

**CITY OF ARCATA
SPECIAL CITY COUNCIL MEETING**

COUNCIL CHAMBER

JANUARY 21, 2020

An adjourned special meeting of the City Council of the City of Arcata was held on the above date at 6:00 p.m. with Mayor Winkler presiding. Notice of this meeting was posted on January 17, 2020. PRESENT: Winkler, Pitino, Ornelas, Pereira, Watson. ABSENT: None. STAFF PRESENT: City Manager Diemer, City Attorney Diamond, Chief of Police Ahearn, Director of Environmental Services André, Director of Community Development Loya, City Engineer Khatri, Finance Director Starzhevskiy, Environmental Programs Manager Benvie, City Clerk Dory.

FLAG SALUTE

The Pledge of Allegiance was led by Mayor Winkler.

CONSENT CALENDAR

ON MOTION BY ORNELAS, SECONDED BY WATSON, AND WITH A UNANIMOUS VOICE VOTE, THE COUNCIL ADOPTED THE CONSENT CALENDAR FOR JANUARY 21, 2020, AS PRESENTED. AYES: WINKLER, PITINO, ORNELAS, PEREIRA, WATSON. NOES: NONE. ABSENT: NONE. ABSTENTIONS: NONE.

- A. Approve the Minutes of the City Council Meeting of December 4, 2019.**
- B. Approve the Minutes of the City Council Meeting of December 12, 2019.**
- C. Approve the Minutes of the City Council Meeting of December 18, 2019.**
- D. Bi-Weekly Report on General Warrants.**
- E. Award a Construction Contract for the Arcata Valve Vault Installation and Pipe Connections Project to RAO Construction Co., Inc. in the Amount of \$35,392.00; Authorize the City Engineer to Increase the Contract Amount by up to \$7,078.40 (20 Percent for a Total of \$42,470.40) to Allow for Any Unforeseen Contingencies and Additional Work as Necessary; and Authorize the City Manager to Execute all Applicable Documents.**
- F. Adopt Resolution No. 190-47, a Resolution of City Council of the City of Arcata Ratifying the Arcata Fire Protection District's Ordinance No. 19-19 Adopting the 2019 California Fire Code, Title 24, Part 9, Based on the 2018 International Fire Code.**
- G. Accept Grant in the Amount of \$1,100 from the Humboldt Area Foundation for Habitat Restoration in Butcher Slough.**
- H. Accept Grant in the Amount of \$600 from the Humboldt Area Foundation for the Arcata Ridge Trail.**
- I. Adopt Resolution No. 190-48 Amending the Loan Terms and Funding Commitment for the Isackson's Affordable Housing Project.**

OLD BUSINESS

A. Provide Direction on Ordinance No. 1527, An Ordinance of the City Council of the City of Arcata Amending Chapter 3.5 of Title V of the Arcata Municipal Code, to Establish Regulations Related to Single-Use Disposable Foodware Items and Plastic Bottle Restrictions, Title V—Sanitation And Health, Chapter 3.5—Waste Reduction; Requiring All Single-Use Disposable Foodware (SUDs) be Compostable as Defined in the Ordinance; Encouraging Reusable Foodware and Dispensers; Allowing Businesses to Charge a “Take-Out” Fee to Encourage Customer Use of Reusable Containers; and Prohibiting the Sale or Distribution of Single-Use Plastic Beverage Containers at City Facilities and Events.

Environmental Programs Manager Benvie introduced the ordinance for the Council. She said the key points were a ban on non-compostable, single-use foodware as well as single-use beverage containers at City facilities. She went on to state that the ordinance would require single-use disposable foodware to be fiber based and compostable. Accessory foodware items, such as stir sticks and cup sleeves, would be provided to consumers only upon request. Businesses would be required to use reusable foodware onsite and to charge 25 cents for takeout containers showing that charge on the receipt. She noted that the ordinance did include exemptions and waivers. She stated that the ordinance would not apply to prepackaged foods and foodware items composed entirely of aluminum would be exempt. She further stated that disposable foodware items not yet readily available in compostable form would be exempt until the items were readily available.

There were several instances in the ordinance where the Council was asked to make a choice from options provided by staff. Staff and the Council reviewed those items and the Council stated its preferences.

Mayor Winkler invited public comment.

Joe from the Humboldt Chapter of the Surfrider Foundation, appeared before the Council and spoke in support of the ordinance. He described the Foundation's Ocean Friendly Restaurant Program which encouraged restaurants to not use single-use plastics.

An unidentified member of the audience appeared before the Council and spoke in support of the ordinance, as well as recommending a definition of "compostable" that referred to items compostable in a healthy manner.

Jeff Sterling appeared before the Council and spoke in support of banning plastic beverage bottles except bottled water.

Jeff Myer, Mendes Supply, appeared before the Council and spoke in support of the ordinance. He said he had many very advanced items available for his customers. He spoke to the cost of items that conformed to the ordinance and said in some cases the cost differences were outrageous. He stressed the importance of education for the businesses.

Carl Pellatz, representing the Board of Directors of the Humboldt Crabs, appeared before the Council and said the Board was in support of the ordinance, but was concerned about the initial cost noting that a compostable beer cup cost three times the price of the cups they currently offered. He also said they were concerned with how quickly they would have to come into compliance and were concerned about keeping costs down for their fans.

Skylar Fisher, a Humboldt State University student, appeared before the Council, spoke in support of the ordinance, and said the Council needed to take this first step to phase out single-use plastics.

Larry Glass, Northcoast Environmental Center, appeared before the Council and encouraged it to not be timid with the ordinance. He spoke about the pollution caused by the use of plastics.

An unidentified member of the audience appeared before the Council and encouraged the Council to take a leadership role in the state and be aggressive.

Maggie Gainer, Zero Waste Humboldt and the Northcoast Environmental Center, appeared before the Council and asked it to be sure the ordinance had current and correct legal and environmental definitions. She recommended the Council, if it chose not to be bold, make a strong commitment for an annual evaluation of the ordinance. She also recommended renters of City facilities be required to track their waste.

Joanne McGarry appeared before the Council and urged it be aggressive and adopt the ordinance.

Mayor Winkler closed the public comment period.

PITINO MOVED TO CHOOSE OPTION A FOR THE DEFINITION OF BOTTLED BEVERAGE IN SECTION 5476, "DRINKING WATER, SPARKLING WATER, ENHANCED WATER, SODA, SPORTS DRINKS, JUICE, OR OTHER SIMILAR PRODUCT IN A RIGID PLASTIC BOTTLE HAVING CAPACITY OF TWENTY-ONE FLUID OUNCES OR LESS, AND INTENDED PRIMARILY AS A SINGLE-SERVICE CONTAINER."

PITINO WITHDREW HIS MOTION.

The Council continued to state its preferences of the options provided in the ordinance.

Mayor Winkler again invited public comment.

Maggie Gainer, Zero Waste Humboldt, appeared again before the Council and said this would require a cultural shift and that research had shown that penalties did work to change behavior, such as charging for take-out containers.

Jeff Myer appeared again before the Council and spoke about the cost burden to local businesses if required to purchase single-use plastic items that conformed to the ordinance. He urged the City to provide more education for local businesses.

An unidentified member of the audience appeared before the Council and recommended it adopt and enforce the ordinance immediately.

An unidentified member of the audience appeared before the Council stating the situation was dire and suggested the City could subsidize local businesses to conform with this improvement.

An unidentified member of the audience appeared before the Council and asked if there was a plan for the use of any forfeited deposits by renters of City facilities suggesting the funds could go toward a local processing facility.

Scott Alexander from Carl's Jr., Arcata, appeared before the Council and said their fiber-based and clay products were compostable, but not locally. He expressed his concern about the requirement for reusable foodware for onsite dining. He expressed his support for the ordinance and hoped to have valid options so he could continue doing business in Arcata.

Mayor Winkler closed the public comment period.

BY GENERAL CONSENSUS, THE COUNCIL AMENDED THE DRAFT ORDINANCE BY MAKING THE FOLLOWING CHOICES FROM THE OPTIONS PRESENTED BY STAFF:

SECTION 5476 DEFINITIONS.

B. "BOTTLED BEVERAGE" MEANS DRINKING WATER, SPARKLING WATER, ENHANCED WATER, SODA, SPORTS DRINKS, JUICE, OR OTHER SIMILAR PRODUCT IN A RIGID PLASTIC BOTTLE HAVING CAPACITY OF TWENTY-ONE FLUID OUNCES OR LESS, AND INTENDED PRIMARILY AS A SINGLE-SERVICE CONTAINER.

F. "COMPOSTABLE" MEANS MATERIALS IN THE PRODUCT OR PACKAGE ARE FIBER-BASED AND WILL BREAK DOWN INTO, OR OTHERWISE BECOME A PART OF, USABLE COMPOST (E.G., SOIL-CONDITIONING MATERIAL, MULCH) IN A SAFE AND TIMELY MANNER. PRODUCTS OR PACKAGES MADE WITH PLASTICS, EITHER PETROLEUM OR BIOLOGICAL BASED, OR MADE WITH FLUORINATED CHEMICALS SHALL NOT BE CONSIDERED COMPOSTABLE.

REMOVE H. "EVENT" MEANS ANY ACTIVITY WHICH REQUIRES A PERMIT PURSUANT TO TITLE X, PUBLIC PROPERTY, CHAPTER SECTION 10006 OR SECTION 11001 WITH FIFTY OR MORE PERSONS IN ATTENDANCE.

REMOVE O. "PARTICIPANT ATHLETIC EVENT" MEANS AN EVENT IN WHICH A GROUP OF PEOPLE COLLECTIVELY WALK, JOG, RUN, BICYCLE OR

OTHERWISE PARTICIPATE IN SPORT OR SIMILAR ACTIVITY ON CITY PROPERTY.

SECTION 5478.4 DISPOSABLE FOODWARE CHARGES. (COUNCILMEMBER ORNELAS DISSENTING)

C. FOOD VENDORS AND FOOD PROVIDERS SHALL CHARGE CUSTOMERS TWENTY-FIVE CENTS (\$0.25) FOR THE DISPOSABLE FOODWARE PROVIDED. IN ADDITION, FOOD VENDORS AND FOOD PROVIDERS SHALL PROVIDE A MINIMUM TWENTY-FIVE CENT (\$0.25) DISCOUNT FOR CUSTOMERS WHO BRING THEIR OWN REUSABLE FOODWARE FOR TAKE-OUT FOOD. FOOD VENDORS OR FOOD PROVIDERS MAY PROVIDE A LARGER DISCOUNT AT THEIR OWN DISCRETION.

SECTION 5478.8 WAIVERS.

B.1. NO DISPOSABLE FOODWARE ITEM EXISTS WITH SUBSTANTIALLY SIMILAR SIZE, PERFORMANCE, AND/OR UTILITY THAT CONFORMS WITH THE DISPOSABLE FOODWARE STANDARDS AT SECTION 5478.6 OR, IF SUCH AN ITEM EXISTS, THE PURCHASE OF SUCH ITEM WOULD COST 200% MORE THAN THE PURCHASE OF A NON-CONFORMING DISPOSABLE FOODWARE ITEM.

SECTION 5478.10 ADMINISTRATION, ENFORCEMENT, AND PENALTIES.

B. VIOLATIONS OF SECTIONS 5478.3-5478.9 SHALL BE ENFORCED BEGINNING JANUARY 1, 2021. VIOLATIONS OF ALL OTHER PROVISIONS OF THIS ARTICLE ARE SUBJECT TO ENFORCEMENT AT ALL TIMES.

SECTION 5479.1 SALE AND DISTRIBUTION OF SINGLE-USE PLASTIC BOTTLED BEVERAGES ON CITY PROPERTY RESTRICTED.

A. NO PERSON MAY SELL OR DISTRIBUTE BOTTLED BEVERAGES AT ANY ACTIVITY FOR WHICH THE CITY HAS ISSUED A PERMIT ALLOWING THE ACTIVITY TO BE HELD IN OR ON CITY PROPERTY.

B. IN THE EVENT THAT CONTAINERS GREATER THAN TWENTY-ONE OUNCES IN SIZE ARE UTILIZED, SINGLE-USE CONTAINERS (E.G., SINGLE-USE CUPS) MAY BE USED IN THE SERVING OF BEVERAGES BUT MUST CONFORM TO THE REQUIREMENTS PURSUANT TO ARTICLE 3--FOODWARE WASTE REDUCTION.

SECTION 5479.3 EXEMPTIONS.

REMOVE E. THE PROVISIONS OF THIS ARTICLE SHALL NOT APPLY TO THE SALE OR DISTRIBUTION OF BOTTLED BEVERAGES TO PARTICIPANTS OF A PARTICIPANT ATHLETIC EVENT.

SECTION 5478.4 ADMINISTRATION, ENFORCEMENT, AND PENALTIES.

E. ANY VIOLATION OF THIS ARTICLE MAY RESULT IN FORFEITURE OF UP TO THE ENTIRE AMOUNT OF THE VIOLATING PERMIT HOLDER'S FACILITY USE DEPOSIT, IF ANY, IN THE DISCRETION OF THE CITY MANAGER.

F. IN ADDITION TO ANY OTHER REMEDY AVAILABLE, ANY VIOLATION OF THIS ARTICLE BY ANY PERSON IS SUBJECT TO THE FOLLOWING ADMINISTRATIVE FINES PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 53069.4, AND PURSUANT TO TITLE I, CHAPTER 3 OF THE ARCATA MUNICIPAL CODE.

ON MOTION BY WATSON, SECONDED BY PEREIRA, AND WITH A UNANIMOUS VOICE VOTE, THE COUNCIL INTRODUCED ORDINANCE NO. 1547, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARCATA AMENDING CHAPTER 3.5 OF TITLE V OF THE ARCATA MUNICIPAL CODE, TO ESTABLISH REGULATIONS RELATED TO SINGLE USE DISPOSABLE FOODWARE ITEMS AND PLASTIC BOTTLE RESTRICTIONS, AMENDED AS ABOVE; WAIVED READING OF THE TEXT AND CONSENTED TO READ BY TITLE ONLY. AYES: WINKLER, PITINO, ORNELAS, PEREIRA, WATSON. NOES: NONE. ABSENT: NONE. ABSTENTIONS: NONE.

RECESS: The Council recessed from 8:00 to 8:08 p.m.

B. Consider Approval of the Creek Side Mixed Occupancy Residential Annexation Project.

Mayor Winkler recused himself from the discussion and vote on this item as he did consulting work for the applicant, Danco. He left the Council Chamber at 8:00 p.m. Vice Mayor Pitino commenced to preside over the meeting.

Director of Community Development Loya told the Council that staff was looking for its input and that it anticipated the introduction of documents relative to the project at the Council's February 5, 2020, regular meeting. He described the project in detail. He noted that the project currently provided two access points to Foster Avenue which would be extended westward from the current City limits to join the portion of Foster Avenue currently in the County. He noted that the conservation easement would prevent further development westward into the Arcata Bottom and would have a requirement for organic practices recorded on the title.

Vice Mayor Pitino invited public comment.

Chris Dart, agent for Foster Avenue, LLC, appeared before the Council and acknowledged that all the issues brought up at the last Council meeting had been addressed by staff and he did not oppose any of them.

An unidentified member of the audience appeared before the Council and asked if improved emergency response time had been addressed in the planning for this project.

Oz of Plaza Point appeared before the Council and expressed concerns relative to water supply, wastewater capacity, and public safety on the trails.

An unidentified member of the audience appeared before the Council and expressed concerns relative to sea level rise stating this was not a good spot to build.

Vice Mayor Pitino closed the public comment period.

Director of Community Development Loya responded that sea level rise was addressed in the draft Environmental Impact Report. He said staff's response in the final EIR used the National Oceanic and Atmospheric Administration's sea level rise of 10 feet in the next 50 years which did not get close to the project site. He said that the fire and police departments both felt they could handle the new project with their current and planned service levels. He also noted that the project would pay toward the cost of a new water tank in Zone 1 and pay a wastewater impact fee and wastewater connection fees toward planning efforts to assure adequate future capacity of the wastewater treatment plant.

ON MOTION BY ORNELAS, SECONDED BY PEREIRA, AND WITH A FOUR-TO-ZERO VOICE VOTE WITH ONE ABSENCE, THE COUNCIL CONTINUED THE PUBLIC HEARING TO FEBRUARY 5, 2020, AT 6:00 P.M., IN THE COUNCIL CHAMBER. AYES: PITINO, ORNELAS, PEREIRA, WATSON. NOES: NONE. ABSENT: WINKLER (RECUSED). ABSTENTIONS: NONE.

RECESS: The Council recessed from 8:55 to 9:00 p.m.

NEW BUSINESS

A. Introduce Ordinance No. 1526, An Ordinance of the City Council of the City of Arcata Amending the Arcata Municipal Code Title VII (Public Works), Chapter 3 (Water), Article 9 (Discontinuance of Service); Waive Reading of the Text, and Consent to Read by Title Only.

Mayor Winkler returned to the Council Chamber at 9:00 p.m. and commenced to preside over the meeting.

City Attorney Diamond explained that this ordinance would implement the City's policy for discontinuation of water service for residential customers due to non-payment. She said the policy implemented state law and the ordinance would update the Municipal Code. She noted that the ordinance included findings to enable it to go into effect immediately upon adoption.

Mayor Winkler invited public comment.

An unidentified member of the audience spoke in favor of adoption of the ordinance.

Mayor Winkler closed the public comment period.

ON MOTION BY PEREIRA, SECONDED BY ORNELAS, AND WITH A UNANIMOUS VOICE VOTE THE COUNCIL INTRODUCED ORDINANCE NO. 1526, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARCATA AMENDING THE ARCATA MUNICIPAL CODE TITLE VII, PUBLIC WORKS, CHAPTER 3,

WATER, ARTICLE 9, DISCONTINUANCE OF SERVICE. AYES: WINKLER, PITINO, ORNELAS, PEREIRA, WATSON. NOES: NONE. ABSENT: NONE. ABSTENTIONS: NONE.

B. Small Cell (5G) Wireless Facilities.

City Attorney Diamond said this was agenda item was the first step in implementing the Council's priority project to adopt ordinances to accommodate 5G technology including updating the Land Use Code to set out a regulation framework, adopting a fee schedule, consider removing exclusions for three-foot and less antennas, and consider consulting with Humboldt State University. She said staff was looking for additional direction from the Council because there were developments from the Federal Communications Commission (FCC) that had made the deployment of small cell wireless facilities much easier and regulation by the City much more difficult. She said that under the new FCC order, small cell facilities, which are small antennae about 15-inches high and spaced relatively close together, are principally permitted almost anywhere on publicly owned property. She reminded the Council that the incentive behind the Council's priority project was for the City to develop a regulatory infrastructure to accommodate this build-out as it came. She explained that the policy direction staff was first seeking had to do with how far the Council wanted staff to go with this because the small cell order was currently under litigation. She said that under the current order, the City could implement a ministerial program similar to a building permit for installation of a small cell facility and the fees for that would be capped. She stated that the second direction staff was seeking was if the Council wanted staff to analyze the Land Use Code for an update to address small cell facilities. Finally, the third question was if the Council wanted staff to look into a dig-once policy.

On inquiry by Councilmember Watson, City Attorney Diamond confirmed that the City could not ban 5G facilities in the City.

On inquiry by Councilmember Winkler, City Attorney Diamond said that under the current order, the City could not regulate small cell facilities based on health impacts different than currently addressed in the regulations, could not require a greater distance between antennae, could not require antennae be farther away from buildings, etc.

Councilmember Pereira said she felt it was prudent for the City to establish a framework.

Councilmember Pitino said he supported requiring building permits and charging fees therefor.

Councilmember Ornelas said she was in support of developing a dig-once policy.

Councilmember Watson expressed his support for amending the Land Use Code and creating a fee structure as much as possible.

Mayor Winkler invited public comment.

Matt Landman, a resident of Arcata, appeared before the Council and told it that Mill Valley, California, had banned 5G from residential neighborhoods. He asked the Council to create an independent research committee to assess proximity and cumulative exposure health implications of evolving 5G technology while especially considering children and pregnant women. He asked the Council to delay any decisions until it had studied research.

An unidentified member of the audience appeared before the Council and said the impacts to people of 5G technology was unknown. She encouraged the Council to pull out all the stops to slow this indefinitely. She also supported the creation of a research committee.

An unidentified member of the audience appeared before the Council and asked it to think about the impacts and include indigenous people in its decision making and follow their lead.

Joanne McGarry appeared before the Council and recommended it do everything it could to oppose this type of big brother behavior. She recommended the City join other communities in stalling this.

An unidentified member of the audience appeared before the Council and proposed it ban the location of 5G technology anywhere near schools or children.

Oz of Plaza Point appeared before the Council and asked the Council to think of the children and grandchildren. He asked how we could get faster communications while keeping health and safety in mind.

Mayor Winkler closed the public comment period.

BY GENERAL CONSENSUS, THE COUNCIL ASKED FOR CLARIFICATION OF MILL VALLEY'S ORDINANCE.

BY GENERAL CONSENSUS, THE COUNCIL STATED IT WAS NOT OPPOSED TO HOLDING A TOWN HALL MEETING ON THE SUBJECT AFTER IT HAD RECEIVED MORE INFORMATION.

ORAL AND WRITTEN COMMUNICATIONS

Mayor Winkler invited public comment.

Ten unidentified members of the audience appeared before the Council and read a statement by David Josiah Lawson on what it meant to be a man in the 21st century. They advocated for justice for David Josiah Lawson.

Dese Maynard appeared before the Council and noted that the City spent money on police officers for meetings, but had not solved the murder of David Josiah Lawson.

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An unidentified member of the audience appeared before the Council and said that in the next election, people would vote for human rights and dignity. He asked what the Council could do to heal the grievous wound to the community.

An unidentified member of the audience appeared before the Council and denounced the presence of police officers at the meeting.

Mayor Winkler closed the public comment period.

ADJOURNMENT

The meeting was adjourned at 10:30 p.m.

Respectfully submitted,

Bridget Dory
City Clerk