CITY COUNCIL MINUTES
July 25, 2011
REGULAR SESSION

The Regular Session of the Auburn City Council was held in the Council Chambers, City Hall, 1225 Lincoln Way, Auburn, California on Monday, July 25, 2011 at 6:00 p.m. with Mayor Kirby presiding and City Clerk Joseph G.R. Labrie recording the minutes.

CALL TO ORDER

ROLL CALL:

Council Members Present: Bridget Powers, Kevin Hanley, J. M. Holmes, Keith Nesbitt, Bill Kirby.

Council Members Absent: None

Staff Members Present: City Attorney Michael Colantuono, Community Development Director Will Wong, Fire Chief Mark D'Ambrogi, Public Works Director Bernie Schroeder, Transit Analyst Megan Siren, Administrative Services Director Andy Heath, Interim Police Chief Valerie Harris, Police Chief John Ruffcorn, Public Works Engineer Carie Huff and Code Enforcement Officer Jennifer Solomon.

By **MOTION** adjourn to a Closed Session under Government Code Section 54957.6:
MOTION: Hanley/ Kirby/ Unanimously approved by voice

(1) **Initiation of Litigation:** (G.C. 54956.9(c))

(Number of Potential Cases): 1

(2) **Conference with Labor Negotiators:**
G.C. 54957.6

Agency Designated Representative: Patrick Clark

Employee Group: Local 39

REPORT OUT OF CLOSED SESSION
No reportable action.

PLEDGE OF ALLEGIANCE

MAYOR'S COMMENDATIONS/PROCLAMATIONS/ACKNOWLEDGEMENTS/ ANNOUNCEMENTS

Fire Chief Mark D'Ambrogi showed a slideshow of pictures from the Project Canyon Safe event.
Mayor Kirby presented Certificates of Appreciation for Project Canyon Safe volunteers.

AGENDA APPROVAL

Council Member Hanley requested item 12 be moved to follow item 9. The agenda was approved with this requested change by consensus of the Council.

CONSENT CALENDAR

1. **Warrants**

   By **RESOLUTION 11-83** approve Warrants # 77598 through 77763 totaling $750,335.09.

2. **Minutes**

   By **MOTION,** approve City Council Minutes of June 27, 2011 and July 1, 2011.

3 **Auburn Municipal Airport East Area Hangars Ground Lease**

   By **RESOLUTION 11-84,** authorize the City Manager or his designee to execute a 40-year ground lease between the City of Auburn, a Municipal Corporation, and Auburn East Hangars Row "Foxtrot", Shawn A. Bickford & Donald D. Wolfe, Lessees.

   ********** End of Consent Calendar **********

   By **MOTION,** approve the consent calendar.
   MOTION: Nesbitt/ Powers/ Approved 5:0

4. **Public Comment**

   Council Member Nesbitt said while the parking enforcement has improved, the parking situation in Old Town has not changed. He said he would like this issue readdressed in terms of signage and advertising.

   Council Member Holmes said McCaulou's will be opening soon. He said 1240 High Street has a dental group opening soon after a long-term vacancy. He said August 4th and 5th, the State Historical Resources

Commission will be meeting in Auburn; he encouraged people interested in the history of Auburn to attend. He said he would like to have revisions to the City Charter draft discussed at the next meeting in terms of the City Clerk and City Treasurer positions.

Mayor Kirby said he would like staff to look at the Jury Parking Lot for daytime parking for Old Town patrons. He also said Auburn Movie night is this Wednesday at Central Square.

Public Works Director Bernie Schroeder announced that the City of Auburn won "Best of the Best" place to picnic for the School Park Preserve.

Victoria Conley, resident of Auburn, spoke in opposition of a City Charter.

PUBLIC HEARING

Council Member Hanley recused himself from item 5 and 6 and left the Council Chambers due to proximity of his home to subject properties.

5. **Weed Abatement Public Protest Hearing**

Fire Chief Mark D'Ambrogi presented this item. He said 21 parcels have not complied with the request to abate their property. He said this public hearing is to hear any and all objections from the property owners as to why the abatement process should or should not proceed.

No public comment.

Council Member comments followed additional enforcement actions, fire season time periods, and "due process" under a City Charter.

Conduct a Public Hearing for the purpose of declaring public nuisance of those properties that have not complied with the Auburn Municipal Code, City Ordinance, Title IX, Chapter 95.03, "Notices to Remove: Default: Removal by City". And, by **ABATEMENT ORDER**, authorize the Fire Chief to abate those properties that have been posted and notified as a public nuisance, and have not complied with "Notices to Remove".
MOTION: Holmes/ Powers/ Approved 4:0 (Hanley recused/ absent)

6. **Non Payment of Administrative Citations, Authority to Assess Tax Roll**

Code Enforcement Officer Jennifer Solomon presented this item. She said the cases before the Council tonight were issued citations, advised of right to appeal and were not appealed or paid.

Council Member Nesbitt asked about details on the 490 Aeolia Drive fine of $11,600.

Jennifer Solomon reviewed aspects of the Aeolia Drive violation: (1) timeline of the case, (2) the parking space converted to a living space, (3) number of citations issued, (4) correspondence and contact with the property owner, (5) plan check submitted by resident, and (6) parking issue on property due to building code violation.

Council Member Holmes asked why this violation and outstanding fine was not brought to the Council before tonight.

Jennifer Solomon explained that she was trying to achieve compliance from the property owner before she took the step of assessing the fine on the tax roll.

City Attorney Michael Colantuono explained that this is the first time the City has used this collection process on administrative citations.

Council Member Nesbitt asked for an estimate of the potential cost of required improvements to the property.

Community Development Director Will Wong said the site plan that he had approved for the property owner had minimal costs associated. He said the property owner understood the process and chose not to comply.

City Attorney Michael Colantuono said the city's goal is to achieve compliance. He said if the property owner indicated a willingness to comply, a release of the lien could be considered.

Craig Rowland, the property owner at 490 Aeolia Drive, explained the problem with the access to parking on his property. He said this property is owned by his mother, who has the property in a trust. He said because he is a general contractor and a civil engineer he understands the violation. He explained the plan he submitted for an alternative parking design. He said the noticing process has been confusing. He said he is unsure he can afford to do the work to come into compliance with the fines that are currently due.

Council Member Nesbitt asked if the city agreed to a compromise of the fines, if Mr. Rowland would agree to complete the work within a required timeframe.

Mr. Rowland said he would be willing to complete the work if the city works with him on the fine amount. He said he intends to keep the garage as living space when he comes into compliance with alternative parking.

He said he feels he could get the property into compliance in the next two months.

Council Member Nesbitt said it is more important to get the property into compliance then to levy a large fine on this property owner.

City Attorney Michael Colantuono advised that the assessment should be sent to the County "as-is" due to the deadline for tax roll assessments. He said it could be pulled off the tax roll when the property owner comes into compliance.

Council comments followed regarding determining the reduced fine amount.

Council Member Nesbitt made a motion stating if the property at 490 Aeolia Drive becomes compliant in the next 90 days that the fine be reduced to $600.

Council Member Powers said she would like to see the revised fee determined by staff to reflect actual staff costs in regards to citing this property.

City Attorney Michael Colantuono clarified that the resolution to Placer County for the tax roll assessment will still read the original $11,600 fine amount, and will be revised upon compliance and approval of the City.

By **RESOLUTION 11-85, 11-86, 11-87, 11-88, 11-89,** approve each of the collections (4), approve the Tax Roll Assessment for Administrative Citation's report and direct the City Clerk to file a certified copy of the report with the Placer County Auditor-Controller in order to collect.
In addition, when the property at 490 Aeolia Drive becomes compliant (in the next 90 days) with tax roll assessment will be revised to a $600 fine.
MOTION: Nesbitt/ Holmes/ Approved 3:1 (Kirby voted No; Hanley absent/recused)

*** Council Member Hanley rejoined the Council at the dais.***

REPORTS

7. City Council Committee Reports

Council Member Powers reported on the Airport Business Park Association meeting last week and thanked City Manager Bob Richardson for his presentation. She also reported thanked Megan Siren for her weekly Streetscape updates.

Council Member Holmes reported on the progress the Arts Commission is making with the portion of steel recovered from the World Trade Center. He said he is unsure if it can be completed by September of this year. He also reported the Auburn Chamber of Commerce Board passed the resolution supporting the Wildland Fire Management Fund. He said the City of Colfax and the Placer County Water Agency have been urged to pass similar resolutions. He reported that the State Office of Historical Preservation met at City Hall last Thursday regarding historical buildings and how to get them on the national register. He reported he will be meeting with the Bureau of Reclamation in Washington D.C. in August.

COUNCIL BUSINESS

8. **CalPERS Contract Amendment Ordinance – Section 21428**

Finance Director Andy Heath presented this item. He said a CalPERS actuary was present to answer any questions from the Council.

By **MOTION**, waive full reading and introduce a first reading of an ORDINANCE approving an amendment to the contract between the City of Auburn and CalPERS, providing Public Employees' Retirement Law Section 21428 (Increase Industrial Disability Allowance to 75% of Final Compensation) for local fire members.
MOTION: Nesbitt/ Powers/ Approved 5:0

9. **Recology Auburn Placer – Solid Waste Collection 2 Year Rate Ceiling Increases 2011/12 - 2012/13**

Transit Analyst Megan Siren presented this item. She said the 1.4% increase applies only to the base rates. She said the residential rates are estimated to increase between 0.74% and 1.02% and the commercial rates are estimated to increase between 0.60% and 1.01%.

Council Member questions followed regarding the actual effect on residential and commercial consumers and staff analysis and recommendation.

By **RESOLUTION 11-90,** adopt a 1.4% Cost of Living adjustment of the ceiling established by the City's franchise agreement with Recology Auburn Placer on residential and commercial rates shown on Attachment A for the July 1, 2011 through June 30, 2012 period and adopt a not to exceed 4% Cost of Living for the July 1, 2012 through June 30, 2013 period.
MOTION: Powers/ Nesbitt/ Approved 5:0

9a. **Solicitation and "Aggressive Solicitation" Ordinances**

Interim Police Chief Valerie Harris presented this item. She addressed concerns that were raised regarding chapter 116 (door to door solicitations) during the last reading: (1) the exemption that could be made for non-profit agencies, (2) extension of the time a permit is valid from 6 months to 1 year, (3) definition of door to door soliciting, and (4) situations needing a permit.

Council Member questions followed: (1) solicitation definition, (2) direct and indirect solicitation, (3) period of time the permit is issued, (4) "letter of the law" under current ordinance, and (5) proof of required licenses.

Valerie Harris said if this ordinance is too restrictive it will create "more work, more problems and more complaints." She said she spoke with the Contractors Board and the Board of Realtors about the ordinance and said they support it. She explained the type of door to door behavior that usually results in calls to the Police Department.

City Attorney Michael Colantuono said you can not exempt people who have a state license from getting a solicitor permit without getting into a subject sensitivity issue. He said you could exempt them from the display requirement. He clarified the business license process as it related to obtaining a solicitors permit. He advised this permitting process must apply to "everybody or nobody."

Council Member questions continued regarding simplifying the process for the business community and permitting brokers, not individual agents.

City Attorney Michael Colantuono said one permit could be issued yearly to cover the whole organization, profit or non-profit.

Craig Rowland, resident of Auburn, clarified that going up to a door to request to use someone's phone is not soliciting.

Dave Johnson, President of Placer County Association of Realtors, expressed his concerns as a realtor. He explained the licensing process realtors are currently required to complete. He said he would like to see a solicitor's permit exemption for agents who hold a higher level of license.

Council conversation followed regarding business license requirements for anyone doing business within the city and current enforcement.

Council Member Hanley said because there is no rush to enact the door to door solicitation ordinance, he would like more review of the ordinance

to ensure it does not become a nuisance for local business owners. He said he wants to make sure the "letter of the law" as stated will be enforced fairly for everybody.

Council Member Nesbitt clarified that the company will be responsible for holding the solicitation permit and any employee under that business will be covered by that permit.

Council Member comments followed regarding supporting a delay of the chapter 116 ordinance and allowing more input on the way it will work.

Mayor Kirby stressed the importance of coordinating legal advice on how the ordinance is drafted.

By **MOTION,** bring back for second reading, an ORDINANCE amending Chapter 116 of the Auburn Municipal Code relating to door to door solicitations on August 22nd 2011.
MOTION: Hanley/ Powers/ Approved 5:0

City Council recessed for 5 minutes

Valerie Harris presented an update on this item. She said the ordinance is not changed from the first reading. She reviewed the process for handling citations under the panhandling ordinance. She said she is also working with Placer County Sheriff to get a similar ordinance passed. She reviewed educational materials for the public.

Mayor Kirby said he doesn't believe that most offenders of panhandling will participate in "homeless court" and the ultimate goal is to get panhandling out of the area.

Council Member Hanley said he would like a revision to Chapter 121 section 121.03 "All solicitation prohibited at specified locations" to include 15 feet of gas stations.

Hold a second reading, by title only, of an **ORDINANCE 11-06** adding Chapter 121 to the Auburn Municipal Code relating to aggressive solicitations (panhandling).
MOTION: Nesbitt/ Powers/ Approved 5:0

10. **Phase II Stormwater Permit**

Public Works Engineer Carie Huff presented this item. She said this is an informational report on the reissuance of the Phase II Stormwater Permit for stormwater dischargers from small municipal separate storm sewer systems (information available in staff report).

Council Member questions followed: (1) permit extension, (2) permit process, (3) additional cost to implement permit requirements, (4) implementation schedule, (5) "one size fits all" solution for all jurisdictions, (6) chamber of commerce involvement, and (7) a citizens' advisory group.

Council conversation followed regarding unfunded mandates. Council members would like to see a letter to address the problem.

City Attorney Michael Colantuono said the regional board is a state agency implementing both state and federal law and there is no mandate rule for federal government and no charter exception to the federal government.

Craig Rowland, resident of Auburn, spoke of his experience with these types of requirements.

11. **Review of City Operations – Public Works Department**

Public Works Director Bernie Schroeder presented this item (full report available in the City Clerk's office). She reviewed the four primary divisions of public works (1) operations and maintenance, (2) sewer operations, (3) transportation division, and (4) engineering and administration. She also reviewed: (1) activities related to the airport, (2) regulatory programs, (3) inter-department support and operability, and (4) influence of a charter city. She then provided a conclusion and summary.

Council Member questions followed: (1) local contractors, (2) prevailing wages, (3) Capital Improvement Plan, (4) pavement management system, (5) city maintained traffic lights, (6) birds nesting in eaves of City Hall building, and (7) Safe Routes to School project.

Council comments followed regarding the thorough report and they thanked Public Works Director Bernie Schroeder.

12. **Solicitation and "Aggressive Solicitation" Ordinances**

Moved to item 9a.

13. **Blocker Drive Appraisal and Authorization for Funding**

Community Development Director Will Wong presented this item (informational available in staff report).

Council Member Holmes said he has been contacted by the cohousing group who was interested in this property. He said they are meeting

locally later this week. He asked if the property could be sold for a new appraisal value.

Will Wong said a decision by Council in 2008, designated the property as potential future city facility needs; i.e. a fire station or possible storage. He said an analysis of that need should be completed to determine if it still exists, or if the property should be sold. He said if sold, the proceeds would have to go to the housing fund, and the property would need to be appraised. He said the City must decide whether the building would be sold as an affordable housing project or to the "highest bidder.' He said staff will be coming back to Council to make recommendation on what to do with the redevelopment agency and related properties. He said agreements can not be entered into right now as a development agency.

Council Member Hanley asked about staff looking into AB 26 and AB 27. He said his concern is that if the City continues with the redevelopment agency, they have already lost control of the Blocker Drive property. He said he would like to look into possibly rezoning the property to low impact zoning to protect that neighborhood from high density housing.

Council Member Nesbitt said it is not responsible to spend money on an appraisal out of the general fund because it appears the city has lost control of the property.

14. **Payments to Governmental Agencies and Affiliations**

Council Member Holmes presented this item. He said he asked for an accounting of all the different organizations that the City is a member of. He said the Finance Director created a list of the organization, cost and fund. He said a major concern is the $12,400 that is paid to the Placer County Flood Control District (PCFCD) of which there is no benefit. He said the only action from that organization he can remember was a letter drafted to support a project Auburn was doing.

Council Member Hanley said he sits on the board of the PCFCD. He said it should be determined if the City's participation in the Flood Control District would help us to secure matching funds for flood-related projects, like Electric Street and if not, possibly disassociate.

Council Member Holmes said he supports having staff take a look at these issues and come back to whether continued membership is of any benefit at all.

Council Member Hanley said he would also like to know why the "temporary fee hike" in the League of California Cities dues a couple years back was seemingly made permanent.

Council Member Nesbitt he would like to see a cost benefit analysis completed on membership to these organizations and brought back to Council.

15. **Public Recognition of Auburn Restaurants that Support *PlacerGrown* Agriculture**

Council Member Hanley presented this item. He said other jurisdictions promote local agriculture by presenting an annual award to a restaurant that is supporting local agriculture. He said he would like to see this in the City of Auburn. He said *PlacerGrown* has set criteria for the selection process. He said the award will be presented at the next City Council meeting.

Council Member comments followed regarding supporting local businesses and agriculture.

By **MOTION,** request that the Mayor present an annual commendation based on the recommendation from the *PlacerGrown* Board of Directors, to the restaurant within the City of Auburn chosen as the best supporter of local agriculture for that year.
MOTION: Powers/ Holmes/ Approved by voice

16. **Support for SB 783 (Dutton), ADA Lawsuit Abuse Legislation**

Council Member Hanley presented this item. He said Senator Dutton is working on a bill to give business owners 120 days to fix the problem before a lawsuit can be filed.

Council Member Nesbitt said he is putting together a seminar to help the local business owners who have been affected by this to help them craft letters to the State Bar of California. He said this is to create needed public awareness .

Council Member Holmes said the Chamber of Commerce has formed an Ad Hoc committee to look at this issue.

By **MOTION,** approve the letter to Senator Dutton in support of SB 783 and legislative efforts to eliminate vexatious and expensive ADA lawsuits filed against small businesses in Auburn and around the state.
MOTION: Powers/ Nesbitt/ Approved by voice

ADJOURNMENT

Mayor Kirby adjourned this meeting, without objection, at 9:57 p.m.

William W. Kirby, M.D., Mayor

Joseph G. R. Labrie, City Clerk