

MINUTES



County of Inyo Board of Supervisors

March 10, 2020

AMENDED BY BOARD ORDER 02.08.22

The Board of Supervisors of the County of Inyo, State of California, met in regular session at the hour of 10:01 a.m., on March 10, 2020, in the Board of Supervisors Room, County Administrative Center, Independence, with the following Supervisors present: Chairperson Matt Kingsley, presiding, Dan Tothoroh, Jeff Griffiths, Rick Pucci, and Mark Tillemans.

- Pledge* Chairperson Kingsley led the Pledge of Allegiance.
- Public Comment* Chairperson Kingsley asked for public comment during the first public comment period and there was no one wishing to address the Board.
- County Department Reports* Clerk-Recorder Kammi Foote read aloud a prepared statement about the tragic events that happened on election night as staff and volunteers delivered and counted ballots from the March 3 Primary. Chairperson Kingsley asked all in attendance to rise for a moment of silence for poll worker Jim Hartshorn, the husband of Assistant Clerk-Recorder Michele Hartshorn.
- HHS Director Marilyn Mann provided an update regarding COVID-19 and the Public Health Division's efforts to address and respond to ever-emerging information.
- Chief Probation Officer Jeff Thomson offered congratulations to the Board and staff for the March 6 groundbreaking for the Consolidated Office Building. He also reported on two trips to Death Valley School District to offer presentations on the pitfalls of texting while driving.
- Public Comment Reopened* Philip Anaya of Bishop reported on the dangers of Census-takers possibly spreading coronavirus as they go door-to-door.
- CAO-Adv. County Resources – Film Commissioner Oral Report* Film Commissioner Chris Langley delivered to the Board his annual spring oral report on filming activity in Inyo County.
- CAO-Adv. County Resources – Final FY 18-19 CPSP Payments* Moved by Supervisor Tillemans and seconded by Supervisor Tothoroh to approve final payments of \$1,250 from the 2018-19 Advertising County Resources Budget to the Friends of the Eastern Sierra Tri-County Fairgrounds for the 2019 Tri-County Fair Grandstand Entertainment. Motion carried unanimously.
- Recycling & Waste Management – Geo-Logic Amendment 1* Moved by Supervisor Tillemans and seconded by Supervisor Tothoroh to approve Amendment No. 1 to the contract between the County of Inyo and Geo-Logic Associates of Grass Valley, CA, increasing the contract limit payable under the Agreement from \$584,005 to a not-to-exceed amount of \$622,480, and authorize the Chairperson to sign, contingent upon all appropriate signatures being obtained. Motion carried unanimously.
- Public Works – AWD Vehicle Purchase* Moved by Supervisor Tillemans and seconded by Supervisor Tothoroh to authorize the purchase of one (1) mid-sized 5-passenger utility AWD vehicle, a 2020 Toyota RAV4 LE AWD, from Perry Motors, Inc. of Bishop, CA in an amount not to exceed \$27,336.41. Motion carried unanimously.
- Public Works – Mazourka Shop* Moved by Supervisor Tillemans and seconded by Supervisor Tothoroh to approve proposed Resolution No. 2020-09, titled, "A Resolution of the Board of Supervisors of the County of Inyo, State of California Authorizing the Recording of a Notice of Completion for the Mazourka Shop

*Fencing Project
N.O.C./Reso
#2020-09*

Fencing Project,” and authorize the Chairperson to sign. Motion carried unanimously.

*Emergency Services
– INF Wildfire
Mitigation
Presentation*

The Board received a presentation from Inyo National Forest representatives on the agency's wildfire mitigation efforts and plans.

*HHS-Public Health –
Tobacco Ordinance
Approval Delayed*

After a lengthy discussion last week for the first reading of a proposed ordinance to create a tobacco retailer license, Inyo County Public Health and Tobacco Control staff presented the ordinance to the Board for enactment. Staff briefly reviewed the ordinance, titled, An Ordinance of the Board of Supervisors of the County of Inyo, State of California Amending the Inyo County Code to Add Chapter 5.45 to the Inyo County Code Regarding the Regulation of Tobacco Product Sales and Requiring the Licensure of Tobacco Retailers."

The Chairperson opened the floor to public comment.

The Board heard comments from Ken Sample, Cindy Steffen, Daniel Brown, the owner of Bishop Smoke Shop, Chasity Logan, and an employee of the Shell Mart in Independence. Sample, Steffen, Brown, Bishop Smoke Shop's owner, and the Shell employee objected to the extra layer of regulations (which might reduce their customer base), government interfering with private enterprise, what they deemed was inadequate notice of the proposed ordinance, government putting the onus on businesses to protect children but not holding parents accountable, youth use statistics that might not be truly reflective of reality, the setting of minimum prices for tobacco products, and retailers on the Reservation not being subject to the regulations. They explained their concern that if they were forced to raise their prices to meet minimum requirements, customers will go to the Reservations to buy their products instead. They also questioned why the County was looking at additional regulations for retailers instead of cessation and educational efforts targeted at youth. Logan was concerned specifically with the proposed ban of all vaping products, noting that vaping has saved her life by helping her to get off cigarettes.

Staff and Board members in response noted that the proposed ordinance and last week's hearing were both advertised in the newspaper, and letters were sent to retailers in the unincorporated parts of the county – not the City of Bishop where two of the three commenters own stores. It was also noted that while the County's ordinance will not affect the City of Bishop or Reservations, staff is actively working with the City and Tribes to adopt similar regulations to ensure consistent policies regionwide; there just isn't a mechanism to allow all local governments to adopt the measures simultaneously. Public Health staff also reported they sent a survey out to all retailers in the County several months ago, with all but two responding as to how different iterations of tobacco bans would impact their businesses. Deputy HHS Director-Public Health and Prevention Anna Scott said staff opted not to pursue a total flavored tobacco ban, like Mono County has instituted, based on feedback from retailers and the Board.

Discussion continued about youth tobacco usage statistics, what other jurisdictions are doing to address the issue, and federal and state legislation related to flavored tobacco products.

Chairperson Kingsley thanked the retailers in attendance. He noted he has been on the Board for 7 years and the Board does not go out of its way to restrict private enterprise. He said Inyo County doesn't even have a business license and the Board generally doesn't consider adding regulations for business owners. He said the County is trying to thread a needle to not overburden retailers while taking actions to keep tobacco products out of youth hands. He said he hoped the County could work with the Tribes and City to ensure an even playing field. Chairperson Kingsley added that the County needs to provide some leadership so the other entities will follow suit, at the very last where a ban on flavored vaping products is concerned. He noted that the ordinance does not propose banning the use of vaping products, just the sale of them. He proposed delaying approval of the ordinance until it can be brought back with the price control elements removed.

Supervisor Totheroh said everything in the proposed ordinance is meant to address the problem of youth tobacco use, and is based on health studies and statistics and retailer

feedback. He noted that information provided by Public Health indicates that minimum packing and price requirements do impeded underage access to the products. He added that the Board has given a chance for all constituents to weigh in on the issue, including the 80 healthcare professionals and educators who turned in 80 letters to the Board in support of the regulations.

Supervisor Griffiths said this process started a year ago when Mono County adopted its tobacco regulations and encouraged a regional approach. He said it's been clear in his mind that certain products are specifically marketed to youth – such as candy-flavored tobacco products – and they should be banned but he is not interested in regulation menthol cigarettes and mint-flavored chewing tobacco used by adults. He added that it was his hope the County was cooperating with retailers and it's unfortunate the City of Bishop retailers were not also sent letters. Regarding youth use statistics, he said he would prefer to rely on medical professionals, school officials, and youth who answer surveys. He said he would support taking a step back and re-evaluated the proposed ordinance if the Board wanted, noting that the goal is not to adopt these regulations as fast as possible, but to get them right.

Supervisor Pucci said he heard from Kyle Oney, owner of Manor Market, who is against the pricing regulations and worries that the Tobacco Retailer License, while proposed to be free, may end up with hefty fees in the future. Supervisor Pucci said he agreed that customers will go to a cheaper location in an area not subject to the County's regulations. He thanked the retailers for sharing their concerns and said he has also received a lot of feedback from medical professionals. He said the County cannot control what the Tribes do, so there would be a concern about unfair competition. He added he also doesn't want to punish the adults on fixed incomes and said he doesn't think it's the Board's position to set prices. He said the vaping ban is a separate issue, pointing to statistics showing that vaping gets youth addicted to tobacco. Supervisor Pucci also said he didn't want to wait to see what the Tribes and City do, but would prefer to take the lead to help ensure the regional policies are not as restrictive as those adopted in Mono County, where even menthol cigarettes and flavored chew are banned. He added that he wants to avoid unintended consequences for cannabis retailers.

Supervisor Tillemans said he agreed higher prices in the county would drive customers to retailers on Reservations. He said the County has the unique position to work with the Tribes on protecting all youth in the community. He said the bottom line is he is committed to doing everything possible to protect youth, and flavored vaping products are a real concern. Supervisor Tillemans said a delay in adoption of the ordinance would allow more time for staff to coordinate and engage with Tribes.

The Board reached consensus not to adopt the ordinance as requested, but rather to have staff bring it back in the future for another first reading and public hearing – after adequate notice is provided and staff has reached out to retailers.

*Recess/Reconvene –
Lunch*

The Chairperson recessed the meeting at 12:37 p.m. for lunch and reconvened the meeting at 1:10 p.m. with all Board members present.

*Recess/Reconvene –
Board of Equalization*

Chairperson Kingsley recessed the Board of Supervisors meeting at 1:10 p.m. and reconvened as the Board of Equalization (separate minutes to be approved at next Board of Equalization meeting) with all members present. The Chairperson adjourned the Board of Equalization meeting at 1:17 p.m. and reconvened as the Board of Supervisors with all members present.

*Public Works – U.S.
Bicycle Route 85
Letter of Support*

Transportation Planner John Pinckney presented to the Board a proposal to designate U.S. Bicycle Route 85, which includes a specific route through Inyo County. He explained that Caltrans will not approve the designation unless all road owners are in support of it. He said this is not a construction project and imposes no costs or liability to the local agency. The Board expressed its support of the project. Moved by Supervisor Tillemans and seconded by Supervisor Totheroh to authorize the Chairperson to sign a Letter of Support for the proposed U.S. Bicycle Route 85. Motion carried unanimously.

*Water Department –
Direction for
OVGA Reps*

Water Department Director Aaron Steinwand asked for the Board's direction to the Owens Valley Groundwater Authority (OVGA) representatives in advance of the OVGA meeting scheduled for March 12, 2020 in Bishop, CA, specifically, agenda items dealing with funding commitments and the addition of certain entities as interested parties or associate members. Staff also asked that the Board authorize the County's OVGA Director, Supervisor Totheroh, to represent the County's annual funding commitment for the OVGA's Groundwater Sustainability

Plan Development Budget pursuant to Article IV of the Joint Powers Agreement and the 2018 funding agreement to be at least \$52,859/year and not to exceed \$98,167/year, contingent upon the respective funding commitments of OVGA members. After extensive discussion, the Board came to consensus to authorize Supervisor Totheroh to commit Inyo County to covering half of the budget shortfall created by members dropping out of the OVGA. The Chairperson opened the floor to public comment. Philip Anaya of Bishop spoke to the need to remain committed to developing a Groundwater Sustainability Plan regardless of cost. Mary Roper, on behalf of the Owens Valley Committee, said the group's single vote as an interested party would not override any of the agencies' votes and the OVC could provide an interesting perspective with the opportunity to speak as an OVGA board member. Discussion among the Board and with staff continued, with the Board ultimately supporting the addition of an Associate Member seat representing mutual water companies, and having the OVC and Lone Pine Paiute Tribe join as Interested Parties.

*Parks & Recreation –
Portagee Joe
Campground Name
Change*

Assistant CAO Leslie Chapman presented a request that the Board consider changing the name of the campground located at 101 Tuttle Creek Rd., Lone Pine, CA from Portagee Joe Campground to Portuguese Joe Campground (*4/5ths vote required*). She provided background information on Joe Pires, the individual for whom the campground was named in the 1960s and one of many colorful characters living in the valley at the time. She said the issue of the campground name being derogatory arose amid objections and the threat of a lawsuit from Mr. Allen Berrey. Chapman said town hall meetings were held in Lone Pine in 2016 where the majority of residents expressed a strong attachment to Joe and were opposed to changing the campground name. She said although Mr. Berrey has since withdrawn his threat, the land owner, LADWP, strongly suggested the County change the name before it would renew the County's campground lease. She said information was gathered on Joe with the help of the Library, and it was discovered that his tombstone says "Portuguese Joe," so staff recommended using that name for the campground. Chairperson Kingsley said he was opposed to the name change but ultimately supports staff's proposal because it is what appears on his tombstone. He requested a plaque at the campground memorializing Joe and Chapman said staff is working on it. Moved by Chairperson Kingsley and seconded by Supervisor Totheroh to change the name of the campground located at 101 Tuttle Creek Rd., Lone Pine, CA from Portagee Joe Campground to Portuguese Joe Campground. Motion carried unanimously. **(SEE ATTACHED AMENDMENT)**

*County Counsel –
Proposed Police
Power Water
Transfer Ordinance*

County Counsel presented for Board consideration an ordinance to allow the County to update and continue the regulation of the transfer or transport of water from groundwater basins located wholly or partially within Inyo County, and to make clear that it regulates such transfers or transport under the County's general police power separate and independent of the County's zoning regulatory powers. The Chairperson opened the floor to public comment. Philip Anaya of Bishop said he was happy with the proposed ordinance but questioned why the language was changed to "beneficial interested parties" from "interested parties." Randy Keller of Bishop also questioned the qualifier, but also said the ordinance was a good move. Mary Roper of the Owens Valley Committee asked why the qualifier was added. Assistant County Counsel John Vallejo explained that they want to ensure the person appealing to the Water Department has a direct and legal interest, and that people aren't appealing just to block their competitors. He added that CEQA uses the same language. Moved by Supervisor Griffiths and seconded by Supervisor Totheroh to read title and waive further reading of the proposed ordinance titled, "An Ordinance of the Inyo County Board of Supervisors Adding Chapter 7.02 of the Inyo County Code to Regulate the Transfer or Transport of Water from Groundwater Basins Located Wholly or Partially Within Inyo County, and Repealing Inyo County Ordinance No. 1004 (Chapter 18.77 of the Inyo County Code)," and schedule enactment for 10:30 a.m. on Tuesday, March 17, 2020, in the Board of Supervisors Chambers, County Administrative Center, Independence. Motion carried unanimously.

*Clerk of the Board –
Approval of Minutes*

Moved by Supervisor Tillemans and seconded by Supervisor Totheroh to approve the minutes of the regular Board of Supervisors meeting of February 25, 2020. Motion carried unanimously.

*Board Member and
Staff Reports*

Supervisor Totheroh reported attending a meeting yesterday of an ESCOG subcommittee developing proposed bylaws and a budget for the Joint Powers Authority, and said he had an Owens Valley Groundwater Association meeting this Thursday.

Assistant CAO Leslie Chapman reported that a flood warning was issued at about 2 p.m. for Inyo County, and staff is taking precautions with regard to the Tinnemaha burn scar, including

notifying campers of the danger and potential need to self-evacuate. She also noted where to obtain sand bags for filling.

Assistant Clerk of the Board Darcy Ellis said she is working to arrange the Board's annual Southeast Inyo meeting, tentatively scheduled for April 14.

CAO Quilter notified the Board of the need to schedule a special meeting so the Board can accept the Statement of All Votes Cast in the March 3, 2020 election by the 30-day deadline imposed on the Clerk-Recorder.

Chairperson Kingsley commended the Assistant Board Clerk and CAO for a great job organizing the groundbreaking for the Consolidated Office Building.

Public Comment

Chairperson Kingsley asked for public comment during the final public comment period and there was no-one wishing to address the Board.

Adjournment

Chairperson Kingsley adjourned the meeting at 3:16 p.m. to 8:30 a.m. Tuesday, March 17, 2020 in the County Administrative Center in Independence.



Chairperson, Inyo County Board of Supervisors

Attest: *CLINT G. QUILTER*
Clerk of the Board



by: _____
Darcy Ellis, Assistant

AMENDMENT TO THE MINUTES OF THE BOARD'S MARCH 10, 2020, MEETING CONCERNING RE-NAMING PORTAGEE JOE CAMPGROUND

On March 10, 2020, after having discussed the matter in closed session on December 10, 2019, the Board of Supervisors approved changing the name of the "Portagee Joe Campground" to the "Portuguese Joe Campground." Mr. Berrey played a significant role in the Board of Supervisors' decision to change the name of the campground. To recognize that role, the minutes of the Board's March 10, 2020 meeting concerning its action on that date to change the name of Inyo County's 'Portagee Joe Campground' to 'Portuguese Joe Campground' are amended by adding the following:

1) At a community meeting in Lone Pine in February, 2017, Mr. Berrey advised those assembled that he did not consider anyone involved in naming the campground "Portagee Joe" to have acted out of racism, bigotry, or malice; but that, nevertheless, the campground's name should be changed because the word "portagee" is offensive. And, in support of that contention, he read an excerpt from a 2014 essay in the Portuguese American Journal by Professor George Monteiro of Brown University titled, "From Portingale to Portugee," which points out why the use of the word "Portagee" could be considered offensive.

2) At that meeting Mr. Berrey also suggested that the campground be re-named 'Portuguese Joe Campground', the reasons for which he elaborated upon in a letter he sent the next day to the editor of, and which was published in, The Inyo Register. The gist of Mr. Berrey's letter was that it was simply much more respectful for the community to now refer to "Portagee Joe" as "Portuguese Joe."

3) Later in 2017, and then in 2019, Mr. Berrey also suggested to the Board of Supervisors that it re-name the campground in honor of Wayne Geiger, a U.S. Army soldier from Lone Pine killed in action in Iraq, and that a monument be erected at the campground in remembrance of Jose Pires, aka . "Portagee Joe."

4) During the course of his efforts to change the campground's name, and pursuant to the request of then-Assistant County Administrator Chapman that he help her discover "Portagee Joe's" real name, Mr. Berrey looked for and found Jose Pires's (Portuguese Joe's) gravestone at the Mt. Whitney Cemetery in Lone Pine and took photographs of it, one of which he sent to Ms. Chapman and which she later included in the Staff Report she presented to the Board of Supervisors at its March 10, 2020 meeting.

5) The July 16, 2017, email from Mr. Berrey to the Board of Supervisors suggesting and explaining his reasons why the campground should be re-named in honor of Wayne Geiger was entered into the record in connection with the Board's March 10, 2020, action re-naming the campground Portuguese Joe Campground.

6) The letter Mr. Berrey wrote to the editor of The Inyo Register in 2017 and which he supplied to Board of Supervisors at its March 10, 2020, meeting was entered into the record in connection with the Board's action on that date to re-name the campground "Portuguese Joe Campground."

7) Also entered into the record in connection with that action was an email from Mr. Carlos Fonseca to Assistant Board Clerk Darcy Ellis for the Board of Supervisors to consider on March 10, 2020, in deciding whether to change the name of the campground to "Portuguese Joe Campground."

8) The Board does understand that Mr. Berrey feels that his contributions to effectuating the name change were not appropriately recognized at the March 10, 2020 meeting. The Board hereby recognizes Mr. Berrey's efforts in having the campground's name changed.