

MINUTES OF THE REGULAR MEETING OF THE TRINIDAD CITY COUNCIL
WEDNESDAY, MAY 10, 2006

I. CALL TO ORDER/ ROLL CALL

- Mayor Lin called the meeting to order at 7:30PM. Council members in attendance: Lin, Marlow, Bowman, Heyenga, Cuthbertson.
- City Staff in attendance: City Clerk, Gabriel Adams;

II. PLEDGE OF ALLEGIANCE

III. ADJOURNMENT TO CLOSED SESSION

IV. RECONVENE TO OPEN SESSION

V. APPROVAL OF AGENDA

Motion (Heyenga/Bowman) to approve the agenda as amended. Passed unanimously.

VI. APPROVAL OF MINUTES

April 12, 2006 scc

Motion (Heyenga/Cuthbertson) to approve the minutes as corrected. Passed 4-0. (Lin absent)

April 12, 2006 cc

Motion (Marlow/Bowman) to approve the minutes as corrected. Passed 4-0. (Lin absent)

April 25, 2006 cc2

Motion (Heyenga/Lin) to approve the minutes as corrected. Passed 4-0. (Cuthbertson absent)

VII. COMMISSIONERS REPORTS

Marlow – Parks and Recreation, Streets

Trails: The Director of Public Works has recruited 5 part-time workers for emergencies and special projects: Nick Marcin, Stormy Burns, Michael & Pete Dell, and Scott Phillips.

The TCCC will begin work on the ALM Trail on May 22. Construction materials are being prepared by Public Works Department.

Bowman – Police, Harbor

Harbor: The Harbor is preparing for Salmon Season.

Police: Request for Indian Gaming grants on the agenda.

Heyenga – Fire, Planning

Planning:

There will be a Planning Commission meeting this month, May 17. Items on the agenda are:

- Addition to a house on Underwood.
- Museum Society site plan for new museum.
- Septic Maintenance ordinance review by Planning Commission.

Comments on the Management Plan for the 12.5 acres on the City's southern boundary are due to the Yurok Tribe by May 16. Comments emailed to the City Clerk will be forwarded.

The letter to John Frame explaining procedures for removing trees was sent, as per Council direction.

Request for bench near the harbor parking lot.

A request was submitted to the Planning Commission for a visitor bench customized out of a redwood root stump. The Planning Commission gave conceptual approval for the idea. Since the location is near and possibly on the Rancheria's property at the harbor, Mayor Lin will be asked to present the idea to the next Tribal Council meeting.

IGCBC: Grant applications for Indian Gaming funds are due to the County by May 15. There are three City grants for these funds on tonight's agenda.

Fire: A grant application for a replacement fire truck is on tonight's agenda.

Lin – Water, Town Hall

Water: Meeting on Thursday, May 11 at Town Hall about Impervious Surfaces within the City will be presented by HSU students working in cooperation with Streamline Planning.

ASBS: 1ST Watershed Management Plan will take place in mid-June. Date to be announced.

Cuthbertson – Finance

Finance: We should receive the 3rd Quarter financial report from CPA by May 15.

VIII. STAFF REPORTS

City Clerk/IWMC – Adams

IWM: The City's diversion rate for 2004 is 47%, 3% shy of the mandated 50%. We're currently in good standing with the CIWMB.

A small task force of volunteers has been formed to organize a recycling program for this year's Fish Festival. We'll be targeting plastics, beverage containers, and kitchen waste. The group meets on Fridays at City Hall. Contact the City Clerk for more information.

City Attorney – Guttero - Absent

Police Chief – Thrailkill – Bowman announced arrests, service calls, and statistics on behalf of the Police Chief.

IX. ITEMS FROM THE FLOOR

(Three (3) minute limit per Speaker unless Council approves request for extended time.)

Brad Twoomey – Trinidad

The U.S. Cellular project has been passed back to the Planning Commission. Is the appeal still active? The Planner should identify whether an appeal is still pending. Time limit for appeal should be looked into.

X. CONSENT AGENDA - NONE

XI. AGENDA ITEMS

1. Continued discussion/decision on proposed dog ordinances. (Heyenga)
Heyenga explained that at the end of March the City postponed a decision on the draft dog ordinances to allow an animal activist to study and comment on the proposals. As of April 30, the City had not received no response from that individual, although I have left two phone messages and sent two emails asking for her comments. In the last messages I said that if we did not hear from her by Wednesday, May 3 we would assume she had no problems with the draft ordinances. Except for a Council decision on the issue of allowing dogs off leash at any or all Trinidad beaches, the ordinances is ready for Council action.

Questions for clarification:

Heyenga: Suggested that since the Rancheria manages beachfront property that may be affected by the ordinance, Mayor Lin should bring the issue before the Tribal Council for consideration. Also, since Resolutions are not enforceable, the leash law should be included in the ordinance, not set by resolution.

Public comment included:

Barbara Shults – Animal Advocate, KMUD radio program host.

The objective of my organization is to deal mainly with pet overpopulation and abuse. Some of my concerns with the ordinance include:

- Legal exposure that may arise dealing with beach access to dogs and the leash law.
- The Council is considering limiting dogs in certain locations, but there's no plan to develop or designate dog parks or alternative locations that are available to dogs.
- The discussion should be open to regional input. Since the issues are not limited to Trinidad and affect the greater community, the discussion should not be limited to Trinidad alone.
- Trinidad should have a designated Animal Control Officer who is specialized animal welfare.
- The ordinance lacks language that encourages positive animal behavior and training incentives.
- Dog owners must be accountability for the behavior of their pets.

Paula Levine – Westhaven/Trinidad

I would request that as many beaches as possible be available for dogs off-leash.

Gail Kenny – Trinidad

I would like to maintain the privilege of walking my dog off-leash on all City beaches. I'm also concerned with how the City plans to deal with repeat offenders. Also, Trinidad enforcement is limited to the dry sand. The State maintains jurisdiction beyond the mean high-tide line.

Brad Twoomey – Trinidad

I'm primarily concerned with the type and amount of new signs that will be installed if and when the new ordinance is passed. The City is riddled with nuisance, view-polluting signs. The City should avoid having to install new signs, especially on the beach.

Kathy Bhardwaj – Trinidad

How does the ordinance deal with loose dogs that would be considered vicious, or attack someone? How many times does this have to happen before it's removed or placed into a shelter? I walk my dog on the beach in the winter and during less populated beach days. Maybe the Council should consider seasonal restrictions?

Aaron Garrett – Stagecoach/Trinidad

I'm concerned with the definition of "nuisance dog". I hope the City does not allow this term to be taken advantage of.

Heidi Garrett – Stagecoach/Trinidad

My family has lived here since the 1960's. I have experienced very little dog problems on Trinidad beaches.

Anne Kenny – Patrick's Point/Trinidad

I'm a dog owner. I walk my dog on the beach every day. I've had a number of encounters with aggravated tourists who don't like my dog off-leash. Who do we complain to when we're assaulted by these people? What protects us from them?

Dave Carlisle – Trinidad Community

Thanks for considering the opinions and input from the residents of the greater community. We too are affected by Trinidad's laws.

Kim Tays – Trinidad

I don't have a dog, but I support local dog owners and their ability to run their dogs on the beach.

Richard Johnson – Trinidad

One way to look at this ordinance is as a work in progress. Once it's passed, future modifications should be made when necessary.

Council comments:

Bowman: The Police Chief recommends that our laws be consistent with the State Parks rules - State Parks require dogs on leash on their beaches. He suggests having a leash-law for all beaches north of Trinidad Head and allowing them to run free on all beaches south of the Head. The Police Chief needs a proper ordinance to enforce and handle dog problems. At this point, the Chief has an incredible amount of discretion as to how to deal with them.

Cuthbertson: I'd like to see the recommendations from animal advocacy groups in writing.

Lin: The endless amount of variables associated with both dog & owner behavior make this ordinance incredibly difficult to write.

Heyenga: The public needs to understand that the City already has an animal ordinance. We're not creating a new law for the City, we're simply modifying a out-dated ordinance. The ordinance will provide an enforcement mechanism for the Police Chief to follow when attempting to hold the dog owner accountable for their pets. For instance, if a loose or viscous dog is impounded, the process to retrieve the dog would be similar to the steps involved in retrieving an impounded vehicle. The current ordinance restricts dogs from accessing the Head. It also states that viscous dogs will be destroyed. Do we want our ordinance to remain this way? The City is surrounded by large County beaches that already allow dogs off-leash. It may be time to discuss this issue at a special meeting.

Marlow: There are very few people in town who want more restrictions as compared to the number of owners who have well behaved dogs. Instead of re-writing the entire ordinance we should focus our energy on specific problems. There are plenty of offensive signs posted throughout town that threaten to fine owners who allow their dogs to poo in public places. Dog attacks and ways to handle them should be our primary focus.

Heyenga: In order to fine someone, we need a well-written law. The Police Chief stated that on average, dog incident reports occur at least once a month.

Lin: Old or new, do we enforce the dog ordinance anyhow? No. We shouldn't waste our time creating new laws if we don't have the resources and commitment to enforce them. The Council may wish to consider focusing the City's resources on public education instead.

Cuthbertson: All we're doing is updating an out-dated ordinance. First, I'd like to hear from the public and consider their concerns. Changes have to be made to the ordinance. It should be done right.

No action taken. Continued to a future meeting.

2. Discussion/Decision on submitting an alternative project for the 2005-1006 Indian Gaming Grant. (Lin)

The City was awarded a grant of \$26,000 for the replacement of water main on Scenic Drive. Most of the water main on Scenic drive consists of four inch PVC except a section of about 1,000 feet which consists of old three inch pipe. This undersized section is under greater stress and more susceptible to breakage. The project approved was to replace about half of undersized section with four inch PVC pipe and the other half was supposed to be part of the Rancheria's Scenic Drive repair project.

Unfortunately, the Rancheria's Scenic Drive repairing project is being delayed indefinitely. This makes the replacement of the City's section less cost efficient, and the goal of reducing the stress on the pipe will not be achieved.

Mayor Lin proposed to submit an alternative project to replace the water main project. The State allows project substitution so long as it is approved by the Local Committee on Indian Gaming Grants. The proposed substitute project will be the Development of the Preliminary Engineering Report for the Water System, a project previously approved by the City Council (February, 2006). The cost of the project to the City is \$28,525. We will request that the funded \$26,000 to be used for this project.

*Motion (Heyenga/Bowman) to approve the submission of an alternative project (Engineering Evaluation of the Water System) to replace last year's funded Indian Gaming grant (Scenic Drive Water Line Repair) and authorize the Mayor to sign the documents on behalf of the City. **Passed unanimously.***

3. Discussion/Decision on Indian Gaming Grant application for replacement fire truck. (Heyenga)
Postponed decision to the continuation of this meeting – scheduled for May 11 at 3:00pm.

4. Discussion/Decision related to communication facilities on Trinidad Head and procedures for termination. (Marlow)
Marlow explained that many Trinidad residents, along with the Yurok Tribe, are concerned that the City's permitting for communication facilities on Trinidad Head has been illegal. It would be prudent to authorize the City Attorney to research and report his opinion in regard to any legal exposure that he sees in these matters.

The attorney should also advise the city on the steps required to terminate existing leases and to remove all facilities in the event that the City would so desire.

Public comment included:

Kathy Bhardwaj – Trinidad

In order to save the City Attorney some time, the Friends of Trinidad Head (FROTH) would like to offer our resources and help steer him in the right direction.

Stan Binnie – Trinidad

FROTH has spent countless hours studying files and preparing information. We would like to offer our work to the City Attorney to review.

Council comments:

Lin: Read a letter from the BLM that was pulled from the FROTH binder. It was an inspection letter written a few years ago that stated the City was maintaining the Head in compliance with the BLM restrictions placed on it since the time of the acquisition.

Heyenga: If the Yurok Tribe and the City are asking the BLM to review the condition of the Head, we shouldn't direct the City Attorney to investigate anything until the BLM report is received. Attorney review could cost us thousands of dollars.

Marlow: We don't know what our liability is. It's possible that the BLM could revoke the land transfer. Further, an outside group could sue us independently or jointly with the BLM. I want to know what our exposure is. Can we be defended and are we likely to prevail? The research is not that complicated.

Bowman: I read the 2001 BLM inspection report. Evidently this was after the cellular facilities were developed. The BLM stated the City was in compliance. The report might not be bullet-proof, but it's an argument in our favor.

Cuthbertson: I agree with Heyenga. We should wait for the BLM to respond to our letter before we spend money on an opinion from our City Attorney. We have to defend ourselves and be prepared for a lawsuit from Verizon or Cal-North if we demand the removal of their facilities.

Lin: We need more information from different sources. I'm willing to spend a few hundred dollars to get a legal opinion from our attorney.

Heyenga: I don't like going into this under the assumption that the City's doing something illegal. Public hearings have been held and our attorneys have consulted us throughout development of the Head. If the BLM has no problem with the Head, we're on solid ground. I'm not willing to spend money on an attorney opinion until we hear from the BLM.

Bowman: The BLM holds the key to a resolution to this matter. Let's find out what they think.

Lin: We often ask for our attorney's opinion without Council consent. We don't need to wait for a formal lawsuit to be filed to engage our City Attorney. I'm considering calling him regardless of the decision made tonight. I'd like the attorney to respond to the charges alleged by FROTH. I want to know if we're in a defensible position.

Heyenga: People who have strong opinions against what we are considering can always threaten the City and claim that it's violating the law. Allegations such as these get settled in court. Claiming we violated laws does not warrant attorney review. A City government should protect itself from attacks. Until we hear from the BLM we shouldn't spend money on defending ourselves.

Marlow: What if our attorney concludes that we are violating the law? What if the attorney say's you'd be fools to take this to court, and you indeed violated the law. Do you think it's prudent to wait for someone to take us to court before we know whether or not we're not in compliance? What about all the legal references that have been cited?

Heyenga: Yes, but if the BLM states we're in compliance, we do nothing. The City doesn't go around looking for potential lawsuits. The allegations have been brought forward by people who have an agenda. The accusations aren't formal legal filings that warrant a formal response. We'll formally address this issue when someone decides to take us to court.

Cuthbertson: Regardless of any decision we make, we're going to court. Furthermore, Marlow thought this was important enough to bring to the Council. If the Council doesn't support the motion and the Mayor directs the attorney to investigate anyway, don't criticize anyone else for contacting the attorney without Council consent.

Heyenga: If Mayor Lin is going to call the attorney anyway, why have we spent so much time discussing the issue?

Marlow: To get you on record. If you're convinced we're going to court, why wouldn't you want to hear from your attorney?

Bowman: If we're going to seek our attorney's advice, the Council should make this decision. Furthermore, we act on the advice of our City Planner. If laws were violated, shouldn't Streamline Planning have some responsibility in this?

Motion (Lin/Marlow) to authorize the City Attorney to develop a legal opinion regarding any exposure which the City may have regarding permitting of communication facilities and to determine the necessary steps and cost to terminate all leases.

Motion passed by the following vote:

Yes: Marlow, Bowman, Lin

No: Cuthbertson, Heyenga

5. Discussion/Decision on sending a letter to the BLM in response to a letter from the Yurok Tribe to BLM regarding Trinidad Head. (Lin)

The City has received copy of a letter that the Chairman of the Yurok Tribe sent to the Bureau of Land Management requesting the BLM looking into a possible violation by the City against the conditions of land transfer in relation to the cellular telephone towers installed at the Trinidad Head. Council member Heyenga - acting on his own - has sent a letter to the BLM in response to the Yurok's letter. Lin proposed send an official letter to the BLM responding to the letter from the Yurok Tribe. The draft letter is included in the packet.

Public comment included:

Brad Twoomey – Trinidad

The City prepared an elaborate application in order to receive the Head from the BLM. At that time, Trinidad was the first city in California to have a General Plan approved by the Coastal Commission. The BLM asked that the Coastal Commission review Trinidad's application for consistency with the BLM objectives and the City's General Plan. Later, Trinity Systems developed a cable TV facility on the head that was eventually abandoned for over 3 years. According to the General Plan, this would be defined as a pre-existing, non-conforming structure that was no longer in compliance. How did the City allow further development to occur?

Kathy Bhardwaj – Trinidad

Whatever the City does, we hope it's done legally. After all, the money used to finance a lawsuit belongs to the people of Trinidad.

Council comments:

Cuthbertson: I support the letter, but the reference to the Coast Guard housing transfer should be a separate request.

Heyenga: We have been working for years to acquire the Coast Guard housing and I agree with Cuthbertson that the issues should be dealt with separately. The letter should use phrases consistent to what was referenced in the Yurok letter. What bothered me about the Yurok letter is that they asked for a meeting with the BLM and

didn't include the City. We should include (in our request to the BLM) that the City participates in any discussions that involve Trinidad's use of the Head. The City must be represented. It's in the City's interest not to let the BLM meet only with the Yurok Tribe.

Marlow: That would be somewhat presumptuous. If a federal agency wants to get information it's only natural that they meet with all the parties – but not necessarily all at the same time. In fact, meeting with everyone at the same time would be counterproductive. We don't need to butt into the Yurok Tribes business.

Heyenga: This is "our" business. Isn't it our job to protect the City and insist on representation and equal treatment?

Lin: We can only ask to be included. We're entitled to due process. It's rude to demand something when we're asking for their opinion. It's up to the BLM to decide. You already expressed your opinion in your letter to the BLM.

Heyenga: We are abdicating our role in defending the City's interest by letting another group – who's interested in taking the City's property – sit down with the BLM and present their side of the argument. Asking is not demanding. We're putting the request in a positive way. They're going to talk about "us" there.

Marlow: That's "ok". They're going to do that anyway.

Lin: There's a number of ways the Tribe can talk with the BLM without us knowing. What are we afraid of?

Heyenga: What if the roles were reversed? I think the Tribe would have a problem with this.

Cuthbertson: Are we interested in keeping the Head? The BLM may hold the key and we should emphasize our desire to be involved in the discussions.

Lin: We shouldn't impose our way of doing things upon them. There's a better way of stating our interests.

Bowman: We should avoid making demands. Maybe we could ask "we hope you will allow us to participate in any meetings concerning the Head. Or, "we hope you will include us..."

*Motion (Bowman/Heyenga) to send the letter as amended. **Passed unanimously.***

6. Discussion/Decision to direct our CPA to perform a cash flow analysis. (Cuthbertson)
Continued to a future meeting.

7. Discussion/Decision to require recording of all Council meetings. (Cuthbertson)
By consensus, the council authorized the City Clerk to investigate recording system improvements and report back to the Council at a future meeting.

8. Discussion/Decision regarding the City position on admitting the Hoopa Tribe to HCAOG. (Heyenga)
When the Council appoints a member to represent Trinidad on a regional committee such as the Redwood Coast Energy Authority (RCEA), Humboldt Transit Authority (HTA), or the Humboldt County Association of Governments (HCOAG), the representative is expected to lobby and vote for Trinidad's interests. For example, Mayor Lin has successfully gotten funds from HCOAG for paving projects.

However, sometimes an issue comes up that is not a typical item of business, an issue that involves a policy decision, not just an allocation decision. The issue of permitting the Hoopa Tribe to join HCOAG is such an issue.

At present the HCOAG Board is made up of the seven incorporated cities and the County. This eight-member board has deadlocked twice on the issue of allowing the Hoopa Tribe to join. At least one City, Blue Lake, discussed the issue at their Council meeting and directed their representative on how the Council majority felt Blue Lake should vote.

Admitting Hoopa to the HCOAG Board may have financial consequences for the City of Trinidad. There may be good reasons to admit the Tribe, there may be good reasons not to. The point is whether we want to discuss the issue, understand the ramifications, and then direct our representative on how to vote.

Councilmembers representing the City should not have to, and actually cannot, bring every agenda item back to Trinidad's City Council for a vote. In most instances the representative knows what the majority of Councilmembers would support. However, in this instance the decision may have long-term consequences not only for HCOAG but for Trinidad's access to transportation funds. The City's position should be decided by majority vote after a thorough discussion of the issues.

The next HCOAG meeting is May 25, with their agenda going out May 18. At this time the Hoopa issue has not been brought forward for that agenda. However, the timing gives us a chance to research the question, discuss the issues at our May 23 meeting, and decide whether to give our representative any direction on how to vote when the issue returns.

Council comments:

Lin: The HCAOG Board does not completely understand the impact that admitting Hoopa might have. Are you (Heyenga) assuming this might have a financial impact or do you know this for a fact? Do not make assumptions. The Board makes decision that are in the County's best interest. We aren't necessarily "lobbying" for our City in all cases. Why are you singling out this issue? I've voted on a number of issues as an HCAOG Board member. Is racism involved? Is it the money? You're picking and choosing is suspicious.

Heyenga: You lobbied for Trinidad's interest in the past. Any issue that changes the fundamental nature of an organization is different than the ordinary agenda item. Admitting an Indian Tribe to HCAOG changes the voting balance of the board and raises the additional issue of why not the Yurok, Wiyot, or Table Bluff? There is a significant precedent at stake here.

Bowman: County Supervisor Roger Rodoni was pressured to vote one way by his board but his vote was honored.

Lin: Representatives listen to debates, reports, and discussions that the Council has not had the chance to hear. In this situation, I have the most knowledge about the issue. You (Heyenga) are making assumptions without the facts. Representatives are selected to represent the City. If you don't like your representatives, replace them – or don't vote for them.

Motion (Heyenga/Bowman) to bring the issue of admitting Hoopa to HCAOG to the Council meeting May 23 for discussion and possible instructions for our representative on the City's position.

Motion passed by the following vote:

3 Yes: Bowman, Heyenga, Cuthbertson

2 No: Marlow, Lin

9. Discussion/Decision regarding Indian Gaming Grant application for police facility. (Lin)
The Council postponed the discussion to the continuation meeting – scheduled for May 11 at 3:00pm.

10. Discussion/Decision regarding Indian Gaming Grant application for police car. (Bowman)
The Council postponed the discussion to the continuation meeting – scheduled for May 11 at 3:00pm.

XII. ADJOURNMENT

- Council meeting ended at 11:45 pm. Continuation scheduled for May 11 at 3:00pm.

Submitted by:

Approved by:

Gabriel Adams
City Clerk

Chi-Wei Lin
Mayor