

TOWN COUNCIL MEETING NO. 810, MARCH 23, 2011

Mayor Driscoll called the meeting to order at 7:30 p.m. and led the Pledge of Allegiance. Ms. Howard called the roll.

Present: Councilmembers John Richards, Steve Toben and Ann Wengert; Vice Mayor Maryann Derwin and Mayor Ted Driscoll

Absent: None

Others: Angela Howard, Town Manager  
Janet McDougall, Assistant Town Manager  
Sharon Hanlon, Town Clerk  
Leigh Prince, Town Attorney Representative

ORAL COMMUNICATIONS [7:31 p.m.]

Ms. Howard asked that an urgency item be added to the agenda for Closed Session Real Estate Negotiations, GC Section 54956.8, involving 900 Portola Road. Councilmember Richards moved to add the item to the agenda as Item 12. Seconded by Vice Mayor Derwin, the motion passed 5-0.

CONSENT AGENDA [7:31 p.m.]

- (1) Approval of Minutes of Town Council Meeting of February 23, 2011 [*removed from Consent Agenda*]
- (2) Ratification of Warrant List of March 9, 2011 in the amount of \$322,610.26
- (3) Ratification of Warrant List of March 23, 2011 in the amount of \$122,535.79

By motion of Vice Mayor Derwin, seconded by Councilmember Richards, the Consent Agenda (Items 2 and 3) was approved with the following roll call vote:

Aye: Councilmembers Richards, Toben and Wengert, Vice Mayor Derwin and Mayor Driscoll

No: None

REGULAR AGENDA [7:35 p.m.]

- (1) Approval of Minutes of Town Council Meeting of February 23, 2011

Councilmember Toben moved to approve minutes of Town Council Meeting of February 23, 2011 as amended. Seconded by Councilmember Wengert, the motion passed 4-0-1 (Richards abstaining).

- (4) Recommendation by Town Attorney – Introduction of Ordinance Relating to Informal Bidding and the Town Purchasing System
  - (a) First Reading of Title, Waive Further Reading, and Introduce an Ordinance of the Town Council of the Town of Portola Valley Amending Chapter 2.38 [Informal Bidding] of Title 2 [Administration and Personnel], Repealing Chapter 3.24 [Quality and Non-Discrimination in City Contracts and Employment] and Amending Chapter 3.20 [Purchasing System] of Title 3 [Revenue and Finance] of the Portola Valley Municipal Code (Ordinance No. \_\_)

Ms. Prince briefly explained each of the three elements that the proposed changes would affect.

When Portola Valley adopted its informal bidding policy (Chapter 2.38), she said, it set a maximum of \$75,000, but the State has since authorized higher limits, up to \$125,000. The revised ordinance raises the Town limit to correspond to the current State limit, and inserts language that will enable the Town to periodically ratchet up the limit automatically without having to amend the ordinance.

The proposed revisions also repeal Chapter 3.24, which Ms. Prince explained has become unnecessary since so many Federal and State laws and regulations address the issue of quality and non-discrimination in contracts and employment.

Chapter 3.20, which involves the purchasing system, embraces supplies rather than the services covered by the informal bidding code. State law requires municipalities to have policies covering such purposes, and Portola Valley's policy dates back to 1954, Ms. Prince said. Accordingly, the proposed amendment will bring the code up to date with current practices and procedures.

In response to Councilmember Richards, she explained the difference between formal and informal bidding. In formal bidding, which usually involves capital expenditure projects, the Town goes through the full process of putting out invitations to bid to a list of contractors, defining conditions and establishing deadlines, etc.

Councilmember Richards moved to approve the Introduction and First Reading of Title to amend Chapter 2.38 [Informal Bidding] of Title 2 [Administration and Personnel], repeal Chapter 3.24 [Quality and Non-Discrimination in City Contracts and Employment] and amend Chapter 3.20 [Purchasing System] of Title 3 [Revenue and Finance] of the Portola Valley Municipal Code (Ordinance No. \_\_\_\_). Seconded by Councilmember Toben, the motion passed 5-0.

Ms. Howard noted that staff will be bringing further outdated portions of the Portola Valley Municipal Code to the Town Council for its consideration.

[Note: The second reading of the proposed changes is scheduled for the Town Council meeting of April 13, 2011.]

- (6) Recommendation by Assistant Town Manager – Introduction of Ordinance Relating to Commercial Use of Town Parks and Recreation Areas [7:39 p.m.]
  - (a) First Reading of Title, Waive Further Reading, and Introduce an Ordinance of the Town Council of the Town of Portola Valley Adding Chapter 12.10 [Commercial Use of Town Parks and Recreation Areas] to Title 12 [Streets, Trails and Public Places] of the Portola Valley Municipal Code (Ordinance No. \_\_\_\_)

Ms. McDougall said that this issue came up as a result of concerns expressed by the Parks and Recreation Committee and some staff members about use of tennis and all-sports courts for fee-based organized play and sports clinics without ensuring necessary insurance coverage and without Town sanctions. Some committee members thought these activities undermine efforts to get the Town's tennis program underway, and create inequities in that the tennis pro the Town has engaged must maintain insurance and turn over a portion of the registration fees collected to the Town.

This proposed ordinance language has been drafted to address this situation, making it unlawful to undertake commercial activity in the in the Town's parks, open space lands and recreation areas without a written agreement or permit from the Town.

Ms. McDougall indicated that there had been questions raised about whether there would be exceptions for occasional one-on-one personal training, dog training, yoga instruction, coaching in tennis, pitching and so forth, which led to discussions about whether the regulations should be based on intensity, frequency, regularity and other such factors.

Vice Mayor Derwin asked whether one tennis instructor teaching one student on a court would require a Town sanction. According to the current draft, Ms. McDougall said, the answer is “yes,” provided it is paid instruction. She confirmed that this would differ from past practices.

In response to Councilmember Richards’ inquiry about when insurance becomes an issue, Ms. Prince said that she believes insurance questions come into play regardless of whether one or two people are involved or a group of people. Ms. Howard said that her concern stemmed from the lack of parity between the Town-sanctioned lessons taking place on one court and the commercial competitors on a neighboring court.

In terms of determining the need for further regulation, Councilmember Wengert asked whether there have been any citizen complaints about lack of access to facilities due to these activities. Ms. McDougall said she was not aware of any complaints of that nature, but that the issues are more a matter of parity, liability and the need for funds for maintenance.

Councilmember Toben suggested that periodic one-on-one activities probably would fall below the level of discretionary enforcement. The intensity-frequency-regularity triggers and enforcement intervention would come into play, on the other hand, if a coach met weekly with 10 students and monopolized half the courts.

Mayor Driscoll pointed out an additional dimension, describing a scenario in which two instructors are teaching tennis to 10 students each, with one class consisting entirely of out-of-town students. He said that might be another case in which it might be worthwhile to draw a distinction, because the idea is to maintain the facilities primarily for the benefit of Portola Valley residents.

Nate McKitterick, Wayside Road, said that a similar issue came up a couple of years ago when the Town Center was new and staff was asked to enforce a policy of noncommercial use. He said that the ordinance as currently drafted seems overly broad, in that it could apply to a nanny or an elder companion as well as a coach or trainer, and that more precision would be helpful to Town staff as well as residents about what would – and would not – be permissible. He said that it is appropriate to apply the Town’s 50% rule from the General Plan (specifying that in commercial activities at least 50% of the participant/beneficiaries are Town residents).

Mr. McKitterick, Portola Valley Planning Commission chair and an attorney specializing in insurance and indemnification also commented on the liability issue. He did not address the issue of the Town’s tennis pro, but said that if someone is using Town facilities for the intended purpose of those facilities – such as playing basketball on the basketball courts – it may not be appropriate to require specific, additional insurance because the activity poses no additional risk to the Town. He said that he does not believe that San Francisco, Woodside, Los Altos, Los Altos Hills and other communities have such requirements.

Councilmember Toben posed a hypothetical situation of a college student coaching some youth playing basketball, sets up some drills for them and a child gets hurt. The child’s parents sue the coach and name the Town because the Town was aware of the activity. While the activity is within the intended use of the facility (basketball), he said there is still a credible claim of negligence on the part of the coach and, by inference, the Town. Councilmember Toben asked whether these circumstances wouldn’t necessitate additional liability coverage.

Ms. Prince said that she is concerned about the added risk to the Town if it is not named an additional insured. Ms. Howard said that another important point is the fact that Portola Valley is self-insured via the ABAG Plan, which is proactive in the risk-management arena and imposes certain requirements on entities in the pool. Ms. Prince said that she did not check with ABAG for model ordinance language, but did look at ordinances in other communities, such as Menlo Park and Palo Alto. She also said she has reviewed some of the actions other places are taking to address the somewhat related issue of boot camps.

Mayor Driscoll said that he sees two philosophical approaches. In one instance, he said, it could be a sweeping, minimally enforced ordinance that gives the Town substantial power over a broad range of facilities – parks, open space lands and recreational areas owned by the Town. On the other hand, he said, the approach could be to start off with a more defined ordinance that targets a specific, clearly identified problem and modify it as circumstances change. In other words, he said, the starting point might be a tennis court ordinance that later broadens to include fields, and so on down the line. In summary, he said that the problem is much more complicated than the proposed ordinance addresses.

Councilmember Wengert agreed with the latter approach, adding that it might be appropriate for the initial ordinance to be limited to the use of the tennis and sport courts, and further be defined by intensity of use, frequency of use and resident versus non-resident user criteria. She noted, too, that fields have been highly regulated for a long time, with very clear policies and rules in place. Ms. McDougall, in response to a question from Mayor Driscoll, said that to conduct a soccer clinic, for example, a person has to pay a user fee, etc., but that presently no fee would apply to the pitching coach who comes in for a single session with a few children. In response to a question about dog trainers' use of the fields, Ms. McDougall indicated that policy prohibits dogs, but the performance lawn may be an exception, because dog-walkers do often use it.

Mayor Driscoll indicated that perhaps a distinction should be drawn between playing fields and park-like expanses of grass, and suggested that Councilmember Wengert's idea might extend to the playing fields as well as the tennis and sports courts. Mayor Driscoll also said that it is not clear to him whether certain activities are preventing others from using the facilities.

Councilmember Toben, assessing various ways in which the Town might incur liability, described another scenario, that of a trainer conducting a circuit-training class that includes calisthenics on the performance lawn, jumping on and off the retaining wall, and jogging through the Redwood Grove. If someone breaks an ankle while jumping or trips over a root while jogging in the course of that activity, he is concerned about liability if the activity is not regulated. He said that it makes sense to him to cover as many scenarios as possible from the start.

Mayor Driscoll said that he is not inclined to craft an ordinance that requires figuring all of the possible scenarios. Councilmember Toben said he takes the opposite point of view, beginning with something that is more over-arching with enforcement based on judgment and discretion.

Mr. McKitterick said that he is not sure that the field ordinance authorizes the Town to issue citations to people who offer sports classes. Because that has been identified as an issue at least as regards the soccer fields, he said that it would be appropriate to include the fields in the ordinance under discussion. Councilmember Richards and Vice Mayor Derwin said that they agree. Councilmember Richards also said that it is unclear what to target as far as insurance issues go, whether it includes property damage or just personal injury, and whether the insurance issues extend beyond commercial uses.

Mayor Driscoll asked Ms. McDougall to go back and try to incorporate some of the ideas presented, and come back for further discussion. Ms. McDougall said that perhaps the best approach for now would be to aim to regulate only activities that have the potential to make the facilities unavailable to other users. That would exclude one-on-one circuit training, but it would include the tennis and sports courts as well as the performance lawn. Councilmember Wengert reiterated that the ordinance should incorporate the intensity and frequency of use and the resident-nonresident parameters. Mayor Driscoll said that he wanted to avoid regulating the activities of individual residents in their private transactions with individual instructors. He also suggested looking to the ABAG organization for model ordinances.

[Note: With a revised draft to consider, this item is scheduled for the agenda of Town Council meeting on April 13, 2011.]

COUNCIL, STAFF, COMMITTEE REPORTS AND RECOMMENDATIONS [8:10 p.m.]

(6) Discussion and Council Action – Proposed Amendment to Town’s Personnel Policy and Procedures regarding Use of the Community Hall by Town Staff

Ms. Howard said that this proposal is an example of the effort to update policies. The Town adopted a policy enabling full-time staff members to rent the Town’s old Multi Use Room (MUR) at a discounted rate 18 years ago. The current rate for residents to rent Community Hall at the Town Center is \$1,800 plus a refundable \$1,000 cleaning deposit. She said that the discounted facility is a nice perk, but the initial rate is no longer reasonable. She recommended raising the staff fee from the \$200 established in 1993 (with a \$150 cleaning deposit), to either \$550 (which is still less than 30% of what residents pay) or to one-half of the current rate (\$900). She also said that eliminating the policy entirely is another option, but one that she does not favor.

Councilmember Richards said that the lower rate makes sense to him. Councilmember Wengert agreed, suggesting an even \$500 (rather than \$550).

Vice Mayor Derwin said that she had considered suggesting extending the discount to members of the Town Council also, but decided that limiting it to full-time staff seems logical because otherwise it might prove difficult to draw the line.

Councilmember Wengert moved to modify the Portola Valley Personnel Policy and Procedures to establish a rental fee of \$500 for Community Hall rental by salaried, full-time staff. Seconded by Councilmember Richards, the motion passed 5-0.

(7) Reports from Commission and Committee Liaisons [8:15 p.m.]

(a) Planning Commission

Councilmember Toben reported that at its March 2, 2011 meeting the Planning Commission approved a request for modification to Town’s Geologic and Movement Potential Maps for property at 141 Santa Maria Avenue in the Woodside Highlands, and a site-development permit for 9 Redberry Ridge in Blue Oaks.

(b) Emergency Preparedness Committee

The Emergency Preparedness Committee met on March 10, 2011, and Councilmember Toben said that the Committee reviewed its goals for the year, and Vice Chair Craig Taylor described the training metrics that he has put together. After the meeting, Councilmember Toben checked in with Ms. Howard because some of her 2011 performance goals also relate to emergency preparedness. He also said that a Fifth Wednesday training program is scheduled for June 29, 2011, and a friend from Marin County – who has been involved in some extraordinary programs in wildfire evacuation in Mill Valley – will take part.

(c) Parks and Recreation Committee

Councilmember Toben indicated that at the Parks and Recreation Committee meeting on March 21, 2011 members focused on the Ford Field renovation, discussed the proposed ordinance regulating commercial activity at Town parks and recreation areas, and heard from a resident who expressed interested in establishing and funding a skate park in Town.

(d) Committee and Commission Orientation

Councilmember Wengert indicated that she attended the Annual Committee and Commission Orientation meeting on February 28, 2011, as did Vice Mayor Derwin, Ms. Howard and others. She said that it was a

well-attended meeting, with approximately 20 individuals taking part, including several new members of the Trails and Paths Committee. Councilmember Wengert said that it's good to hold this annual meeting, and Ms. Hanlon did a great job of providing information and explaining policies and procedures. Vice Mayor Derwin said that, in the future, everything possible should be done to ensure that all new committee members and committee chairs take part in this event.

(e) Architectural and Site Control Commission (ASCC) resume

Councilmember Richards reported on the ASCC meetings of February 28, 2001, and March 14, 2011. At the former, he said the ASCC reviewed the T-Mobile landscaping plan, continued review of the site development permit application for a new residence at 9 Redberry Ridge in the Blue Oaks Subdivision, a proposal for a new guest house at the 255 Golden Oak Drive property, and also discussed a proposal for an accessory structure, swimming pool and sports court at 55 Golden Oak. During its March 14 meeting, the group continued discussion of the T-Mobile plans, and discussed a remodeling permit application.

(f) Cable & Utilities Undergrounding Committee

Councilmember Richards said that the Cable and Undergrounding Committee, meeting on March 10, 2011, is now up to its full membership again. The group continued its discussion on the PG&E Rule 20A project.

(g) Cultural Arts Committee

Councilmember Richards, noting that Ms. Howard also attended the March 10, 2011 meeting of the Cultural Arts Committee, said that, among other things, the Committee discussed blending Blues & BBQ with the Portola Valley School District's anniversary celebration.

(h) Conservation Committee

At its March 22, 2011 meeting, Councilmember Richards reported, the Conservation Committee, with Marianne Plunder now as chair, asked about the status of the Conservation Element of the Town's General Plan. He said that resident Majda Jones, from Portola Valley Ranch, brought up the subject of mitigating to minimize fire risk without overly zealous clearing, and that resident Derry Kabcenell initiated an interesting discussion about mountain lion sightings. Ms Howard told the Town Council that she followed up with Lt. Larry Schumaker in the Sheriff's Office to inquire about the process for handling reports of mountain lion sightings, and has asked Julia Dillingham to run an educational article about mountain lions in the next *Portola Valley Post*.

Councilmember Richards also said that a Committee member brought up the fact that they were looking at open-space areas, and wanted Mr. Young to provide maps so they can see where the boundaries are.

(i) Council of Cities

Vice Mayor Derwin said that the Council of Cities discussed shared services at its February meeting.

(j) Community Events Committee / Cultural Arts Committee

At the special joint meeting of the Community Events and Cultural Arts Committees on March 1, 2011, Vice Mayor Derwin reported, members divided work for the Portola Valley School District anniversary celebration between the two committees and discussed whether to solicit funds for the open-space program at the event. In a related meeting about the school district celebration, Vice Mayor Derwin and Ms. Howard met with Town Historian Nancy Lund, PV School District Superintendent Tim Hanretty and representatives of the Cultural Arts and Community Events committees to ensure that all parties were in agreement in terms of roles.

(k) (C/CAG) City/County Association of Governments

Vice Mayor Derwin said that the big discussion at the C/CAG focused on the \$2 million for the Safe Routes to School program that will be administered through the San Mateo County School Superintendent's Office. Previous Superintendent Ann Campbell was present, answering questions. C/CAG also elected new Chair, Bob Grassilli of San Carlos, and two new Vice Chairs, Carlos Romero of East Palo Alto and Brandt Grotte of San Mateo. Vice Mayor Derwin said that the group also reviewed and recommended approval of Measure M, the \$10 vehicle registration fee that will give Portola Valley \$75,000 per year for traffic congestion management, stormwater pollution prevention and other programs.

(l) Teen Committee

Although lacking a quorum, the Teen Committee met on March 13, 2011, and Vice Mayor Derwin reported that members are interested in taking part in the Sharing the Bounty project, growing and/or harvesting produce for programs that feed the needy, such as Second Harvest, holding a Movie Night, and launching a new Bill and Jean Lane Civic Involvement Teen program. Vice Mayor Derwin also indicated that one member asked about whether a garden could be planted at the Spring Down property.

Councilmember Toben pointed out that with the new budget year beginning on July 1, 2011, if the Teen Committee wants to have a Movie Night in August, they might be able to apply for an allocation of funding in the 2012 budget. Vice Mayor Derwin said that she would share that information with the Committee.

(m) Safe Routes to School Coalition

Vice Mayor Derwin said that the Safe Routes to School Coalition met to review the idea of a school turnaround at Corte Madera and the possibility of a bus for transportation.

(n) Sustainability Committee

The Sustainability Committee held a special meeting, Vice Mayor Derwin reported, at which Steve Schmidt gave a presentation on the High Energy Home software package. The Committee also discussed smart strips.

(o) Bill Lane Memorial

Vice Mayor Derwin said that she and Ms. Howard, as well as Mr. Young and his entire family, attended a ceremony memorializing the late Bill Lane – a tree-planting event in Humboldt Redwoods State Park – that was organized by the Lanes' daughter, Sharon Lane. Vice Mayor Derwin described the experience as magical.

(p) Trails and Paths Committee

Mayor Driscoll attended the Trails and Paths Committee meeting on March 1, 2011, and reported that the Committee is definitely making progress.

(q) Traffic Committee

Mayor Driscoll reported that the Traffic Committee is the only committee in Town with its charter governed by ordinance, a situation that is in the process of being addressed. A new charter is being drafted and an initiative on bicycles is being discussed.

(r) Other

Mayor Driscoll also reported that in conjunction with the Peninsula Volunteers' Meals on Wheels program; he participated in the annual Mayors on Wheels event, met with Assemblyman Rich Gordon to convey Portola Valley's concerns about the Cargill Saltworks Project, and would be attending a Joint Venture Silicon Valley conference on regionalism at the invitation of the organization's president.

WRITTEN COMMUNICATIONS [8:45 p.m.]

(8) Town Council February 25, 2011 Weekly Digest – None

- a) #2 – Letter to Town Council from Gerald Buchwald regarding Grand Jury Selection – February 22, 2011

Ms. Howard noted that it's not too late to nominate people to serve on the San Mateo County Grand Jury.

(9) Town Council March 4, 2011 Weekly Digest

- a) #4 – Email and attachment to Town Council from Sharon Driscoll regarding the proposal of the Bill and Jean Lane Civic Involvement Program – March 3, 2011

The Town Council unanimously approved the Teen Committee's proposed Bill and Jean Lane Civic Involvement Teen program. This program would provide an opportunity for local high school students (grades 10-12) to experience firsthand the work of various Town committees, and to learn about Town government and the importance of citizen input.

(10) Town Council March 11, 2011 Weekly Digest

- a) #2 – Flyer sent to all Town Residents inviting them to attend the Firewise Workshop: "How to Identify Fire Hazards Around Your Property," on Friday, March 25, 2011

In response to Councilmember Toben, Ms. Howard said that 22 people have registered so far. Mayor Driscoll suggested that it might make more sense to schedule these workshops when fire danger is high.

(11) Town Council March 18, 2011 Weekly Digest

- a) #1 – Letter to John Paul Hanna from Margaret Sloan regarding appeal from Planning Commission action on January 19, 2011 – March 15, 2011

Mayor Driscoll said that this letter was drafted in consultation with the Town Attorney in the interest of finding a negotiated solution to the Neely/Myers application. Meanwhile, Ms. Howard pointed out, the item is on the agenda for the April 27, 2011, meeting of the Town Council.

- b) #2 – Memorandum to Mayor and Town Council from Janet McDougall regarding San Mateo County Chamber of Commerce Diversity Awards – March 18, 2011

The Town Council approved of recommended nominee Nicole Miller for the San Mateo County Chamber of Commerce Diversity Award. As Ms. McDougall noted in her memo, Ms. Miller is a parent volunteer who has provided a high level of support to the students who live in East Palo Alto and attend Ormondale and Corte Madera Schools. She provides the students with breakfast each morning at school after the long bus ride from East Palo Alto, supports their parents who require transportation to and from school events, and coordinates after-school programs (i.e., Brownies) so that these students are able to participate with their fellow students.



Councilmember Toben noted that Ms. Miller was among the candidates who applied for the Trails and Paths Committee, and he said that she is clearly a civic-minded resident.

CLOSED SESSION [8:50 p.m.]

(12) Real Estate Negotiations

Conference with Real Property Negotiator  
Government Code Section 54956.8  
Property: Parcel # 076-261-010, 900 Portola Road  
Negotiators – Town Attorney and Town Manager

REPORT OUT OF CLOSED SESSION: None to Report

ADJOURNMENT [9:25 p.m.]

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Mayor

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Town Clerk