

MINUTES OF THE SPECIAL MEETING OF THE TRINIDAD CITY COUNCIL
MONDAY, OCTOBER 17, 2016

I. CALL TO ORDER

- Mayor Miller called the meeting to order at 6:00PM. Council members in attendance: West, Fulkerson, Miller, Baker, Tissot.
- City Staff in attendance: City Manager Dan Berman, City Clerk Gabriel Adams, City Attorney Andy Stunich, City Planner Trever Parker.

II. PLEDGE OF ALLEGIANCE

III. ADJOURNMENT TO CLOSED SESSION

1. *Conference with legal counsel regarding active litigation. Tsurai Ancestral Society vs. City of Trinidad. Pursuant to California Government Code section 54956.9 (a)*
2. *Conference with legal counsel regarding potential litigation. Claim for damages against the City by Reinman and Covney. Pursuant to California Government Code section 54956.9(a), 95*

IV. RECONVENE TO OPEN SESSION

City Manager Berman stated that continuing settlement efforts are being made regarding the Tsurai litigation, and the Council has rejected the damage claims submitted by Reinman and Covney.

V. APPROVAL OF AGENDA

*Motion (Fulkerson/West) to approve the agenda. **Passed unanimously.***

VI. APPROVAL OF MINUTES – September 14, 2016 cc

*Motion (West/Tissot) to approve the minutes as written. **Passed unanimously.***

VII. COUNCIL MEMBER REPORTS

Fulkerson: Reminded the public to vote for Trinidad Sales Tax Extension Measure G.

Miller: RCEA community choice aggregate program; contracts approved to get the program going.

West: HCAOG discussing trail system from Trinidad to Scotia, and Measure U implications on County road budget.

Baker: Attended Yurok Tribal Council meeting. Deferred law enforcement update to agenda item 1 discussion. Introduced HCSO Kevin Miller.

VIII. STAFF REPORTS:

City Manager Berman highlighted various accomplishments and project status for the month; *City is preparing for upcoming winter weather, water plant improvements have made a significant difference in treatability of the water supply, announced upcoming meetings scheduled for the Van Wycke Trail Project Proposal, and NOAA Trinidad Head Facility improvements underway.*

IX. ITEMS FROM THE FLOOR:

Patti Fleschner – Trinidad

Thanked Deputy Wilcox for assistance keeping homeless and travelers moving along at Saunders Park, the Museum, and the Library. Effort needs to continue due to the increase in activity. Councilmember **Fulkerson** encouraged the public to walk-through the park as often as possible.

Susan Rotwien – Trinidad

The recent shop fire at a property on Quarry Road was set by squatters. Transients are a serious issue. Deputy Wilcox is great, but we need more deputies covering Trinidad. Expecting an on-time departure for crab season this year. Thanked and congratulated City Planner Trever Parker for all her hard work on the Vacation Rental Ordinance.

X. CONSENT AGENDA

1. Financial Status Reports for August 2016.
2. Law Enforcement Activity Report – September 2016
3. Proclamation in Recognition of Domestic Violence Awareness Month, October 2016.

4. Approval of Consultant Scope of Services for Ocean Protection Council Citywide Low Impact Development Grant Project with City Engineer GHD.
5. Planning Commission Vacancy Notice
6. Van Wycke Trail Update

*Motion (West/Tissot) to approve the consent agenda as written. **Passed unanimously.***

XI. DISCUSSION/ACTION AGENDA

1. Presentation/Discussion with Humboldt County Sheriff representatives regarding Measure Z funding and Public Safety.

City Manager Berman explained that the City has been awarded \$75,317 in Measure Z funds from Humboldt County to support additional law enforcement services in Trinidad. The City's proposal was to utilize these funds to support an additional 0.5 FTE deputy in Trinidad. This would involve one deputy splitting their time between the City of Blue Lake and the City of Trinidad, and Trinidad would go from having a dedicated deputy on duty ten hours a day four days a week, to six days a week.

The Humboldt County Sheriff's Office was supportive of our application throughout the process, but they have just recently informed the City that they do not have the staff available to move forward with this plan. They have also indicated that they are not sure when or if they will have the staffing available.

Initial conversations with County staff who administer the Measure Z funds have suggested that they could hold the funds over to future years, and they are willing to consider proposals for potential alternative uses of the funds. The Board of Supervisors would likely need to approve any such alternative, as these funds were awarded based on a specific proposal for additional deputy hours. Any use would need to be consistent with the intent of Measure Z, and proposals developed with County engagement.

The City of Blue Lake is in the same situation and is interested in working collaboratively on community public safety concepts. Some initial options for consideration, which may or may not involve Measure Z funds, could include:

- a) Lighting improvements in selected areas;
- b) Increased training and equipment for community involvement through neighborhood watch or similar efforts;
- c) Hiring or contracting for non-law enforcement security positions, independently or possibly with the Trinidad Rancheria, who already have security staff.

The Council has a Public Safety Committee, which currently consists of Councilmember Baker. Rather than having a detailed discussion at this meeting, staff recommends another Council member join this committee, and the committee be tasked with exploring these options in more detail, including public meetings, with the goal of coming back to the Council with recommendations. This would provide a forum for community engagement and participation in the effort to improve public safety in and around Trinidad.

HCSO Lieutenant Kevin Miller explained that there is a high demand for law enforcement, but the supply of qualified deputies is low. As quickly as the Sheriff hires, Deputies are lost for injuries, retirement, etc. There is shortage of "good" deputies. We don't want to over-promise and under-deliver. It could be a year before a new deputy is trained and prepared for duty. There are (12) positions currently open.

Council questions included:

Fulkerson: Questions about the background check process, and whether the Sheriff is able to anticipate retirements and plan accordingly.

Baker: Who pays for Police Academy training? We are very lucky and grateful to have Deputy Wilcox.

Public comment included:

Patti Fleschner: Do problems occurring with law enforcement on a national level have any impact on local law enforcement enrollment? **Miller** responded, no.

Council comments included:

Fulkerson: Asked Miller if he felt that staffing pressures elsewhere were politically motivated? In other words, should we be putting pressure on our County Supervisor? **Miller** suggested that no, pressure would not help this situation.

Councilmember West volunteered to join Baker on the Public Safety Committee assigned with holding public meetings, including the Sheriff's Office and County representatives, and developing public safety recommendations for the Council, including how to proceed with the Measure Z funds.

2. Discussion/Decision regarding Claims Against the City by Reinman and Covney.

City Manager Berman explained that the City has received a claim for damages from two property owners. The basis for the claim is that the City's VDU Ordinance improperly restricted their use and income from their properties by limiting them to operating a single vacation rental (now Short Term Rental or STR) on their property rather than two separate STRs on their property.

The City Attorney has recommended the City deny the Claim. Rejection of the Claims may lead to legal action against the City. The Council discussed this item in Closed Session due to the threat of litigation, and reported out that the claim has been rejected.

Public comment included:

Walt McNeill – Attorney Representing Reinman & Covney

Referencing his October 17 letter submitted to the Council prior to the meeting regarding the claims, it is very unusual that you chose to make this matter a public discussion item. Your Attorney tells you that the claims were not filed in a timely manner. That is not true. This is a constitutional claim that has no statute of limitations. My door is always open, and I'm open to discuss settlement at any time. This is extremely disappointing. My clients have been deprived of their rights, and the monetary consequences are real. I urge the Council to reconsider their decision. You can do that at any time.

No further public or Council comments.

The Council rejected the claim in closed session.

3. First Reading of Ordinance 2016-03: The City of Trinidad Short Term Rental Ordinance.

City Manager Berman explained that the City has been working to develop, implement, and improve regulations of Short Term Rentals for many years. The draft Ordinance began as a revision to the current ordinance, motivated primarily by a perceived need to cap the total number of STRs in Trinidad. It would break new ground for the City in establishing different types of STRs, capping STRs in Residential Zones of the City, limiting transferability of STR licenses, limiting STR license holders to a single license, and revising the definitions and language of the current VDU Ordinance to improve clarity, enforcement, and overall implementation. It represents substantial work by the Planning Commission, the Council, and the Community over the last year.

The details of the Ordinance have been discussed by Council over many recent meetings, and are best reviewed in the Ordinance language itself. The Council can make changes to the current draft Ordinance at this meeting, prior to the first reading. There are two issues that were not fully settled at the last meeting, and recommendations for the Council will be discussed tonight.

When does it take effect?

A second reading and final adoption can be held at the next regular meeting of October 26th. No changes, except minor editorial corrections, can be made between the first and second reading. The Ordinance is then provided to the Coastal Commission to review for consistency with the Coastal Act and our Local Coastal Program. That process may result in changes to the Ordinance requested or required by the Coastal Commission. Staff and Council can work with Commission Staff through this process. The Commission will presumably certify some version of the Ordinance.

The Council will then need to 're-adopt' the final revised and Commission approved Ordinance. That final action by the City, after Coastal Commission Certification, is the point where it will become effective. In the unlikely event that the Commission certifies it without any real changes, it would become effective upon that action by them.

Preamble: As directed, the Preamble drafted by the City Attorney has been included in the Ordinance itself. The City Staff, City Planner, and City Attorney worked to edit the preamble somewhat from the draft provided at the September 2016 meeting. The Preamble does not set the regulations, but provides basic context for the reasoning behind them.

STR License Types: The Ordinance creates three types of STR licenses:

Full Time STR License. This is the vast majority of existing Trinidad STR Licenses. They allow year-round use as a STR. The number will be capped in the UR and SR zones at 19 and 6 respectively. They will have a minimum use requirement of 60 nights /yr.

Resident STR License. This allows limited (less than 60 nights per year) STR use of the entire home, and is only available to property owners in their primary residence. Only one or two current STRs might qualify for this. This provides an opportunity for actual Trinidad residents to provide limited coastal lodging in their home, while still being a long term resident member of the community.

Homeshare STR License. This is where a property owner, in their own home, can rent up to one bedroom out as an STR, but the owner must be hosting (i.e. sleeping in their home) during the STR use.

Decision on Resident STR License Details and Cap: A cap for this License type was discussed but not set at the last meeting. Staff believes that failing to cap this could pose a risk of a continued increase in STR use when the City is overall trying to prevent further expansion of STRs in Trinidad. *A Cap of 6 in the UR Zone is proposed, with an option to request an exception through the Planning Commission beyond the cap. Resident STRs are otherwise regulated similar to Full-time STRs.*

Occupancy Limits: The Council's recent direction was to set occupancy at two per bedroom for all STR Licenses in the UR Zone, and to not count the first two children (under 12). This is a change from the current occupancy limit of two per bedroom plus two additional. The '2+2' approach is a common formula used for STR occupancy elsewhere.

Staff sees the rationale for this reduced occupancy rate as twofold

- a) Trinidad has small lots, and lower occupancy in the UR zone will reduce the frequency of impacts to the surrounding neighborhood due to parking, noise, and other nuisance issues, and
- b) This largely commercial STR use is being allowed as a residential use. But typical residential occupancy of homes in Trinidad is less than two per bedroom. It would be very rare for a three-bedroom home in Trinidad to have eight long-term occupants. Thus limiting STRs to two per bedroom is much more consistent with the typical residential use of these homes, and all that implies for noise, parking, and the like.

STR managers have argued that a) they typically include children in their head count, and tracking occupancy two different ways is not ideal. STR managers have also argued that the more common limit of two per bedroom plus two additional occupants is reasonable and ongoing in many STRs with no complaints over years if not decades, and that the City can reduce occupancy in response to problems, rather than across the board.

The STR Committee recommends:

- a) Stay with two per bedroom in the UR zone, except where lot sizes exceed either 10,000 square feet or 8,000 square feet). (Each size cutoff got the support of one of the two Council members on the Committee).
- b) Include all individuals in the occupancy count.

Fines: An administrative fines provision has been included largely copied from the City of Pacific Grove. The maximum administrative fine amount of \$1000 for City ordinance violations is set in state law. The City Manager would have discretion, with guidance outlined in that section, to set fines up to that limit.

Dwelling definition: The definition, combined with the language on 'One STR per Parcel' resulted in confusion and unintended consequences in the current Ordinance. These have been corrected. This definition of Dwelling, in section D, is specific to this STR Ordinance, and because the specific governs the general, staff and the City Attorney do not see a conflict (as asserted at prior meetings) between this language and the old Dwelling Unit definition in the City's General Plan.

Public comment included:

Walt McNeill – Attorney

Read from a prepared statement submitted to the Clerk. Summarized, McNeill noted that setting up the new resident STR category is unfair and the category should be eliminated. Occupancy limits are also arbitrary. Nuisances are the issue. You can't reduce or take away rights from people you have historically given them to. Constitutional freedom of association is being violated. And then there's the water restrictions. All the restrictions discriminate against STR owners and are aimed at putting them out of business. The transferability section will be challenged. I urge you to reconsider your position on this.

Jonna Kitchen – Trinidad resident / Owner, Trinidad Retreats

Read from a prepared letter submitted to the City for public record. Occupancy limits should be left as-is. Visitors should be allowed up to 20 on holidays. Current STR's should be grandfathered in regarding transferability. Fines? Who is being fined up to \$1000 per day? What about all the other laws and ordinances that are being broken? Who's enforcing them?

Steve Ladwig – Trinidad

Regarding occupancy limits, children under 13 should be included. It encourages and is welcoming to families.

Susan Rotwein – Trinidad

Read from a prepared letter submitted to the City for public record. The plus 2 occupancy limit should be left as-is, and larger lots should not count kids under 13. Suggested requiring 1 off-street parking space per 2 occupants. Once the cap is reached, licenses should be transferable to children. Regarding noise, exceptions must be made for fishing related activities. Punishment for unlawful, false complaint reports made to law enforcement and/or city staff should be included in the violation section.

Reid Kitchen – Trinidad resident / Owner, Trinidad Retreats

Read a letter submitted by new property owner (and vacation rental owner) **Marc Gottschalk and Rachel Duclos** to the City and included in the public record. The letter questioned the purpose of limiting occupancy from what the current ordinance already reads, limiting transferability, water restrictions, and "hair triggering" events that cause significant violations.

Written correspondence submitted from the following individuals:

- **Mike Reinman**
- **Alan Grau**

Council comment included:

Fulkerson: Countless other cities have ordinances and caps regulating STR's. What have we done different that makes our ordinance an alleged problem? City Attorney Stunich stated that the Planner did most of the hard work, and that he believes that the City is in good shape, legally. Confident that the City is taking far less that other ordinances take.

- Resident STR Cap

West: Concerned with capping unnecessarily. However, it's easier to cap now than to do it later.

Miller: If no one applies then the City can decide to remove the cap later if it becomes unnecessary.

By consensus, the Council agreed to set the Resident STR Cap and (6).

- Minimum Activity Requirement

City Manager Berman explained that the ordinance will become effective after Coastal Commission certification. At that point, vacation rental license holders will have one year from that date to decide whether to use their home as a vacation rental for 60 days or not. If not, they will lose their license.

- Occupancy Restriction

Miller: I agree that setting the lot size limit to 10,000 sqft. helps reduce occupancy issues and achieve the goals we set out to resolve. **Fulkerson** and **West** agreed.

By consensus, Council agreed to allow the +2 occupancy only to lots 10,000 square feet or more.

City Attorney Stunich explained that STR use can be much different than a long-term residential lifestyle. This law protects long-term residents from the lifestyle habits that STR's have the potential to promote.

- Noise Issues

Fulkerson: I hope that the City Manager will handle noise complaints related to fishing related activities appropriately. As in, "sorry, this is a fishing village". **Baker** and **Tissot** agreed.

Tissot: Suggested that noise complaints should be further defined in a future noise ordinance.

- Violations/Fines

City Manager Berman explained the background on where the section came from. Fines will be directed at the license holder. Contracts should be written in a way that enables managers to hold visitors responsible for fees associated with issues.

Closing comments:

Fulkerson: Resident Alan Grau's letter was very discouraging. The Council listened to both sides, made compromises, incorporated the comments, and met in the middle. No one won completely, or lost completely.

Motion (Fulkerson/West) to include final changes to the Ordinance from the version in the staff report, and waive reading of the Ordinance text in full, and conduct the first reading of the final Ordinance 2016-03 by title.

Passed unanimously.

4. Discussion/Decision regarding Ordinance updates and priorities.

City Manager Berman explained that there are a number of the City's existing ordinances that may warrant updates, and new ordinances are needed in a number of areas. This item is intended to be an initial discussion. The following ordinances are needed, or have been suggested as needed by either staff or Council: Noise, Setting Fines, Procurement, Banning Fireworks, and Banning Drones.

Staff recommends priority be made to Noise and Procurement Ordinances first.

There was no public comment.

Council agreed to the City Manager's recommended priorities, and added Fines as the third priority. Sample noise ordinances will be brought to the Council for review by December.

XII. ADJOURNMENT

Meeting ended at 8:50pm.

Submitted by:

Approved by:

Gabriel Adams

Dwight Miller

DRAFT