

MINUTES OF THE REGULAR MEETING OF THE TRINIDAD CITY COUNCIL
WEDNESDAY, MARCH 08, 2017

I. CALL TO ORDER

- Mayor Miller called the meeting to order at 6:00PM. Council members in attendance: West, Miller, Baker, Rotwein. **Ladwig - Absent**
- City Staff in attendance: City Manager Dan Berman, City Clerk Gabriel Adams, City Attorney Andy Stunich. City Engineer Josh Wolf.

II. PLEDGE OF ALLEGIANCE

III. ADJOURNMENT TO CLOSED SESSION

1. *Public Employee Performance Evaluation for City Manager Pursuant to Government Code Section 54957*

IV. RECONVENE TO OPEN SESSION

No report.

V. APPROVAL OF AGENDA

City Manager Berman gave a brief explanation of the agenda format, consent agenda content, and opportunities for public comment.

West: *Requested to pull consent items 3, 4, and 8 for discussion.*

Baker: *Requested to pull consent item 5 for discussion.*

Rotwein: *Requested to pull consent items 3 & 4 for discussion, and suggested a meeting time limit of 8:30pm.*

*Motion (Baker/West) to approve the agenda as amended, pulling only consent 3 for discussion and requesting the City Manager to summarize the remaining consent items that need clarification. **Passed 4-0.***

VI. APPROVAL OF MINUTES – February 08, 2017 cc2

*Motion (West/Baker) to approve the minutes as written. **Passed 4-0.***

VII. COUNCIL MEMBER REPORTS

Rotwein: Met with Trinidad Tribal Council representatives and discussed the Stormwater Project and Trails Committee. Scheduled a meeting with the Coast Guard as well regarding marine safety.

West: HCAOG will be focusing on the safety corridor again. The transportation tax did not pass, but due to the damaging winter rains the County may try a second ballot measure in the near future. Also noted that the Trinidad Coastal Land Trust is looking for support for the Little River Trail project.

Baker: Update on St. Joseph Hospital improvements.

Miller: RCEA rolling out the Community Choice Energy Program this spring.

VIII. STAFF REPORTS:

City Manager Berman presented a report to the City Council at the meeting highlighting various accomplishments and project status for the month; *Water Filter Replacement Project complete, Harbor Trust Application Environmental Assessment is available for public review and comment, Measure Z \$75,000 funds awarded to city for public safety, Septic Grant outreach meeting will be held March 14 from 3-7pm in the City Manager's office – staff will advertise, OPC Grant presentation showing bioswales and raingardens proposed for construction this summer. City Engineer Josh Wolf presented images of winter storm damages and Van Wycke Trail issues.*

IX. ITEMS FROM THE FLOOR:

Jim Cuthbertson – Trinidad

Suggested how to run the meeting better and thanked the City Manager for the brief Consent Agenda report.

Pat Morales – Trinidad

You shut the public out of this meeting. I'll get a recording and take my complaint to the grand jury.

Kathleen Lake – Trinidad

Explained regulatory capture, and submitted comments in writing claiming the city fails to offer protections to residents that complain. We want to hear why Council members vote the way they do and what exparte meetings occur each month.

Shirley Laos – Trinidad Rancheria

On March 06 a Notice of Availability was released to the public regarding an environmental assessment prepared by the BIA for Harbor properties owned by the Trinidad Rancheria that are in an application for Trust status. Comments will be accepted by April 06, and the document is available at many locations. Further updates will be given as the process advances.

Dorothy Cox – Trinidad

Offered to help remove bushes on Ocean Avenue that are in the City right-of-way. The City needs to contact Victoria about the hedge, and please do not make Ocean Ave a one-way road. Thanks for putting this on the agenda. Also, I sent a formal complaint to the City Manager. He needs to have regular office hours and be accessible to the residents.

Kim Tays – Arcata

I'm not sure what I can or cannot talk about. The public should have the ability to request that consent items be pulled for clarification and discussion. **Mayor Miller** assured Tays that there will be comprehensive discussions regarding Trinidad Head cellular site and Van Wycke Trail project at a future meeting.

Tom Davies – Trinidad

This is a confusing consent agenda. I appreciate the presentation on the Van Wycke Trail, but the City Manager said this was an update. I recall the Council asking staff to bring the Van Wycke Trail project back for a vote. What happened to that? Regarding the budget, there should be detailed line items for contracted staff projects.

Don Allen – Trinidad Area Resident

Regarding storm damage, when will the culvert on Parker Creek Trail be replaced?

Zack Brown – Trinidad Rancheria

Appreciate GHD's presentation on storm damages and the Van Wycke Trail. The Rancheria would like to see the cell tower lease extended. Volunteered to be on the Trinidad Trail Committee.

X. CONSENT AGENDA

1. Financial Status Reports for January 2017.

2. Water Treatment Filter Emergency Repair Project Update.

3. Short Term Rental (STR) Ordinance Update and Proposed Coastal Commission Hearing Process

Pulled for discussion: City Manager Berman explained that the City's STR Ordinance does not go into effect until it is certified by the California Coastal Commission. The current City moratorium on accepting new STR Licenses expires at the end of June, and City staff are operating under direction to make best efforts to have the new rules in place prior to that expiration. Staff recommend the Council receive the following update on the Commission timing and options, and consider submitting a letter to the Commission emphasizing the importance of the time constraints and requesting their assistance with the strategy to forward concerns ahead of the June date so the Council has a chance to address them well in advance of their conclusion.

Public comment included:

Pat Morales – Trinidad

Displayed copies of all STR applications and accused City Manager and staff of making deals and exceptions. Read an email between the City Planner and Manager, and asked for a full list of exceptions granted and justification for each.

Kathleen Lake – Trinidad

Explained regulatory capture, and suggested that this is a “company town”. The City should investigate all exceptions granted. Building code violations have been waived, along with septic exceptions, and bedroom increases. The Council must investigate this.

Kim Tays – Arcata

Pat’s investigation shows exceptions have been made. She listed illegal duplexes, parking exceptions, and poorly written ordinance language. She also cited various other amendments and revisions that were secret and underhanded backroom deals. This amendment impacts our quality of life.

Dorothy Cox – Trinidad

Requested VDU inspection documents for the vacation rental process at 407 Ocean Avenue. There are not 2 parking spaces. Many properties in town have their faults, but this one should have been inspected by the Building Inspector, not the City Manager. Very disappointed.

Tom Davies – Trinidad

I’m unsatisfied with the amended ordinance and inspection process. It was pushed through, and now the Council is trying to push it through the Coastal Commission. There should be an investigation of all exceptions granted.

Adora King – Trinidad

It looks like the City is trying to cover something up.

Council comments included:

West: It has been interesting hearing all the comments. We’d like to see this done and put past us so we can begin implementing the policies, not re-writing them. Balance was found, and we need to move forward. We already sent the petition. The Council supported the ordinance and we want the Coastal Commission’s support.

Baker: There are rules in place for people that receive licenses. I try to make clear why I vote the way I do. I don’t think it would hurt to go through the VDU application documents page by page. I want the Coastal Commission to expedite the process. At this point I support considering a subcommittee to review all the application documents, and I’m in favor of sending this letter out. I don’t see the harm if this gets delayed as long as the process is honored. I’m concerned with the public perception of collusion. I volunteer to review all permit documents and suggest agendizing a subcommittee to review all documents and exceptions.

Miller: I appreciate Baker’s comments, but this ordinance took a tremendous amount of work and I’m very concerned with the timing. There’s much more enforcement/oversight now that there was before. This letter is a mild gesture to request action as soon as possible. 48 residents support it. This is simply carrying out a unanimous vote in November.

*Motion (West/Baker) to send the letter to the Coastal Commission staff. **Passed 3-0-1. Rotwein abstained.***

4. Van Wycke Trail Grant Project Update.
5. Winter Storm Damage Assessment and Recommendations
6. Measure Z Funding Applications
7. Authorize City Manager to Sign Project Agreement for Stormwater Grant Phase II
8. Update on Ocean Avenue Encroachments
9. Agreement for Services with Streamline Planning Consultants for Ocean Protection Council LID Grant Project
10. Trinidad Head Cellular Site Lease Agreement Update
11. City Manager’s Staff Activities Report – February 2017

Public comments included:

Kim Tays – Arcata

Van Wycke trail should be relocated upslope, and the City should talk to Victoria about her hedge on Ocean Ave.

Jim Cuthbertson – Trinidad

The City will have problems with Tsurai regarding the Stormwater project. There should be a discussion held for this item.

Dorothy Cox – Trinidad

The bioswales are ugly, slippery, unsafe, and poorly designed. Please consider something different.

Kathleen Lake – Trinidad

We need to see a detailed Planner budget and fee analysis.

Motion (West/Baker) to approve the consent agenda as amended, pulling # 3 for discussion. Passed 4-0.

XI. DISCUSSION/ACTION AGENDA:

1. Discussion/Decision regarding Councilmember Signatures on Citizen STR Petition

City Manager Berman explained that, inspired by a neighbor's letter to the Coastal Commission encouraging them to move quickly on the City's STR Ordinance, Mayor Miller drafted a similar letter and invited his fellow residents to add their name to it. In the end the letter had 49 signatures, including four current councilmembers. Concerns and questions have been raised as to whether the Councilmember's actions in signing this letter represent a violation of the Brown Act, or other ethical standards for elected officials.

At the time of this staff report, the City Attorney has provided a preliminary response that he does not believe there is a Brown Act violation – he sees it as an exercise of each individual signatory's private free speech rights to petition their government. The City has requested additional outside opinions. Nancy Diamond, an attorney with a long history of advising local municipalities, explained to Berman that there was probably not a violation of the Brown Act. Elected officials should, as a best practice, more clearly identify when they are acting as a private citizen, and when as an elected official.

There are an abundance of quality resources available on the Brown Act, and other guidance for elected officials. A good place to start is found at the Institute for Local Government website, under their 'elected official orientation materials'.

There are two separate expert trainings being held locally in the coming months for elected officials and staff related to public ethics laws and the Brown Act. There are also additional online resources and web-based trainings. At a basic level, the Brown Act is about transparency – it requires proper noticing of agendas, prevents action and discussion from occurring at public meetings on items not on the agenda, and prohibits a quorum of elected officials from discussing issues under their jurisdiction together outside of a properly noticed meeting.

The normal remedy for a Brown Act Violation is that the decision made or action taken is rescinded or made void. If the Council approved a letter or a contract without properly noticing it on the agenda, for instance, that action would be nullified. In this case the equivalent might be the four Council members removing their name from the list of signatories.

City Attorney Stunich summarized his opinion in a confidential memo to the Council, stated bluntly that there was no violation, period.

Rotwein: Disagreed with Stunich and explained that the Brown Act was violated and Council did not act transparently. There are 2 parts to this discussion: 1) the signing of the petition, and 2) violation of the Brown Act. Rotwein noted that she will not participate in discussions related to STR's.

West: We need to consider our actions and if possible attend Brown Act training in May.

Baker: This is a very important issue. I'm not here to adjudicate this, but I have participated in multiple trainings. Because this story made the cover of the Times-Standard, we need to get to the bottom of it. You can't take away an individual's constitutional right to speak just because they become a representative or Council member. I don't want this to fester, but who do we look at to set this straight?

City Attorney Stunich explained the legal process and discussed the anti-slap act which basically says that states cannot limit federal, fundamental rights.

Baker: This is more about governance than it is about the letter of the law. I don't like the idea of being in the middle of 2 legal opinions. I disagree vehemently with Rotwein, but do feel we need to tighten up our governance. Brown Act training = YES. I also suggest we future amend our rules of order.

Public comment included:

Pat Morales – Trinidad

I'm going to see that this meeting and issue goes to the Grand Jury.

Kathleen Lake – Trinidad

This is a small town, and this Council's actions are very disappointing.

Carrie Peyton-Dhalberg – Trinidad Area

I have a great deal of confidence in the Mayor. The City should put out a press release and settle it.

Patti Fleschner – Trinidad

I understood the email. Dick Bruce's letter to the Coastal Commission was excellent and the petition was very clear to me. The City has been fair and it's time to get this resolved. The Brown Act can be senseless at times.

Dorothy Cox – Trinidad

I find fault with the way it was done. It's the perception that makes this a controversial issue. Perception to push and not allow the issue to take its due course.

Dick Bruce – Trinidad

I wrote the letter in response to a letter Lois and I received in the mail from the Coastal Commission. I had a conversation with the City Manager who explained the situation, so I wrote my comments to the Commission and cc'd Dan as a courtesy.

Kim Tays – Arcata

I agree with preserving first amendment rights, but the petition should have come before the Council. It was selective, not inclusive. I encourage the City to have more structured meetings and review the Brown Act. Suggested that Carmel and Monterey public meetings are much more professional and the communities do not have this type of controversy.

Tom Davies – Trinidad

I appreciate Dick's letter to the Coastal Commission, but it seems odd to use someone else's letter to garner support for a petition. All Councilmembers should have .gov email addresses.

Lorraine Cook – Trinidad

I signed the letter/petition because the ordinance was already approved. The letter simply asked for an expedited review process.

Council comments included:

Miller: I've been cognizant of ethics my whole life, and I understand the Brown Act. The STR Ordinance took years to finalize with many public meetings and compromise. The Council voted unanimously on the final draft. 48 people in town shared Dick Bruce's comments. Many people want to see this settled. Back in January I heard there was an opening on the Coastal Commission and I threw my name in the hat. I believe in protecting our coast. I'm here to serve the City, and to serve the coast.

*Motion (Rotwein) to adjourn the meeting at 9:00pm, and to draft a letter to the Coastal Commission saying the petition was not an action taken by the City Council. **Motion failed due to lack of second.***

No decision was made.

Council discussed Consent #3 next...

Rotwein recused herself from the meeting at 9:15pm.

2. Discussion/Decision regarding Draft Noise Ordinance 2017-01
Continued to the second meeting in March.

3. Discussion/Decision regarding Trail Committee Proposal
Continued to the second meeting in March.

XII. ADJOURNMENT

Meeting ended at 9:45pm.

Submitted by:

Approved by:

Gabriel Adams
City Clerk

Dwight Miller
Mayor