City of Millbrae and the San Mateo County Sheriff’s Office.

Council inquired about:

- Has the County expressed a firm proposal to use the station and if yes, not to use the word “Sub-Station” if signage is changed;
- Will the Millbrae radio frequency be kept;
- Radio frequency used by the County is digital and cities use analog frequency;
- Details on the Volunteer Program;
- Will the communications van remain in Millbrae.

Staff responded:

- The County will rent the current facility and it will become the Millbrae Police Bureau. Deputies will be dispatched from this area and cars will be stationed at this location;
- Millbrae can keep its radio frequency as it is used by the CERT program. A letter of agreement between the Sheriff’s Office and the City Manager can be written to reflect this;

- Page 21 of the Transfer Agreement addresses this issue. The County will set up and pay for two communication centers. Millbrae will be able to copy what is going on in neighboring cities and the County will be able to communicate with the cities;
- Details on the Volunteer Program are still being worked out. The Volunteer coordinator will become a County employee and run the program out of Redwood City. The volunteers will have the option to stay in Millbrae or work out of another location if they so choose;
- The communications van will stay in Millbrae.

Councilmember Holober thanked staff. She stated that she does not support the reduction in services that agreement entails and will be voting against this item.

Vice Mayor Papan stated that she looks forward to working with Sheriff's Office.

The City Clerk read into the record the following statement from former Mayor and Councilmember Daniel F. Quigg. He was unable to attend the Council meeting but requested that his comments be entered into the record:

"In reviewing this report it appears that many hours were spent by both the City of Millbrae and the Sheriff's Office to assess the needs of our community and our police staff. I would recommend going forward with the transfer of all necessary equipment and services from the City of Millbrae to the San Mateo County Sheriff. This transfer is in the best interest of all the citizens of Millbrae."

No public comment for this item.

Upon a motion/second by Colapietro/Papan Resolution No. 12-09 authorizing execution of the Transfer Agreement between the City of Millbrae and the San Mateo County Sheriff's Office was adopted by a vote of 4:1. Councilmember Holober dissented.

NEW BUSINESS

11. Appointments to be considered by the City Selection Committee

City Clerk Angela Louis presented the report regarding the appointment to fill four vacancies to the Housing Endowment and Regional Trust (HEART) Board of Directors. The Council inquired if Elizabeth Lewis of Atherton had reapplied. It was noted that she had not submitted a reappointment letter.

Council discussed the letters of interest.

Councilmember Gottschalk stated that he had considered applying for the appointment, but had missed the deadline.

Mayor Colapietro stated that he could be nominated from the floor.

Councilmember Gottschalk noted that he would consider being nominated from the floor but would need to know when the HEART Board met so that he could check his calendar. It was noted that the HEART Board meets in San Mateo on the 4th Wednesday of every month.

Councilmembers Papan, Holober, and Lee stated that they would support Councilmember Gottschalk if he chose to apply.

Councilmembers Papan and Holober supported Jack Matthews for reappointment.

Councilmember Holober supported Ron Collins and noted that Andy Cohen may not be the best fit for this appointment.

The 4th vacancy would be at the discretion of the Mayor. If Elizabeth Lewis did not seek reappointment, there could be another nomination from the floor.

No public comment for this item.

COUNCIL COMMENTS

Mayor Colapietro:

- Attended a special workshop hosted by Hanson Bridgett;
- Announced that the January Mayor's Civic Coordinating Council meeting only had 5 groups present. She encouraged all groups to attend. The next meeting is on February 24th at 8:30 a.m. in the Chetcuti Room;
- Attended the C/CAG Board of Directors meeting and it was requested that there be better communication from PG&E to the cities. C/CAG agreed to be the liaison for this purpose. PG&E has assigned a liaison to attend the C/CAG meetings;
- Attended the San Mateo County Pre-Hospital Emergency Medical Services JPA meeting. American Medical Response attended the meeting and gave a report;
- Attended the San Mateo County Office of Emergency Services Council meeting;
- Announced the March 15th Silver Dragon VI exercise;
- Attended the San Mateo County Library JPA. She thanked Librarian Sandy Wee and her staff and the members of the Friends of the Millbrae Library who gave tours to the Board Members.

Vice Mayor Papan:

- Attended the C/CAG Legislative Committee meeting. Requested that the list of unfunded mandates be posted to the website so that public is informed. The November ballot will be heavy with various measures;
- Attended the Peninsula Traffic Congestion Relief Alliance meeting. They appointed John Ford as their new Executive Director;
- Attended the Fields Subcommittee meeting;
- Wished everyone a Happy Valentine's Day.

Councilmember Holober:

- Attended the recent League of California Cities Environmental Policy Committee meeting;
- Attended the C/CAG Congestion Management Environmental Quality meeting and there was discussion on:
 - ✓ the County's single use bag ban
 - ✓ shuttle transportation that comes into the Millbrae station area
- Thanked everyone who attended the Lunar New Year Festival;
- Attended the Technology Subcommittee meeting;
 - ✓ upgrades in the Chamber include a new podium and monitor
 - ✓ funding for the upgrade is coming from PEG monies and not the General Fund

- ✓ making the presentation process clear and easy for all involved in the Chamber and for the viewing public at home
- ✓ going paperless in the future.

Councilmember Lee:

- Announced the successful events held by the Chamber, the Rotary, and Peninsula Chinese Business Association that assist the community;
- Announced that the Lions Club is hosting their annual speech contest tomorrow evening at the Terrace Café;
- Congratulated Councilmember Holober on her work at the Lunar New Year Festival;
- Announced that the Lions held a successful crab feed.

Councilmember Gottschalk:

- Attended the first meeting of the SFO Community Roundtable;
- Stated that he is enjoying his new assignment on the various Commissions and Committees.

RECESS CITY COUNCIL

There being no further regular business to discuss the City Council recessed at 9:57 p.m.

RECONVENE CITY COUNCIL

12. **CLOSED SESSION**

- Conference with Legal Counsel – Existing Litigation
Closed Session held pursuant to Government Code §54956.9(a)
1. Singson v. Millbrae, case CV 1863
 2. Lo v. Millbrae, case CIV 509891

ADJOURN CITY COUNCIL

There being no further business to discuss the City Council adjourned at 10:45 p.m. in memory of Millbrae residents Ray Fellman, Robert Williamson, and Estelle Woolson.

/s/ Angela Louis
City Clerk

/s/ Marge Colapietro
Mayor