

**MINUTES OF THE ADJOURNED REGULAR MEETING OF THE
GOVERNING BOARD OF THE MIDWAY CITY
SANITARY DISTRICT OF ORANGE COUNTY
14451 CEDARWOOD AVENUE
WESTMINSTER, CA 92683**

May 25, 2010

10:00 A.M.

CALL TO ORDER

President Neugebauer called the adjourned regular meeting of the Governing Board of the Midway City Sanitary District to order at 14451 Cedarwood Avenue, Westminster, on Tuesday, May 25, 2010 at 10:00 a.m.

BOARD MEMBERS PRESENT:

Tyler Diep (late arrival, 10:11 a.m.)
Grace P. Epperson
Joy L. Neugebauer
Al P. Krippner
Margie L. Rice (late arrival, 10:28 a.m.)

OTHERS AT MEETING:

Greg Nordbak, General Manager
Robert Housley, Finance Director
Tom Nixon, District Counsel
Dave Larsen, District Labor Counsel
Julia Sales, Administrative Secretary

PLEDGE AND INVOCATION

Director Krippner led the Pledge of Allegiance. Director Epperson gave the Invocation.

PUBLIC COMMENTS:

No public comment.

OLD BUSINESS

- A. Financial Statements for the 3rd Quarter, July 1, 2009 – March 31, 2010

Finance Director Housley summarized the Financial Statements for the 3rd Quarter.

President Neugebauer asked why assets are split into two different groups.

Finance Director Housley explained that the short term and long term assets are separated.

Director Krippner asked why the net asset is up 1.7 million.

Finance Director Housley explained that the revenue component is high at this time of year because the expenses for April, May and June still have to be paid out.

Director Krippner asked if this is still revenues from the user fee increase five years ago.

Finance Director Housley explained that all the funds are accounted for in operating or capital projects: the funds are used towards the District's debt, capital projects, and increasing the reserves, since MCSD expenses have been declining in the past few years, some of the reserve funds have been used.

Director Krippner explained that he just wanted to clarify that MCSD doesn't get into spending too much of the Reserves.

GM Nordbak explained that the District could be Revenue negative starting next year.

President Neugebauer stated that is what the Reserves are for.

President Neugebauer confirmed with Staff that they will be sure that the April & May revenue numbers are included for the Budget Study Session on June 8th, as the numbers in the report are just given to the end of March 31.

GM Nordbak confirmed that April numbers are now in the Budget.

Discussion ensued.

Director Krippner asked Finance Director Housley when the year-end results would be ready.

Finance Director Housley reported that the year-end results will be presented at the first meeting in August 2010.

GM Nordbak asked the Board if they would like to wait for Director Rice who called and said she would be late due to a death in her family.

Discussion ensued.

Director Diep arrived at 10:11 a.m.

NEW BUSINESS

- A. Consider Letter of Engagement for independent audit services, retaining the audit firm Leaf & Cole LLP. for the Fiscal Year 2009-10.

Discussion ensued.

A motion was made by Director Diep seconded by Director Epperson to approve to retain Leaf & Cole, LLP. for the District's independent Auditor for Fiscal Year 2009-10. The motion was approved by the following vote:

AYES: Directors Diep, Epperson, and Neugebauer
NOES: Director Krippner
ABSENT: Director Rice

Discussion ensued.

The Board agreed to break and wait for Director Rice to arrive before starting New Business "9B"-Consider the Fiscal Year 2010-11 Operating Budget, Capital Improvement Projects and Reserves.

President Neugebauer convened a break at 10:21 a.m.

Director Rice arrived at 10:28 a.m.

President Neugebauer reconvened the meeting to open session at 10:29 a.m.

- B. Consider the Fiscal Year 2010-11 Operating Budget, Capital Improvement Projects and Reserves.

GM Nordbak gave a brief introduction of the proposed Budget for Fiscal Year 2010-11 for the Board and thanked the Board for their patience with Staff while preparing the Budget for Fiscal Year 2010-11.

Finance Director Housley presented the Power Point Presentation on the proposed Budget for Fiscal Year 2010-11 for the Board.

There were many questions and answers and discussions regarding the proposed Budget.

The Board set the third Budget meeting for Tuesday, June 8, 2010 at 10:00 a.m.

A motion was made by Director Rice seconded by Director Diep to approve to have the next Budget Session at 10:00 a.m. on Tuesday, June 8, 2010. The motion was approved by the following vote:

AYES: Directors Diep, Epperson, Krippner, Neugebauer and Rice
NOES: None

The Board discussed whether to go to Closed Session now, or continue with Item "C".

C. Consider Implementation of Authorized Residential User Fee Rates for FY 2010-2011 for Sanitary Sewer and Solid Waste Services and Review of Ratepayer Notice

Legal Counsel Tom Nixon explained that the rates that are set go into effect on July 1st for both the sewer and solid waste rates for each year. There are two components for implementing residential User Fee Rates: first, each year the District is required to hold a public hearing and to adopt a Resolution requesting that the assessor's office collect the sewer and solid waste fees on the tax rolls: At the last Board Meeting, this annual process occurred and the public hearing is set for June 22, 2010: second, for this year is adjusting rates within the maximum authorized by Ordinance 64 of the District, in the year 2005 when the District conducted its Proposition 218 process, there was no specific legislative guidance on the process for implementing fees over time. Effective January 2009, there was new legislation that established a procedure for Agencies to adopt schedules for water, sewer, and trash fee adjustments for periods not to exceed five years and also to allow pass through for wholesale water increases. There is no case law addressing how this specifically applies to the Districts step fee increases that were adopted in the year 2005, but if the District does follow the new legislation, the District is required to send out notice to all of the District's rate payers at their billing services address 30 days in advance of establishing the fee.

Legal Counsel Tom Nixon referred to the CASA Conference where there were attorney's giving a Proposition 218 process and there was a split in opinion of whether or not the new legislation applies to what MCSD is doing now, but certainly this is the safest procedure from the legal perspective to provide the notice. If MCSD doesn't provide the notice and it is found that MCSD should have provided the 30 day notice, it will be a process of refunding rate payers. There is no case authority on it at this point, but it is his legal recommendation, if the District is going to adjust rates and to protect MCSD, to comply with the new legislative process and provide a 30 notice. This would require MCSD to have notices in the mail by June 1, 2010.

President Neugebauer clarified that the reason this was a high priority was to avoid the District paying a \$22,000 mailing, otherwise, this would have been considered at the mid-year Budget for next year, but MCSD still needs to spend the \$22,000 and mail to every rate payer.

Legal Counsel Tom Nixon stated "If in fact, there is an adjustment going into effect on July 1, 2010, this is his recommendation.

Director Rice explained that the rate payers are to be notified of any rate adjustment, even though it is covered under the Proposition 218, but if MCSD waits until next year, then the Proposition 218 process will need to be done again, which is more expensive. She doesn't agree to increase the rate to \$46.80, but \$23.40 (half) would be more reasonable.

Director Rice made a motion to raise the Sewer and Solid Waste User Fee to \$23.40. (The motion failed due to no second.)

There was continued discussion on the rate increase amount.

A motion was made by Director Rice seconded by Director Krippner to approve to notify the people that there might be a rate increase. The motion was approved by the following vote:

President Neugebauer voiced that it is premature to make a decision of this greatness with great impact on the Districts rate payers when the Board has not finished the District's Budget studies and have not adopted a Budget for the year. It is premature and it makes much more fiscal sense to look at this at midyear Budget review time, when this year's Budget is completed and the Board knows how much revenue has been generated.

Director Rice explained it is required to give notice to the public and be prepared in case the Board decides to increase the rate. The deadline is now and it needs to be prepared.

Director Krippner agreed with Director Rice.

President Neugebauer asked Director Rice, "How are you going to spend \$19 million dollars reserves by midyear?"

AYES: Directors Krippner, and Rice

NOES: Director Diep, President Neugebauer and Director Epperson

President Neugebauer announced that the motion failed 3-2.

President Neugebauer wants her statement recorded about the \$19 million reserve and the Budget not yet adopted for this year and that it is a premature vote and she would consider this at the midyear Budget review.

Director Rice wants it recorded in the minutes that by not acting today it is too late for this year and the District will now have to do the Proposition 218 notification and the entire process next time.

CLOSED SESSION

President Neugebauer convened the meeting to closed session at 11:33 a.m. pursuant to subdivision (b) Government Code Section 54957.6.

CLOSED SESSION: During the course of conducting the business set forth on this agenda as a regular meeting of the Board, the Chair may convene the Board in closed session to consider matters of pending real estate negotiations, pending or potential litigation, or personnel matters, pursuant to Government Code Sections 54956.8, 54956.9, 54957 or 54957.6, as noted.

Reports relating to (a) purchase and sale of property; (b) matters of pending or potential litigation; (c) employment actions or negotiations with employee representatives; or which are exempt from public disclosure under the California Public Records Act, may be reviewed by the Board during a permitted closed session and are not available for public inspection. At such time as the Board takes final action on any of these subjects, the minutes will reflect all required disclosures of information.

A. CONFERENCE WITH LABOR NEGOTIATORS (Govt. Code 54957.6)

Agency Designated Representative: General Manager Nordbak,
Assistant General Manager Robbins, Finance Director Housley and
Labor Counsel Dave Larsen

Employee Organization: American Federation of State, County, and
Municipal
Employees, LOCAL 1734-01

President Neugebauer reconvened the meeting to open session at 12:07 p.m.

Legal Counsel Tom Nixon stated that there was no reportable action in Closed Session.

BOARD CONCERNS/COMMENT

No comment/concerns at this time.

STAFF CONCERNS

No comment/concerns at this time.

INFORMATIONAL ITEMS

There were no informational items on this agenda, other than what is in the Board's folders from GM Nordbak.

ADJOURNMENT

President Neugebauer adjourned the meeting at approximately 12:08 p.m.

Al P. Krippner, Secretary