**CITY OF MILL VALLEY**
**CITY COUNCIL**

**MINUTES**

**COUNCIL CHAMBERS, CITY HALL**
**26 CORTE MADERA AVENUE, MILL VALLEY**
**February 21, 2012**
**7:30 p.m.**

Mayor Garry Lion--Present
Vice Mayor Andrew Berman--Present
Councilmember Shawn Marshall--Absent
Councilmember Stephanie Moulton-Peters--Present
Councilmember Kenneth R. Wachtel--Present

City Staff Present: City Manager McCann; Acting City Attorney Coleson; Finance and Human Resources Director Erickson; Public Works Director Barnes; Interim Recreation Director Kesler; Senior Civil Engineer Hughes and City Clerk/Administrative Analyst Rogers.

## CALL TO ORDER

**Mayor Lion** called the Regular Session to order at 7:31 p.m.

## PUBLIC OPEN TIME

**Dr. Lynn Noonan,** Sycamore Avenue, discussed alleged incidents regarding a Mill Valley youth and the response of the Mill Valley Police Department.

**Mr. Bob Burton**, discussed the need to inspect the City's older gas pipelines. He discussed plastic bag usage and his desire for the Council to ban various plastic products in the City. He asked the Council to consider installing grey sidewalk ramp delineators instead of the standard yellow ones that are currently being used. He stated he was concerned about the limited options for the public's evacuation during an emergency and urged consideration of extending Sycamore Avenue for emergency use.

## APPROVAL OF THE AGENDA ORDER

It was **MOVED** by **Vice Mayor Berman** and **SECONDED** by **Councilmember Moulton-Peters** to approve the Council meeting agenda. The Motion was carried unanimously by a 4-0 vote, **Councilmember Marshall** absent.

## COUNCIL AND STAFF ANNOUNCEMENTS

**City Manger McCann** introduced **Janet Coleson**, Richards, Watson & Gershon, who would be serving as Acting City Attorney for the evening**.**

## PRESENTATIONS

1. Introduction of New City Employees Bianca Gomez, Associate Engineer, Cecilia Zamora, Associate Engineer, Alexandra Ikeda, Aquatics Supervisor, Brandon Stewart, Parks Maintenance Supervisor, and Robert Zadnik, Streets and Sewers Supervisor
   H*Item No. 1 Supporting Documents*

**City Manager McCann** explained the City's Public Works department reorganization. He indicated that Mr. Stewart and Mr. Zadnik were unable to attend the meeting and would be introduced to the Council at the March 5, 2012 City Council meeting.

**Public Works Director Barnes** introduced Cecilia Zamora and Bianca Gomez and outlined their experience and backgrounds.

**Interim Recreation Director Kesler** introduced Alexandra Ikeda and discussed the various talents she will bring to the City.

2. Planning Commission Annual Report
   H*Item No. 2 Supporting Documents*

**City Manager McCann** introduced **Heidi Richardson**, Chair of the Planning Commission.

**Planning Chair Richardson** presented the report. She discussed projects brought to the Planning Commission for Design Review and discussed Zoning Ordinance revisions and updates. She outlined the state of the Planning Commission and requested that the Council and the Planning Commission resume the practice of an annual joint meeting to enhance communication and coordination. She discussed other topics such as the need for an updated Housing Element, updating the City's sign ordinance, the need for consistent meeting schedules, historic resource protection regulations and enhanced riparian resource City policies and guidelines.

In response to **Mayor Lion, Councilmember Wachtel** stated he was in favor of meeting with the Planning Commission in a joint session.

**Mayor Lion** stated he felt the Planning Commission might benefit from reviewing the projects that had been appealed and brought before the Council to receive explanations and reasoning behind the Council decisions.

**Vice Mayor Berman** discussed past joint Council and Planning Commission meetings. He thanked **Planning Chair Richardson** for her presentation and stated he was concerned with the slow pace at which the Commission was reviewing the Zoning Ordinance. He stated he was happy to hear **Planning Chair Richardson's** interest in riparian issues and agreed that the existing regulations should be reviewed and possibly enhanced.

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**Councilmember Moulton-Peters** thanked **Planning Chair Richardson** for her presentation and commented on the large amount of work that was before the Commission. She also wanted to understand if there were other ways to accomplish the update to the Zoning Code.

**Councilmember Wachtel** thanked **Planning Chair Richardson** for her hard work and service, and that of the Commission. He stated the Commissioners had two bodies of work to review; one being work on internal zoning ordinances and the other being private development and design review projects. He questioned whether the Commission would be able to handle such a large workload.

3. Bicycle and Pedestrian Advisory Committee Annual Report
H*Item No. 3 Supporting Documents*

**Dr. Joan Steidinger** presented the report. She outlined the three main goals of the Bicycle and Pedestrian Advisory Committee (BPAC): 1. Make bicycle and pedestrian travel an everyday occurrence in Mill Valley; 2. Educate the community on bicycle safety; and 3. Acknowledge traffic calming and how it affects bicycle and pedestrian transportation. She discussed such topics as the Committee's involvement with the Miller Avenue Streetscape Design, bike rack installation and the need for accurate maps for bicyclists and pedestrians.

**Vice Mayor Berman** thanked **Chair Steidinger** for her work and service to the City.

**Councilmember Moulton-Peters** thanked **Chair Steidinger** for helping establish the Committee and developing the BPAC's long term goals.

**Councilmember Wachtel** thanked **Chair Steidinger** for her hard work and stated it was greatly appreciated.

**Mayor Lion** thanked **Chair Steidinger** and discussed the need to help update the Blazing Saddles bicycle map.

## CONSENT CALENDAR

It was **MOVED** by **Councilmember Wachtel** and **SECONDED** by **Councilmember Moulton-Peters** to approve **Item Nos. 4 through 7** on the Consent Calendar. The Motion was carried unanimously by a 4-0 vote, Councilmember Marshall absent.

4. Warrants--$ 1,833,915.97
**Recommended Action:** Approve paying expenses authorized by the adopted City Budget.
*Item No. 4 Supporting Documents*

5. Consideration of the Minutes of the May 24, 2010, and February 6, 2012 Regular City Council Meetings.
**Recommended Action:** Approve the May 24, 2010, and February 6, 2012 Regular City Council meeting minutes.

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*Item No. 5 Supporting Documents*

6. Consideration of a Resolution to accept an Easement Grant Deed for Sanitary Sewer Purposes at APN 029-114-13.
**Recommended Action:** Adopt Resolution No. ___.
*Item No. 6 Supporting Documents*

7. Presentation of the Statement of General Fund Revenue & Expenditures, December 31, 2011.
**Recommended Action:** Receive information.
*Item No. 7 Supporting Documents*

The **Council** pulled Item No. 8 from the Consent Calendar for further review.

8. Consideration of a Resolution Approving a Street Rehabilitation Capital Improvement Program Request for Budget Adjustment.
**Recommended Action**: Adopt Resolution No. ___.
H*Item No. 8 Supporting Documents*
*Item No. 8 Amended Resolution*

**City Manager McCann** presented the staff report, explained some slight discrepancies in the original staff report and discussed the revised resolution being brought forth to Council for approval.

**Mayor Lion** opened public comment**.**

As no comments were received, **Mayor Lion** closed the public comment.

It was **MOVED** by **Councilmember Wachtel** and **SECONDED** by **Vice Mayor Berman** to approve **Resolution No. 12-07** as amended, approving a budget adjustment for road impact fee revenues and traffic impact development fees for expenditure on the 2011 – 2012 street rehabilitation CIP. The Motion was carried unanimously by a 4-0 vote, Councilmember Marshall absent.

**OLD BUSINESS**

9. Presentation of the Revised Sewer Service Charge Rate Structure Status Report.
**Recommended Action**: Receive presentation, discuss and provide direction as appropriate. PUBLIC HEARING.
H*Item No. 9 Supporting Documents*
*Item No. 9 - Amended Staff Report*

**City Manager McCann** introduced the item.

**Public Works Director Barnes** presented the staff report.

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In response to **Council** questions, **Mr. John Farnkopf**, Consultant, stated that customer classifications displayed in the staff report were determined in part by historic sewer usage categories, and flow. He stated that using flow as a base for rates is an improvement over other rate structures. He discussed differences in customer classification and noted that the customer classifications were not only based on state regulations, but on the City's historic formula as well.

In response to **Council** questions, **Public Works Director Barnes** clarified that the total annual revenue requirement was approximately 4 million dollars and is based on current adopted rates and the CIP expenditure rate established by the City Council last year.

In response to **Councilmember Wachtel, Public Works Director Barnes** explained the reasoning behind 60 percent fixed rates for residential parcels. **Mr. Farnkopf** stated that Figure No. 6 shows that the fixed charge is derived by taking 50 percent of total revenue requirement and dividing it by the number of parcels. He stated this was a baseline cost that the City would want to recover from any connection to the sewer system. **Mr. Farnkopf** discussed the flow components and the fairness of charge between high flow and low flow users.

**City Manager McCann** noted the proposed changes to the rate structure relative to commercial customers and the expected effect of increasing consistency of rates by virtue of the elimination of reliance on variable annual water volume use data from the Water District.

**Public Works Director Barnes** discussed the distribution and comparison of fees for single family residences.

In response to **Councilmember Moulton-Peters, Vice Mayor Berman** stated the top 7 percent of water users are going to see the biggest increase in rates.

**City Manager McCann** noted that the 93 percent represents 166 cubic feet of water, or two times the amount of water usage than the average household. He outlined the amount of Mill Valley resident's that fall in the top 7% of water usage.

**Councilmember Wachtel** stated that he had not expected to see that the smaller, cleaner use commercial properties would have the highest rate increase.

**Vice Mayor Berman** stated that **Mr. Farnkopf** had warned the Council that the higher charge for commercial properties would occur, due to the need to achieve an equitable assignment of actual cost of service.

**Mayor Lion** discussed the revenue derived from the lower usage commercial properties.

In response to **Councilmember Wachtel, Mr. Farnkopf** discussed and explained cost allocations and customer accounts and unit cost of service.

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**Mayor Lion** opened the public comment period.

**City Clerk/Administrative Analyst Rogers** read an eComment into the record from Michael Burke stating that he supported the Council's interest to adopt a flow-based rate structure.

In response to **Mayor Lion, Mr. Farnkopf** stated that in order to charge single family residences and multifamily residences the same rate, the study would have to group them together and place them in the same classification. He stated he was reluctant to combine them because a more precise allocation can be seen when they are independent.

In response to **Councilmember Wachtel's** question regarding billing to mixed-use properties, **Mr. Farnkopf** stated that the rate used is the predominate use of a parcel.

**Mayor Lion** closed the public comment period.

**City Manager McCann** discussed the next steps for the adoption of a revised rate structure.

**Councilmember Wachtel** stated he was concerned with the following: 1. The rates becoming less flow-based for residents than he had initially thought; 2. There is not a great deal of cost predictability for restaurants; and 3. An unexpectedly high increase for low strength flow commercial properties.

**Public Works Director Barnes** stated the CIP funding in Figure 13 is not final. She stated staff still needs to revisit the figures and make sure the numbers match current needs.

**Councilmember Moulton-Peters** indicated that she was in favor of a realistic CIP funding rate and stated she did not feel $2.5 million in projects may be too aggressive. She stated Marin Municipal Water District (MMWD) was going to be raising flow-based rates around the same time as the City. She stated she felt the City may need to mitigate some of the rate increases for the highest water users.

**Vice Mayor Berman** stated he was comfortable with 50 percent of the fixed costs being taken care of. He stated he wished to be proactive with letting people know about the new sewer rates. He stated the City does not have to meet their capital needs by doing a pay as you go rate increase. He suggested the option of again considering a long-term financing approach to fund the infrastructure needs.

**Mayor Lion** thanked staff for their thorough report. He indicated that he was disturbed that the average strength commercial user would be paying more than anyone else. He concurred with **Vice Mayor Berman** that the debt option should be reviewed.

**Mayor Wachtel** indicated that he wanted to see special notice sent out to the average strength commercial and top tier residential users about the rate increases.

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At 9:45 p.m. the **Council** took a brief recess and reconvened at 9:50 p.m.

**PUBLIC HEARING**

10. Consideration of a Resolution to Declare a Public Nuisance and to Order Abatement of the Nuisance Originating at 628 Lovell Avenue and Budget Adjustment.
**Recommended Action**: Adopt Resolution No. ___.
H*Item No. 10 Supporting Documents*

**City Manager McCann** introduced the item.

**Public Works Director Barnes** presented the staff report.

**Public Works Director Barnes** introduced **Mr. Bonneau Dickson**, Consulting Sanitary Engineer, and stated he was available for questions.

**City Manager McCann** explained the City's desired outcome for this abatement issue and urged cooperation by all parties to find a constructive and satisfactory resolution. He stated the odors present constitute a public nuisance and indicated that the resident's neighbors are anxious to see this situation rectified.

In response to **Councilmember Wachtel, Public Works Director Barnes** confirmed that the septic smell is present inside of the neighbor's homes, not just the manhole. She stated it is hydrogen sulfate gases that are being leaked and that the gas is settling into a neighbor's open-air patio area. She noted that the City had not been out onto **Mr. Traverso's** property to look at the sump pump, but that staff had asked him for his cooperation in fixing the problem.

In response to **Councilmember Moulton-Peters**, **Public Works Director Barnes** stated that the smells were hydrogen sulfite and methane, which are dangerous and harmful in concentrations.

In response to **Vice Mayor Berman, Acting City Attorney Coleson** stated that the public record included the testimony of the individuals who were going to speak during the public hearing.

**Mr. Gary Oswald**, **Mr. Traverso's** attorney, indicated that he had not had a chance to review the staff report and discussed a letter he submitted to the City Attorney's office on January 25, 2102, that outlined his sentiments. He stated he wished to see the smell addressed before any Council action was taken. He stated his client did not know how to abate the issue because engineer's he had hired indicted that his sewer pump was in fine working condition.

In response to **Councilmember Wachtel**, **Mr. Oswald** indicated that **Mr. Traverso** would be willing to allow City staff on his property to investigate the problem.

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**Mr. Oswald** stated for the record that he believed that this was a civil matter between neighbors and not a public matter nor a public nuisance. He stated he felt the City did not have the right to get involved with civil matters.

**Mr. Mike Tarnoff**, Civil Engineer for **Mr. Traverso**, stated he felt the sewer pump in question was functioning properly. He stated he felt another matter may be causing the foul smells and discussed direct connect sewer lateral pipes and improper private plumbing systems.

**Mr. Dickson** explained general residential plumbing systems and the function of a sewer forcemain and holding tank system. He explained that he had not had a thorough enough chance to study **Mr. Traverso's** case, and indicated that he still had questions regarding why the smells were occurring. He requested that he be allowed to work with **Mr. Traverso** and the City to further investigate what is going on.

**Mayor Lion** opened the Public Hearing.

**Walter Good**, 493 Lovell Avenue, stated that he felt that his quality of life and property worth have declined since the sewer system had been installed at the **Traverso** property 26 months earlier. He stated the odor is not only at the street but also in his studio and in his home. He read from a report by the Engineering Research and Development Center discussing the effects of hydrogen sulfide on the body. He stated the sewer odor is posing a health risk to the families who are affected by it. He stated his daughter had been experiencing unexplained health problems and feels that abatement is necessary.

In response to **Mayor Lion, Mr. Good** stated that his daughter had been sick since August, 2010.

**Councilmember Wachtel** questioned whether or not **Mr. Good** would be satisfied with working with **Mr. Traverso** to fix the problem. **Mr. Good** stated he requested swift action.

**Mr. Richard Kramlich**, 510 Lovell Avenue, stated he concurred with **Mr. Good**. He explained the history of the issue and stated the foul smells were coming from his master bath area, on his patio, and outside the Goode's property. He indicated that the **Traverso's** should look into a gravity sewer system.

**Brooks Brit**, tenant at 493 Lovell Ave., discussed the locations in his residence where the foul odor can be smelled. He stated the smell comes back around midnight each night.

**Mr. Traverso** stated he empathized with his neighbors. He corrected the length of the sewer pipe, by stating it is not 500 feet, but 332 feet. He stated **Mr. Dudak**, a former City employee, had been out to his property to look at his sewer system and indicated that he did not know how to fix the problem. **Mr. Traverso** stated that a City ordinance would not allow him to utilize a gravity sewage system because he was not allowed to cross a

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creek with sewage. He described the recommendations and observations of the experts that he had hired to review his sewage system.
**Mayor Lion** closed the Public Hearing.

**Councilmember Wachtel** indicated that there was a problem, but that he wasn't sure what the source was, or what the remedy would be.

**Mr. Dickson** stated he wished to review **Mr. Traverso's** system and look for gases at the man hole and at the wet well. He stated he would use hydrogen sulfide detectors to monitor the odors.

**Councilmember Wachtel** stated the nuisance abatement would give **Mr. Traverso** thirty days to fix the problem. He stated that if **Mr. Traverso, the Goods** and **the Kramlichs** agreed to open their systems and do an expert evaluation from input to output, maybe **Mr. Dickson** could help figure out the problem. He stated he would like to allow thirty days to give everyone involved time to figure out a solution. He stated that if anyone was non-cooperative, then the Council could be apprised and start abatement proceedings.

In response to **Vice Mayor Berman**, **Acting City Attorney Coleson** stated that two people constitute a public nuisance.

**Vice Mayor Berman** stated the situation was deplorable, and was a health hazard. He indicated that he is worried about the hotter summer months. He stated he concurred with **Councilmember Wachtel** about investigating all three sewer areas in the neighborhood.

**Councilmember Moulton-Peters** stated she concurred with **Councilmember Wachtel** and **Vice Mayor Berman**.

**Mayor Lion** stated he concurred with his fellow Councilmembers. He indicated that fixing the odor was of utmost importance.

**Mr. Traverso** stated he had already hired experts to investigate his sewer system. He indicated that hiring an independent consultant, such as **Mr. Dickson**, would be the best option to figure out where the source of the odors is coming from.

**City Manager McCann** stated the City would pay for the investigatory costs.

In response to **Councilmember Wachtel** the parties involved stated for the record that they would all allow the City's consultant access to their properties and sewer syetms.

The **Council** indicated a consensus to continue the review of the potential public nuisance and possible order to abate the nuisance originating at 628 Lovell Avenue, to urge the neighbors to work cooperatively to determine the cause of the odors and to identify solutions, and to continue this item to the March 19, 2012 Council meeting.

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The **Council** indicated a consensus to hear the next item, as it is Council policy to obtain a majority consensus when beginning public hearings on the agenda after 11:00 p.m.

11. Consideration of an Interim Ordinance extending Ordinance No. 1247 prohibiting the establishment of office uses in ground floor spaces in certain areas of the Neighborhood Commercial (C-N) Zoning District and declaring the urgency thereof.
**Recommended Action**: Adopt Ordinance No. ___.
H*Item No. 11 Supporting Documents*

**City Manager McCann** presented the staff report.

**Mayor Lion** opened the public hearing.

No comments were received.

**Mayor Lion** closed the public hearing.

**City Manager McCann** noted that this Item needed a 4/5 vote in order to pass.

It was **MOVED** by **Councilmember Moulton-Peters** and **SECONDED** by **Councilmember Wachtel** to approve Ordinance No. 1252 extending Ordinance No.1247 prohibiting the establishment of office uses in ground-floor spaces in certain areas of the C-N Zoning District and declaring the urgency thereof. The Motion was carried unanimously by a 4-0 vote, Councilmember Marshall absent.

## COUNCIL LIAISON REPORTS

None.

## CITY MANAGER'S REPORTS

a. Outcome from the City Council's February 15, 2012 Planning Retreat.
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b. Presentation on the California Environmental Quality Act by the City Attorney available on the City's website.
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c. General Plan Update Advisory Committee and Working Groups applications being accepted.
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## COUNCIL REQUESTS AND IDEAS FOR DISCUSSION

None.

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## ADJOURNMENT

It was **MOVED** by **Vice Mayor Berman** and **SECONDED** by **Councilmember Moulton-Peters** to adjourn at 11:27 p.m. to the next City Council meeting to be held on Monday, March 5, 2012. The Motion carried unanimously by a 4-0 vote, **Councilmember Marshall** absent.

Approved and adopted by the City Council of the City of Mill Valley on March 5, 2012.

_____
Garry Lion, Mayor

ATTEST:

_____
Kelsey Rogers, City Clerk/Administrative Analyst

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