

CALL TO ORDER - PLEDGE OF ALLEGIANCE - ROLL CALL

Vice Mayor Michael Menesini called the meeting to order at 7:10 p.m. in the Council Chambers, with all members present except Mayor Schroder who was excused.

PRESENT: Lara DeLaney, Councilmember, Janet Kennedy, Councilmember, Mark Ross Councilmember, and Michael Menesini, Vice Mayor.

EXCUSED: Rob Schroder, Mayor.

ABSENT: None.

PRESENTATION(S)/PROCLAMATION(S)

A. Proclaiming April as "Sexual Assault Awareness Month."

Pat Tinker, Community Violence Solutions, accepted the proclamation, in recognition of their work on behalf of victims and their families.

B. Presentation by City of Concord regarding the Status of Re-Use Planning for the Concord Naval Station.

Michael Wright and Bruce Knopf from the City of Concord reviewed the goals, alternatives, community process, recent actions, and working plans for re-use plan for the 5,000 acre Naval Station. They also responded to questions/comments from the Council as follows:

Councilmember DeLaney asked about the phasing of the project and about input from neighboring jurisdictions.

Councilmember Ross noted that the project would be discussed at the next Transpac meeting, and he would ask his questions there.

Councilmember Kennedy commented on the extensive community process, expressing optimism about the finished product.

Vice Mayor Menesini expressed appreciation for the environmental care, as well as the needed housing that will be provided.

Item #11 taken out of order.

PUBLIC HEARING(S)

11. Public hearing to introduce an ordinance amending the Martinez Municipal Code repealing and replacing Title 8, Chapter 8.05, Prohibition of Smoking (First Reading).
[M.Chandler/07.08.00]

Senior Management Analyst Michael Chandler presented the staff report.

Serena Chin, American Lung Association, indicated the organization was willing to be a resource to the City.

Councilmember DeLaney asked about a letter submitted by Ms. Chin with a recommended amendment, and Ms. Chin explained the reason for the amendment. Councilmember DeLaney asked Mr. Chandler for his reaction to the amendment, and he noted the choice was up to the Council, but it could be added if they desired. Deputy City Attorney Veronica Nebb commented on the legal implications.

Vice Mayor Menesini opened the public hearing.

Kevin Corgin expressed support for the ordinance.

Theresa Karr, California Apartment Association, indicated her support also. She presented information from the Apartment Association on the issue. She questioned the 2011 date, and Mr. Chandler explained the provisions that would go into effect at that time.

Denise Dennis, Contra Costa Health Services, commented on the County ordinance regarding second-hand smoke policies and the positive impacts on public health. She offered assistance from the County in implementation.

Mary Curtin, Martinez Unified School District Registered Nurse, commended Martinez for the proactive approach.

Jamie Jenneta, Contra Costa Health Services, read a letter supporting the ordinance from the Co-Chair of the Public and Environmental Health Advisory Board.

Andrea Orosco, Martinez resident and director for the American Heart Association, reviewed statistics related to impacts from secondhand smoke.

Paul Doolittle submitted a resolution in support from the Contra Costa County Building Trades Council and commended the Council for being the first City to consider such an ordinance.

Frank Kluber acknowledged the negative impacts of smoking, but commented on the glorification of smoking by the entertainment industry, as well as the burden of addiction on smokers. He asked the Council to defer approval of the ordinance at this time.

Kristin Henderson asked about provisions for apartment dwellers, particularly complexes with no common areas.

Allison Williams commented on a friend who recently died from emphysema and difficulties faced by those with lung diseases. She was especially appreciative of the provisions related to outdoor smoking.

An unidentified speaker commented on the toxic effects of petrochemicals and other pollutants in the air, much worse than cigarette smoke. He questioned the cigarette tax, and why there is no tax on alcohol.

Rich Verrilli asked why not enact the ordinance sooner, rather than wait until 2011. Deborah Chatfield commented on the effects of secondhand smoke on her son who suffers from asthma, and herself as well.

Gina, Ferry Street Station, asked about impacts of the new ordinance on businesses; specifically where the designated smoking locations would be.

Mike Alford commented on the rights of smokers. He also commented on impacts from emissions from Shell Oil and other refineries.

David Piersall expressed his support for the ordinance. He asked whether the homeowners' association common areas would be a prohibited area. Staff confirmed it would be considered as a public place.

An unidentified speaker asked about enforcement and administrative costs associated with the ordinance. She also commented on mistreatment of smokers by nonsmokers in areas with similar ordinances.

Seeing no further speakers, Vice Mayor Menesini closed the public hearing.

Councilmember Ross thanked the American Lung Association for their assistance to staff, especially for their recommended revisions. He also commented on the pernicious, toxic effects from cigarette smoke. He was supportive of the ordinance.

Councilmember DeLaney discussed why such an ordinance was needed, to protect those with health challenges from the effects of secondhand smoke. She saw it as a quality-of-life issue, not an effort to outlaw smoking altogether.

Councilmember Kennedy echoed the sentiments of the other Councilmembers. She noted there is nothing good that can come from smoking, and she noted that even sporting events have outlawed smoking except in designated areas. She was supportive of the ordinance.

Vice Mayor Menesini acknowledged the addictive properties of nicotine, noting that times have changed from the days when smoking was more prevalent in the workplace. He indicated his support as well.

Ms. Nebb noted that Section 8.05.070E needed to be changed, 1) delete "of nonsmoking units," 2) "Disclosure by landlord(s)" and "Every landlord who elects to designate units as nonsmoking shall maintain a list of..." and "multi-unit residences with designated smoking units **entered into on or after January 1, 2011**" to meet the suggestions by Ms. Chin. She also noted that the ordinance at this point would include private parks within a common-interest development but not other common areas, unless the definition of common place is modified.

Councilmember Kennedy asked whether a resident could ask their landlord to adopt some of the provisions sooner if necessary for health reasons. Ms. Nebb was doubtful that the reasonable accommodations for disability would apply in a privately-owned unit.

On motion by Mark Ross Councilmember, seconded by Lara DeLaney, Councilmember, to introduce an ordinance amending the Martinez Municipal Code repealing and replacing Title 8, Chapter 8.05, Prohibition of Smoking amending Section 8.05.070E Disclosure of Nonsmoking Units by Landlords, 8.05.010Q Public Place, and change start date from January 1, 2011 to June 1, 2010.

The Council recessed briefly and reconvened with all members present as indicated.

Assistant City Attorney Veronica Nebb stated that she neglected a minor clause to one of the amendments and asked the Council to reopen the item. Ms. Nebb indicated that section 8.05.070E needed to reflect an additional amendment: "A copy of this list, and a floor plan, and a copy of procedures for addressing smoking related complaints shall accompany every new lease..."

On motion by Mark Ross Councilmember, seconded by Lara DeLaney, Councilmember, accept amendment made by Assistant City Attorney to add language to Section 8.05.070E "...and a copy of procedures for addressing smoking related complaints shall accompany every new lease..." Motion unanimously passed 4 - 0. Yes: Lara DeLaney, Councilmember, Janet Kennedy, Councilmember, Mark Ross Councilmember, and Michael Menesini, Vice Mayor, Absent: Rob Schroder, Mayor.

Item #15 taken out of order.

CITY COUNCIL

15. Consider a resolution endorsing Employee Free Choice Act which encourages the practice of collective bargaining. [M. Ross/41.00.05]

Tony Gesperino discussed the reason for the Employee Free Choice Act, which the federal government will be considering.

Carolyn Robinson noted that Congressman Miller is a co-sponsor of the bill. She expressed support for the measure, as a way to reduce intimidation for beginning unions. She commended the Council for considering the matter, and she urged them to endorse the measure.

Nancy Maddenly commented on the economic benefits from supporting the unions.

Roberto Reyes expressed his support for the resolution as well.

David Piersall asked why the Martinez City Council's support was necessary when there are other more important issues for them to address.

Tom Lewis commented that the issue of safe working conditions and an acceptable wage is a human rights issue and of great importance to the residents of Martinez.

Rich Verrilli said he also supported the measure, noting that citizens at all levels should be encouraged to be part of the process.

Mike Alford questioned whether the Councilmembers really supported the unions as they profess to, citing the issue of illegal alien employees and others from out of town.

Seeing no further speakers, Vice Mayor Menesini closed public comment on the item. Councilmember Ross respectfully disagreed with Mr. Piersall, noting this is an important issue to the residents of Martinez.

Councilmember DeLaney acknowledged that union issues were important to the City, but she didn't think it was appropriate for the Council to be commenting on federal policies in support or against.

Councilmember Kennedy expressed her full support for the resolution, as did Vice Mayor Menesini. Vice Mayor Menesini noted that there have been and are many issues that are of critical concern to the City even though they are not under the purview of the Council.

On motion by Mark Ross Councilmember, seconded by Janet Kennedy, Councilmember, adopt Resolution No. 038-09 endorsing Employee Free Choice Act which encourages the practice of collective bargaining. Motion unanimously passed 3 - 0. Yes: Janet Kennedy, Councilmember, Mark Ross Councilmember, and Michael Menesini, Vice Mayor, Abstain: Lara DeLaney, Councilmember; Absent: Rob Schroder, Mayor.

Item #12 taken out of order.

12. Public hearing on Water Conservation and Penalty Program and adopt:

- A. Resolution establishing water conservation measures and reducing the use of water furnished by the Martinez Water System during the water shortage emergency; and [T.Tucker/15.02.01]
- B. Resolution amending Section 7, Water Supply and Interruption of Service, for the Martinez Water System - Regulation Governing Water Service. [T.Tucker/15.01.01]

City Engineer Tim Tucker presented the staff report.

Vice Mayor Menesini opened the public hearing.

David Franco noted that the plan calls for significant sacrifice on the part of existing customers, but does not address the issue of new additional customers. He also commented on the excess use penalties, the financial impacts of reduced usage, whether it will result in higher rates to cover the shortfall, and the appeal process. Vice Mayor Menesini agreed there needs to be a clear process that the customers are aware of. Mr. Tucker said it was included, and Vice Mayor Menesini asked that it include specific grounds for appeals.

Mr. Franco also asked what steps the City will take to repair the leaks in the system currently. Vice Mayor Menesini responded that the City has had an aggressive maintenance program for the water mains, but he acknowledged Mr. Franco's points were valid.

Mr. Tucker noted that Chad Lusky, an employee of Central Sanitary District, had raised the issue of using recycled water, which the City is considering.

Chris Master said he was glad that the City is following the practices of the Central Sanitary District. He also questioned the method used to calculate the allotments and the amount of the proposed penalties.

Arnie Watler said he thought the proposed cuts will inordinately penalize those who have already been conserving. He thought there should be a flat rate per resident in the household.

Joe Deleon noted that his neighborhood consists of large lots, and many residents have several animals that don't understand conservation. He asked whether animal owners would be able to have an exception for their needs. Mr. Tucker indicated there are exceptions for livestock. He reiterated that the penalties are only for people who exceed their typical usage.

Steven Butler said he thought the proposed plan was a good start, but he noted it is hard to comment without knowing all the details. He echoed earlier speakers in his concern that those who have already conserved might be penalized when compared with others who have been wasting water.

Mike Pelowski, Martinez Unified School District employee, asked what provisions the City is considering for public authorities. Vice Mayor Menesini expressed appreciation for the school district's conservation efforts. He agreed with Mr. Pelowski that the City needs to lead by example.

Phil Ciaramitaro stated that many people are concerned whether new developments will affect the supplies for current users. Vice Mayor Menesini commented on smart growth principles that will lessen the impacts.

An unidentified speaker discussed the high fee charged to add a second meter at an existing service location. He also noted that his house is vacant half the year, which will affect the allotment he is given. He discussed average water usage per person for most of the United States. Councilmember DeLaney noted that the ordinance should take into account situations like the speaker's and the allotment adjusted accordingly. Mr. Tucker indicated that there are many unique cases that will need to be evaluated individually.

Mike Alford commended Vice Mayor Menesini for responding to the comments made by the public. He expressed concern about inequity in the formula applied to determine maximum usages. He was also concerned about impacts on the parks, etc., and whether the rates would be readjusted if the supply increases.

Deborah McCarthy was concerned about the amount of water to be allotted for larger lots. She also questioned why there isn't more consideration given to creating new storage facilities.

Robert Becker, laundromat service provider, questioned how he can manage his business since more people will use the laundry service to reduce their personal usage.

Theresa Karr noted it is often difficult to control residents in a multi-unit residential complex.

Janice Joy commented on the difficulty in understanding the ordinance when the information given to the public seems to contradict the presentation tonight. She also asked about the billing calculation process, and she noted that some insurance companies are charging extra for lots with little greenery.

Councilmember Kennedy pointed out that mailing deadlines contributed to some of the errors in the mailing to the public. She apologized for the errors, noting that staff had made their best educated guess, given the time constraints.

An unidentified speaker commented on the benefits to the environment from maintaining vegetation, etc., as well as his desire to take proper care of his pets. He indicated that conservation is a joint responsibility.

Ron Skrehot, School Boardmember and Contra Costa Water District employee, said he thought the recommendations were reasonable, especially since they are based on past usage. He acknowledged that there should be a greater focus on water storage, but he knew also that funding is limited or nonexistent. He asked what the City's goal is for Citywide usage, and what the plan is for water saved. He also commented on a recent announcement by the State Department of Water Resources regarding increased allocations based on the increased rainfall.

An unidentified speaker asked when the final information on the proposal would be available to the public. She also asked about the exception process and criteria.

George (last name inaudible) commented on the amount of money paid for Los Vaqueros, the income limitations faced by some seniors, and the amount of water needed for canning, etc.

Rich Verrilli noted that if public comment had been allowed on a previous presentation by Mr. Tucker, some of these questions could have been raised sooner and responded to. He also commented on the carrot vs. stick approach, and he questioned whether using the 1,000-gal threshold was in the City's best interests.

Seeing no further speakers, Vice Mayor Menesini closed public comment on the item. Vice Mayor Menesini expressed appreciation for the valuable input from the public, especially the comments about changing household sizes. He recommended staff clarify the language regarding the exemption process specifically, and that the comments from the public be reviewed and a revised ordinance brought back to the Council.

Councilmember Ross agreed there had been many good comments, and that staff should consider and make revisions, especially since there is no time pressure to finalize the ordinance.

Councilmember DeLaney said she appreciated the revisions made since the last time the Council had discussed the matter, especially since the focus is more on voluntary steps that can be taken. She also suggested that the exemptions for household size not be limited to households of 4 or

more, and she was appreciative of the consideration for livestock and the flexibility in the exemption process.

Councilmember Kennedy agreed with Councilmember DeLaney regarding the household size, and she thanked everyone for their input. She encouraged patience through the process as the ordinance is revised.

Councilmember Ross asked how staff time can be allocated to handle the appeals, so that Mr. Tucker is not overwhelmed. City Manager Phil Vince said he thought the revisions proposed tonight should make the exemptions fewer, as did Vice Mayor Menesini.

By consensus of the Council, the item was continued to May 20, 2009.

Consent Calendar taken out of order.

CONSENT CALENDAR

MOTION WAIVING READING OF TEXT OF ALL RESOLUTIONS AND ORDINANCES.

1. Motion approving Check Reconciliation Registers dated 03/30/09, 04/02/09, and 04/09/09.
2. Motion approving Investment Report ending March 31, 2009.
3. Motion authorizing the City Manager to sign the 2009 Martinez Municipal Use Agreement with the Martinez Community Swim Team.
4. Resolution No. 030-09 accepting bids for the 2009 Paving Project and awarding the Construction Contract to Ghilotti Construction Company. [T.Tucker/12.04.00]
5. Resolution No. 031-09 establishing a Measure H Special Revenue Fund; and adopting a Resolution No. 032-09 establishing a 2009 Debt Service Special Revenue Fund.[C.Heater/2.09.01&2.10.00]
6. Resolution No. 033-09 establishing the rate per Equivalent Runoff Unit for the Fiscal Year 2009-2010 and request the Contra Costa County Flood Control and Water Conservation District to adopt an annual parcel assessment for the National Pollutant Discharge Elimination System Program.[T.Tucker/10.06.06]
7. Resolution No. 034-09 accepting the 2008 Alhambra Creek Sediment Removal Project per contract documents, and instruct the City Clerk to file a Notice of Completion. [D.Salts/10.07.00]
8. Resolution No. 035-09 accepting the 2008-09 Curb Ramp Installation Project per contract documents, and instruct the City Clerk to file a Notice of Completion.[D.Salts/12.02.00]
9. Resolution No. 036-09 appointing the Planning Commission as the Hearing Examiner pursuant to the Martinez Municipal Code, Section 1.15.020(D). [K.Majors/]

Vice Mayor Menesini opened and closed Items #1-9 on the Consent Calendar, with no one coming forward.

On motion by Mark Ross Councilmember, seconded by Janet Kennedy, Councilmember, to approve the Consent Calendar Items #1-#9. Motion unanimously passed 4 - 0. Yes: Lara DeLaney, Councilmember, Janet Kennedy, Councilmember, Mark Ross Councilmember, and Michael Menesini, Vice Mayor, Absent: Rob Schroder, Mayor.

JOINT CITY COUNCIL/BOARD OF DIRECTORS PLEASANT HILL MARTINEZ JOINT FACILITIES AGENCY - ITEM 10 ONLY

10. Adopt a resolution authorizing the additional designated period for Two Years Additional Service Credit for purposes of calculating retirement benefits under the PERS for the job classification of Deputy Community & Economic Development Director - Recreation, Community Services and Marina for the period April 16, 2009 through July 14, 2009. [P.Vince&L.Marshall/4.5.13]

Vice Mayor Menesini opened and closed public comment on Item #10 with no speakers coming forward.

On motion by Lara DeLaney, Councilmember, seconded by Mark Ross Councilmember, adopt Resolution No. 037-09 authorizing the additional designated period for Two Years Additional Service Credit for purposes of calculating retirement benefits under the PERS for the job classification of Deputy Community & Economic Development Director - Recreation, Community Services and Marina for the period April 16, 2009 through July 14, 2009.

Motion unanimously passed 4 - 0. Yes: Lara DeLaney, Councilmember, Janet Kennedy, Councilmember, Mark Ross Councilmember, and Michael Menesini, Vice Mayor, Absent: Rob Schroder, Mayor.

PUBLIC COMMENT

(COMPLETE SPEAKER CARD AND GIVE TO CLERK) Reserved only for those requesting to speak on items not listed on the Agenda.

Kristin Henderson stated that she sent the Deputy Clerk her comments and requested it be made part of the record. She indicated that it had to do with a Historic Resource Inventory, violations of the Public Records Act, unreinforced masonry buildings, and the definition of blight for redevelopment.

Phil Ciaramitaro stated he met with City Manager Phil Vince and Public Works Director Dave Scola regarding his Marina improvement list. He urged the Council to direct staff to work with him to accomplish the items on the list. The Clerk was directed to make the list part of the record and to make copies for the Council. Vice Mayor Menesini requested the City Manager give an update on how staff is addressing the issue at the next meeting.

Joe Valencia spoke in support of a shelter and other services for the homeless, noting he had some private groups willing to staff a facility if a building can be found. He suggested a sleep-in to raise public awareness.

Mike Alford addressed the problems at Safeway noting there has been no improvement, and he requested that signs be installed similar to those at the Nob Hill shopping center. He asked that the Council adopt a redevelopment ordinance so that it can be referended. He also commented on Roberts Rules of Law, conditions at the Marina (including a boat stuck in the mud); and he urged the Council to do something about it.

Mark Thompson encouraged the Council to present a balanced discussion of redevelopment when communicating with the public.

An unidentified speaker clarified for the record that there may be issues raised if challenged in court with respect to the Consent Calendar (since many people thought the meeting was being adjourned after Item #12). She informed the Council of an out-of-town visitor being jumped and beaten, and she requested that a curfew for minors be reinstated. She also stated that there are still cold nights that the homeless have to endure, and a safe place would be helpful.

Tom Lewis urged the Council to support and adopt the "Buy American" resolution. He left copies for the Council to review, and he requested that it be placed on the next agenda.

Seeing no further speakers, Vice Mayor Menesini closed public comment.

CITY MANAGER

13. City Manager Comment(s)/Update(s)/Report(s).

City Manager Phil Vince stated that there were three rail cars that derailed last Sunday at 1:00 a.m. He indicated that it brought to mind questions as to whether the City is prepared for a hazmat incident. Vice Mayor Menesini requested that this item be placed on the next Public Safety Subcommittee agenda.

Vice Mayor Menesini said he recently learned that these trains are moved without anybody being on the train, which is an enormous public safety issue. The Council requested that the City Attorney's Office review to see if the City has any authority to regulate the remote operation of trains.

14. Chief of Police Comment(s)/Update(s)/Report(s).

Chief Simonetti stated that there will be a Public Safety Subcommittee meeting on April 27th at 5:30 p.m. in the Council Chambers. He announced that Officer Michael Estanol was the only officer in the County that will be honored for his aggressive investigations on sexual assault cases.

APPOINTMENTS TO COMMISSIONS AND/OR AGENCIES

16. City Council Comments.

Councilmember Janet Kennedy announced a new play at the Cabaret Theater, the Trailer Park Musical, and she encouraged all to attend. She also stated that she will be speaking at Housing California on April 28th.

Councilmember Lara DeLaney stated she will be attending the League of California Cities Water Task Force on April 16th in Sacramento and the ABAG General Assembly meeting regarding climate change on April 23rd. She also announced the Martinez Gallery reception, Friday, April 17th at 6:00 p.m. at 630 Court Street; the Earth Day Celebration at the John Muir site on Saturday, April 18th; the Public Safety Committee meeting on April 27th at 5:30 p.m. in the Council Chambers; the Budget Workshop on April 29th at 5:30 p.m. in the Council Chambers; the Art and Wine Stroll in the downtown on May 2nd; and the Farmers' Market on May 3rd.

Councilmember Mark Ross announced a Climate Action Leadership Summit on May 4th at the Fox Theater in Oakland. He commented that he was overjoyed with the rescue of the Captain.

Councilmember Kennedy requested that the meeting adjourn in memory of John Nunes, who passed away recently at the young age of 50.

ADJOURNMENT

Adjourned at 10:59 p.m. *in memory of John Nunes*, then to an Adjourned Regular Meeting on April 29, 2009, for a Budget Workshop, at 7:00 p.m. in the Council Chambers, 525 Henrietta Street, Martinez, California.

Approved by the City Council,

Rob Schroder, Mayor

Mercy G. Cabral, Deputy City Clerk – 5/20/09

Attachments: Public Comment requested to be made part of the record.