



**MILLBRAE CITY COUNCIL
MILLBRAE REDEVELOPMENT AGENCY
MINUTES
February 9, 2010**

CALL TO ORDER MILLBRAE CITY COUNCIL AND REDEVELOPMENT AGENCY

Mayor Seto called the meeting to order at 7:00 p.m.

ROLL CALL Mayor/Agency Chair Paul Seto, Vice Mayor/Vice Agency Chair Daniel F. Quigg, Council/Agency Members Marge Colapietro, Gina Papan, and Nadia V. Holober

PLEDGE OF ALLEGIANCE TO THE U.S. FLAG – Girl Scout Troop 30481

1. **CEREMONIAL/PRESENTATION**

- Presentation by the Millbrae Education Foundation

Bill Meyer, Chair of the Millbrae Education Foundation, introduced members of the Millbrae Education Foundation that were in attendance. He made a presentation on the mission and focus of the Foundation and explained how the funds raised were being used. Anyone interested in assisting the Millbrae Education Foundation can contact them at www.millbraeeducationfoundation.org.

The Mayor and Councilmembers thanked Mr. Meyer for his presentation.

- Commendation to the Millbrae Education Foundation

Mayor Seto presented Bill Meyer with a commendation congratulating the Millbrae Education Foundation for their efforts in supporting the Millbrae Elementary School District.

2. **AGENDA OVERVIEW/STAFF BRIEFING**

City Manager Marcia Raines reviewed the agenda items.

- Informational Report Regarding Bills, Claims, and Payroll
- Report out from Closed Session - NONE

3. **APPROVAL OF MINUTES**

- Regular Meeting of January 26, 2010

City Clerk, Angela Louis, noted the following correction to the minutes: under Council Comments, Mayor Seto announced the retirement dinner for Barbara Pettit, he had not yet attended the event.

Upon a motion/second by Quigg/Colapietro, the minutes were approved with corrections.

4. ORAL REPORT FROM CITY COMMITTEE/COMMISSION CHAIRS

- Lunar New Year Committee – Announcing Lunar New Year Festival

Marian Kong, Chair of Lunar New Year Committee, announced the upcoming Lunar New Year Festival on February 21st and 22nd. For more information visit www.millbrae-events.com. New events for this year include:

- extended street fair on Saturday and Sunday;
- afternoon parade on Sunday at 3:30 p.m.;
- Lunar New Year Dinner at 5:30 p.m. on Sunday following the parade.

Vice Mayor Quigg noted that the San Mateo County Times had done a write up in the paper and it was nice to see the support of local media.

Mayor Seto stated that the dinner following the parade is new this year, and it is a way for the community to come together and celebrate.

CITIZEN COMMUNICATION

Wynn Greich, Hayward resident, inquired about the City’s participation with ICLEI (International Council of Local and Environmental Initiative). She also spoke on the adverse side effects of mercury and fluoride.

CONSENT CALENDAR

Councilmember Papan noted a typo in item 6, page 1, paragraph 2 of the Administrative Policy states “outside legal expert”, this should read “financial expert.”

Upon a motion/second by Colapietro/Quigg, Consent Calendar items 5-7 were approved with corrections.

5. Investment Report for Period Ending December 31, 2009
6. City Council Resolution No. 10-07 and RDA Resolution No. 10-01 Adopting the Investment Policy and Designating the City Manager the Responsibility to Serve as the City Treasurer/Investment Officer
7. Report Recommending Council Authorize Staff to Prepare Action Minutes

PUBLIC HEARING

NONE

OLD BUSINESS

NONE

NEW BUSINESS

8. Millbrae Water Pollution Control Plant Renovation Project Update

Public Works Director Ron Popp presented an update on the Water Pollution Control Plant Renovation Project. The City is committed to an on time and on budget project. The completion date is scheduled for November of 2011 and we are 15% into the project. Key points of the presentation included:

- obtaining the necessary permits from Caltrans, the FAA, and the regional water board;
- relocation of PG&E and AT&T utilities;
- relocation of existing sewer mains and construction of new 18 inch storm drain pipelines;
- production piles will commence in April;
- insurance and bond documents in place;
- construction schedule from West Bay Builders has been received and is being reviewed by URS, Kennedy Jenks, and the City;
- next project update scheduled for April 2010.

Councilmember Colapietro commented on the construction sign located at the US 101 exit for Millbrae. She also inquired as to:

- the cost of leasing the land from Caltrans, and if those costs were estimated in the project;
- had the recent storms slowed down the project;
- what is the daily average number of crew on site;
- how many hours a day does Mr. Popp spend on site;
- inquired about prevailing wages.

Mr. Popp stated that there is no cost for the lease of land. The recent storms had not slowed down the project as no excavation is going on yet. With regard to the average number of crew on site, that fluctuates. He also stated that he does not spend time at the site. The City Engineer attends weekly on site meetings, and the Water Pollution Control Plant Superintendent is on site. Updates are reported back to him after weekly the meetings. He also stated that there are prevailing wages.

Councilmember Papan requested that the next project update include the number of new jobs created. She also asked that staff take specific note with regard to the moving of utilities as this may come up during high speed rail talks.

Vice Mayor Quigg inquired as to the performance of West Bay Builders with URS.

Mr. Popp noted that all is going well and that West Bay Builders had hired a project manager with experience in Wastewater Treatment Plants.

Councilmember Holober asked if the existing facilities are operational during the project.

Mr. Popp noted that the plant is online.

Mayor Seto inquired:

- how comfortable Mr. Popp was with the project to date;
- where there any change orders;
- clarification on equipment substitution;
- what fund was being used to pay for the project.

Mr. Popp stated that he was pleased with the project so far, and that no real construction work has yet started. There have been some change orders, but nothing that will impact the projected project completion date. With regard to the equipment substitution, a centrifugal blower rather than a positive displacement blower is needed; there is a difference in longevity and use of energy. The Sanitation Enterprise Fund is being used to pay for the project, and the City has received some of the bond financing money.

Public Comment

Wynn Grich, Hayward resident, commented on:

- Baykeepers' lawsuit;
- 1,600 sewage leaks in last 5 years by the City;
- sewer rates likely to go up due to lawsuit;
- use of acrylamide at the WPCP for treatment;
- sewer lines in the City should also be replaced.

Councilmember Holober noted that the comments made were not on topic.

Mr. Popp stated that Baykeepers filed a lawsuit against the City. The City had 340 overflows due to wet weather, not 1,600. The lawsuit has nothing to do with the renovation project, and rates will not increase because of it. Acrylamide is not used at the Water Pollution Control Plant. Over time, there has been a decrease in overflows. The City is in compliance with what Baykeepers has asked and will go into settlement.

City Attorney Joan Cassman noted that Millbrae is the last city being sued. Under the Clean Water Act there is a strict liability, and no system is free of spills.

Councilmember Papan noted that the intent of the new plant is to reduce the number of spills. The City takes the Bay seriously and is moving forward to not have any more violations.

Mayor Seto thanked Mr. Popp for his report.

9. Ordinance Prohibiting Medical Marijuana Dispensaries
 - Waive 1st Reading
 - Introduce Ordinance

Commander Mark Raffaelli stated that the City has received numerous inquiries with regard to opening and operating medical marijuana dispensaries. The City has the authority to prohibit medical marijuana dispensaries under its broad police power to protect the health and safety of its residents. Certain cities have adopted ordinances that regulate these facilities as to location, operation, and security as a land use/zoning issue, and other cities have adopted ordinances that prohibit medical marijuana dispensaries altogether. Under Federal law, the Controlled Substances Act, the use of marijuana is strictly prohibited as it is classified as a controlled substance. Under California Law, voters approved Proposition 215 (the Compassionate Use Act), which allows seriously ill individuals to use marijuana for medical purposes without criminal liability when the use is recommended by a physician. SB 420 (Medical Marijuana Program) attempts to provide direction on how to interpret and implement Proposition 215. Nothing in either piece of legislation states that cities must allow for medical marijuana dispensaries. The Police

Department has reviewed the experiences of other cities which have permitted such facilities and has assembled documentation of adverse public safety impacts that include:

- street dealers trying to sell marijuana at lower price to those who go to dispensaries;
- people smoking marijuana in public near the facility;
- out of town traffic to obtain marijuana;
- marijuana DUI;
- burglary attempts on the facility;
- criminal element drawn to the facility;
- dealers who have a doctor's recommendation are purchasing from the dispensary and then conducting illegal street sales;
- thefts and robberies near the facility location;
- businesses near facilities are negatively impacted by the criminal element;
- complaints of other illegal drugs being sold at the dispensary.

A complete index of the Police Department's reports is available for review at the Police Department. Staff recommends that the City Council adopt an ordinance prohibiting medical marijuana dispensaries, but exempting from the definition of "dispensary" certain care facilities that are licensed and regulated by the State.

City Attorney Joan Cassman commended Commander Raffaelli on his presentation. She stated that there is a conflict between the Federal law and State law, and under the Federal law, it is illegal to import or use marijuana, and this law trumps any changes at the state level. Proposition 215 provides a very limited defense against criminal prosecution for the use of medical marijuana, and protects patients and their primary caregivers from prosecution under California law. SB 420 provides more detail to Proposition 215 in how it should be interpreted and implemented, but this has only added to the ambiguity. There is no mandate that cities and counties must allow for these facilities to operate in their jurisdiction. The State Attorney General's official guidelines for medical marijuana state that storefront marijuana dispensaries are not authorized under the law. There are current pending court cases that may bring further changes to current law, this is why staff is recommending the adoption of an ordinance prohibiting medical marijuana dispensaries, but exempting from the definition of "dispensary" certain care facilities that are licensed and regulated by the State. This recommendation is supportable by both Federal and State law.

Councilmember Papan thanked staff for their report and support of the ban. She inquired as to the difference between a dispensary and a collective, and if a patient is prescribed marijuana by a doctor, could the patient get it from a pharmacy. She stated that she supports the ban and she emphasized the secondary impacts noted in the report and the importance of protecting the public in Millbrae. We tend to think that this does not happen in Millbrae, but in recent years, two homes in Millbrae were converted to grow marijuana. This proposal does take into account those with tragic health issues.

Mr. Raffaelli stated that a dispensary is for profit only, such as a storefront operation. A collective is non-profit and is a group of people who get together to grow and harvest marijuana for their use only. There are issues with regards to collectives and how they operate and if they are truly non-profit. He noted that pharmacies are not allowed by federal law to dispense marijuana to patients.

Vice Mayor Quigg concurred with Councilmember Papan regarding the secondary effect and the issues of crime surrounding these dispensaries. He noted that the City Attorney pointed out that we do not know what the outcome of these dispensaries will be due to pending lawsuits. He also stated that he is in support of this ban.

Mayor Seto inquired as to why the City does not have an outright ban on these facilities as Millbrae is a relatively small community. The City may not be able to afford the extra police costs to regulate, monitor, and track these facilities. He also inquired as to why the City did not approach this issue via a temporary moratorium.

Mr. Raffaelli noted that the City is prohibiting these facilities with the exception of state licensed facilities. There is accountability with state licensed facilities as the general public does not enter these facilities.

Ms. Cassman noted that the ultimate goal of a moratorium is to study the issue and come out with a land use regulation which does not mean banning the facilities, but deals with time, place, and distance requirements. Other cities have taken the moratorium route; Millbrae is going for the ban. Ultimately the real desire is to protect cities from these facilities. The ban fits Millbrae's purposes; we are being honest that these facilities are not appropriate for Millbrae. We will continue to look at the subject and come back if there are any changes.

Councilmember Colapietro noted that Millbrae is a compassionate community. She thanked staff for their work on this report and supports the recommendation.

Public Comment

Michael Francoise, East Palo Alto resident, spoke in support of the ban. He noted that problems arise in the areas where these dispensaries are located.

Wynn Greich, Hayward resident, stated that she is proud of Millbrae for this ban. She spoke in support of the ban and noted that hospitals could possibly have marijuana rooms to regulate use. Another suggestion was to pursue other alternatives to help people who suffer from chronic health issues.

Upon a motion/second by Papan/Colapietro, Council waived the first reading and introduced an ordinance prohibiting marijuana dispensaries.

10. Motion to Consider Participation in World Health Day

San Mateo County is considering participation in World Health Day, scheduled for Sunday, April 11, 2010. The concept is to open sections of city streets to pedestrians, bicyclists, and families to promote outdoor activities and community events. The Council viewed a brief video presentation on World Health Day activities in other cities.

Council discussed participation in the event, noting that the City already holds similar events throughout the year. The 5K Fun Run, Concerts in the Park, Downtown Concerts, and Millbrae Spring Fair were all cited as examples of community activities hosted by the City. Council stated that if one of the above mentioned items could be held to coincide with World Health Day, this would eliminate staff having to budget and prepare for a new event. Council requested that staff look into this and provide more input with regard to staff time and budgeting. It was also noted that if World Health Day were to become an annual event, staff would be better prepared for participation next year.

City Manager Marcia Raines noted that this event is not included in the current budget and that staff would need to look into this.

Councilmember Colapietro stated that she would like get back to the County regarding the City's participation in World Health Day.

By consensus, the Council agreed to support the concept of World Health Day and try to have an event close to the date, and to respond back to Supervisor Groom and ask if this will be an annual event, so that the City can be better prepared in the future.

11. Motion to Consider Amendment to Council Comments as Defined in the Council Protocols

Council discussed the Council Protocols with regard to Council Comments. Currently, the Protocols do not specify a length of time allotted for Councilmembers to comment on the various assignments they hold, and meetings they attend outside of Council meetings (Section II.4). It was requested that Councilmembers be given three minutes each to make their comments at the end of Council meetings. There was discussion back and forth regarding the length of time for Council Comments, some in favor of the three minute limit and another not in favor. After some deliberation, it was agreed that Councilmembers would be given five minutes each to comment on their activities.

City Attorney Joan Cassman stated that she would bring a resolution before Council at their next meeting to amend the Council Protocols.

Upon a motion/second by Quigg/Holober, the Council unanimously agreed to amend the Council Protocols (Section II.4) to allot each Councilmember five minutes for Council Comments.

COUNCIL COMMENTS

Mayor Seto announced that he was appointing Vice Mayor Quigg and Councilmember Holober as the new Subcommittee for Commission/Committee interviews. He noted that both he and Councilmember Colapietro had served in this capacity for two years.

Councilmember Holober attended:

- Airport Community Roundtable meeting, where it was noted that noise complaints are down. There is an upcoming change in the regulations regarding lower flying aircraft which will be a benefit during periods of low visibility;
- Library JPA meeting, where it was noted that in the next fiscal year, the Millbrae Library will get two early literacy stations also known as toddler computers;
- League of California Cities Environmental Policy Committee meeting in January was dedicated to water issues. The League is supporting a statewide goal to reduce water use by 20% by 2020.

Councilmember Colapietro:

- noted that MCTV Board has new officers;
- stated that MCTV and the Millbrae Historical Society have endorsed the Bill of Rights for Children and Youth;
- attended the Millbrae Fire Department's weapons of mass destruction class, presented by the San Mateo County Sheriffs Bomb Squad;
- congratulated the Police Department for organizing Barbara Pettit's retirement dinner;
- announced the February 10th free lecture at the Community Center by Mark Howard, Ph.D.;

- asked for continued community thoughts and prayers for former Mayors Tullio Bertini and Frank Cannizzaro, and Planning Commissioner John Walker. All three continue to be challenged with health conditions.

Councilmember Papan stated:

- saddened by the recent decision of Superintendent Shirley Martin to retire;
- congratulated San Mateo Police Chief Susan Manheimer on her election as the President of the California Police Chief's Association, the first woman elected to this position;
- Assembly Member Jerry Hill will present a Cal Grant workshop this month;
- free H1N1 vaccinations are available through the San Mateo County Health Department;
- both she and Mayor Seto, along with City staff and representatives from Burlingame met to share concerns on the progress of high speed rail;
- attended a human trafficking epidemic meeting in San Francisco.

Vice Mayor Quigg:

- attended HEART meeting, the goal is to move people into low and moderate income housing;
- thanked the Mayor for his appointment to serve on the Council Subcommittee;
- requested an update report from the Public Works Department on how the City is moving towards the goal of lowering water usage.

Mayor Seto:

- attended Boy Scout Troop 355 Dinner on February 5th;
- discussed priorities of January 30th Council Retreat:
 - ✓ sharing Police services with San Bruno;
 - ✓ review internal Human Resources functions;
 - ✓ upcoming City budget process;
 - ✓ updates on the Water Pollution Control Plant renovation project;
 - ✓ Millbrae Community Youth Center project(formerly Scout House);
 - ✓ high speed rail.

RECESS CITY COUNCIL AND REDEVELOPMENT AGENCY

There being no further regular business, the City Council and Redevelopment Agency recessed at 9:44 p.m.

RECONVENE CITY COUNCIL AND REDEVELOPMENT AGENCY

12. **CLOSED SESSION**

Conference with Legal Counsel – Existing Litigation
Government Code §54956.9(a)
Vangele v. Millbrae

Conference with Real Property Negotiators
Government Code §54956.8
Address: 100 El Camino Real, Millbrae, CA 94030
Negotiators for Agency: Executive Director and City Attorney

ADJOURN CITY COUNCIL AND REDEVELOPMENT AGENCY

There being no further business to discuss, the City Council and Redevelopment Agency adjourned at 10:45 p.m.

/s/ Angela Louis
City Clerk

/s/ Paul Seto
Mayor