

Meeting Minutes for 4/14/16

A Special Meeting (Closed Session) of the Board of Directors of the Kensington Police Protection and Community Services District was held Thursday, April 14, 2016, at 6:30 P.M., at the Community Center, 59 Arlington Ave., Kensington, California. The Regular meeting of the Board of Directors followed.

ATTENDEES

<u>Elected Members</u>	<u>Speakers/Presenters</u>
Len Welsh, President	Randy Riddle, Renne Sloan Holtzman Sakai LLP
Rachelle Sherris-Watt, Vice President	Adam Benson, Renne Sloan Holtzman Sakai LLP
Chuck Toombs, Director	John Holtzman, Renne Sloan Holtzman Sakai LLP
Patricia Gillette, Director	Mike Hazelwood, Renne Sloan Holtzman
Vanessa Cordova, Director	Justin Buffington, Rains Lucia Stern, PC Officer Theodore Foley Linda Lipscomb
<u>Staff Members</u>	John Gaccione
Interim GM/COP Kevin Hart	Linnea Due
Sgt. Hui (on duty)	Gloria Morrison
Lynn Wolter, District Administrator	Leonard Schwartzburd
	Mabry Benson
<u>Press</u>	Andrew Gutierrez
Linnea Due	Marilyn Stollon
	Lori Trevino
	Jim Watt
	A. Stevens Delk
	David Spath
	Lisa Caronna
	Garen Corbett
	Rob Firmin
	Karl Kruger
	Gayle Tapscott
	Gail Feldman
	Paul Dorroh
	Rick Artis
	Barbara Steinburg
	Celia Concus

President Welsh called the meeting to order at 6:33 P.M. President Welsh, Vice President Sherris-Watt, Director Toombs, Director Cordova, Director Gillette, Interim GM/COP Hart, and District Administrator Wolter were present.

PUBLIC COMMENTS

A member of the public asked for more information about the subject matter that would be discussed in the Closed Session. President Welsh responded that this was a lawsuit that had arisen from an injury on one of the paths.

CLOSED SESSION

The Board entered into Closed Session at 6:34 P.M.

Conference with Legal Counsel – existing litigation, (Paragraph (1) of subdivision (d) of Section 54956.9). Name of case: Meyers. V. Kensington Police Protection and Community Services District.

The Board returned to Open Session at 7:06 P.M.

President Welsh took roll call. Vice President Sherris-Watt, Director Toombs, Director Gillette, Director Cordova, and President Welsh were present.

President Welsh reported that, in Closed Session, the Board had been briefed by its attorney on the agenda item and that no action had been taken.

IGM/COP Hart asked President Welsh if Item 8a, under New Business, could be taken first. President Welsh responded in the affirmative.

8a. Introduction of new employee: The IGM/COP introduced Theodore Foley to the community and swore him in as Kensington's newest officer.

IGM/COP Hart asked Theodore Foley to join him at the podium. IGM/COP Hart provided background information on Theodore Foley: Attended the Police Academy in 1994; Visalia Police Department; Madera County Sheriff's Office; ICE; served in U.S. Army 1994-99 and in U.S. Coast Guard 2009-present; Kensington Reserve Officer 2010-16, with two commendations; POST Firearms Instructor, Impact Weapons Instructor, Range Master; and speaks Spanish. IGM/COP said it was his pleasure to swear him in. IGM/COP Hart administered, and Theodore Foley took, the oath of office. IGM/COP Hart pinned on the badge and introduced Officer Foley, who was welcomed with a round of applause. Officer Foley thanked IGM/COP Hart and the District for the opportunity and said he looked forward to meeting members of the community.

PUBLIC COMMENTS

Linda Lipscomb spoke about the recent investigation, completed by the Richmond Police Department, about the traffic stop involving Director Cordova. She said that, when she had moved to Kensington in 1977, Kensington had been a friendly town governed by volunteers. She said that, a few years earlier, District business had started to be sidetracked and that she thought this was the goal of some who wanted to make the District appear to be in constant disarray and chaos. She said this was meant to make our small community susceptible to being "sucked up" by neighboring El Cerrito. She noted that Kensington was in the Sphere of Influence of El Cerrito and said there was a definite push from the more vocal critics of the Board towards contracting out with El Cerrito for Kensington's police services. She said that there were several legal reasons why that might not be possible. She said that preserving Kensington's independence was important because it afforded the community a safe way of life. She said that she had been a Director and had been on the receiving end of invective and disapproval and that the Directors should be thanked for their service. Ms. Lipscomb said there was an official report of the investigation of the vehicle stop of one of the Directors and the ensuing interaction with Kensington officers. She noted that several official complaints had been made. She said she called on everyone,

officers and Directors, to waive any privilege they might have which could prevent the release of the investigation report. She said this was an educated community and that, if those involved really stood for transparency, they would encourage the release of the report to the citizens so they could judge for themselves what happened. Otherwise, all the community would have was what it currently had – speculation, interpretation, and spin. She said there should be an immediate review of Board policy regarding Board member participation on social media, especially with respect to matters over which the Board had within its purview. She said that, when a Director wrote to a social media site – such as Kensington Next Door – about a matter before the Board, it created the appearance of bias and that, should another Director join in the discussion, then no other Director could join in because it could constitute a violation of the Brown Act. She said other matters were not to be disclosed. She reiterated her thanks to the Directors for their service.

Justin Buffington introduced himself as the attorney for the Kensington Police Officers' Association. He said he was at the meeting to discuss the internal investigation about the traffic stop involving one of the Directors and said he was glad that Ms. Lipscomb had mentioned the concept of releasing the report in question. He said there had been a number of allegations made about the police department in general and not just the POA: Those were allegations of conspiracy by members of the police department and the Association to stalk, harass, and intimidate the Director in question. He said the POA had been waiting for the report to come in, in the form of the report he held in his hand. He said the report had been completed by an outside investigator with the Richmond Police Department, who didn't "have a dog in the fight" and hadn't known any of the involved parties. He said, therefore, that it represented an impartial investigation and inquiry into the circumstances that had occurred in October 2015. He said there was an audio recording of the entire traffic stop, which had been part of the investigation. He said the POA now had an opportunity to respond and it had done so in the form of a summary of some of the facts that had occurred, which had been referenced in the investigation. He noted that a number of people had seen that summary. He said that, now, the investigation itself was available, that the people involved did have a privilege, and that the officers involved had decided to waive their privilege and allow the public to see the investigation so the public could scrutinize the investigation and conduct its own analysis. He said that, out of respect for the Director involved, the POA said it would give the Director an opportunity to give her assent to release the report, even though he and the POA didn't believe any privacy rights were implicated by its release because privacy rights were meant to protect the rights of employees and not complainants. He said he and the POA asked the Director to agree to the release of the document, at which time he and the POA would make it available to the community. He said that he and the POA hoped that the Director would want the truth to come out and would agree to the release. Mr. Buffington distributed copies of a document he asked to be included in the record. This document appears in the May Board Packet, under correspondence.

John Gaccione asked what this meant, with respect to the recent press release, which he said was embarrassing. He asked if President Welsh was going to offer an apology for the comments he had made at the prior month's meeting, which Mr. Gaccione said had been disrespectful of another Board member. Mr. Gaccione said an apology should be forthcoming. He then read some passages from the Kensington Police Department's Policy manual's Law Enforcement Code of Ethics, which says that an officer's fundamental duty was to serve the community; to safeguard lives and property; to protect the innocent, the weak, and the peaceful; to keep one's private life unsullied; not to bring discredit to oneself or one's agency; not to act officiously; or to let personal feelings prejudice or influence one's decisions. He noted that the code said that an officer's badge was a symbol of public faith, that an officer would never engage in or condone acts of corruption or bribery, and that an officer alone was responsible for his/her behavior.

Linnea Due asked what document Mr. Buffington had given to the Directors and staff. Ms. Due asked specifically if Mr. Buffington had distributed the investigation report itself because she had understood that the Board would be the appeal body. She asked if the officers had waived their right to an appeal. President Welsh responded that Mr. Buffington had distributed a copy of the press release from earlier in the week, which was not the report.

A. Stevens Delk announced that the Fire District would be offering a free paper-shredding event on April 10th between 10:00 A.M. and 2:00 P.M. She said that, at last month's meeting, she had cited the Kensington Police Policy Manual, which said that weapons would be issued by the police department. She said that IGM/COP Hart had responded that they were not so issued. She had then asked what the manual said, he had replied that the department did not issue weapons. She said that, later, IGM/COP Hart had shown her the policy statement, which says that the department-issued weapon would be a specific type of handgun. She said she had interpreted this to mean that the department would issue a handgun. She said that IGM/COP Hart had told her that the policy manual was an "off-the-shelf" version that the department had "tweaked." She noted that the department purchased this document through a \$2,000 per year service. She said that IGM/COP Hart had submitted a 100-day plan at the time he had been hired and that one of its stated goals had been to review and update the policy manual. She said that had been 300 days earlier. She said that, if there had been any updates, they had been intra-departmental and had not been posted on the online version. She asked IGM/COP Hart to remedy this problem.

Gloria Morrison asked about the grant application that had been submitted for WW funds. Vice President Sherris-Watt responded that she would address that under Board comments.

Leonard Schwartzburd said that it appeared that the report was going to be released and that this pleased him. He said he hadn't had a chance to read, in its entirety, what Mr. Buffington had been distributed. He said that, regardless of whether some of the facts were correct, they didn't explain why the officers had stopped the Director outside of Kensington. He said he believed she had been targeted. He said that Director Cordova's having said that Sergeant Barrow had glared at her was consistent with Sergeant Barrow's behavior towards him. He said he had been a strong critic of how the Board and some of the police had operated. He said there were really good officers on the force and some who were the opposite. He said he had asked IGM/COP Hart to keep Sergeant Barrow away from him because he didn't trust his judgment. He said that IGM/COP Hart was minimizing Director Cordova's saying that Sergeant Barrow had followed and stopped her in Berkeley and then harassed her. Dr. Schwartzburd said he believed that IGM/COP Hart was now part of the culture of cover-up that had existed and still does exist. He said that Jan Behrsin's letter, which had been circulated three years earlier, had characterized Kensington as a police state. He said that this was accurate because, when police acted as though they were above the law, then it was a police state. He said that Sergeant Barrow "skated again" and that, in this, he was above the law. He speculated what it was that Sergeant Barrow "had" on Board members that allowed him to behave in such a flagrant manner. He said that IGM/COP Hart had supported criminal activity by Officer Ramos by deliberately covering up a crime and then conspiring with Sergeant Barrow to falsify the police report. He said there was video evidence, which IGM/COP Hart had seen, that showed the destruction of evidence of a crime, which IGM/COP Hart had tried to explain as not a crime and this defied the laws of physics. He said the report itself spoke of collusion between Sergeant Barrow and Officer Ramos. He asked what IGM/COP Hart was going to do about the lawless behavior of these officers on his watch. Dr. Schwartzburd also said that, when it came to collusion, IGM/COP Hart had given him the choice of only Sergeant Barrow or Officer Ramos to investigate the crime that had been committed against himself. He said this had left him with a clear conviction of whom the criminals really were. He said that, if the Board allowed harassment of this elected official to stand unchallenged, this would be the final straw for him, as was Director Cordova's claim that the police department was corrupt was true, as was any majority vote of the Board. He asked where the due process was. He said that the words used by Sergeant Barrow's "mouthpiece" were similar to the way Cathie had been treated by the then majority. He said character assassination was the modus operandi of the "power-trippers" who had been running things. He said Director Cordova should have courage, she shouldn't let "these people" frighten her into paralysis, and she should continue to fight for her constituents. He said that, if the Board majority were to pass an MOU that was the "shell game" that the present one was, then this, along with a lot of other things, could be corrected after the upcoming election.

Mabry Benson said that the reasons people left their jobs were their manager or their work environment – it often had nothing to do with money. She said that, to the best of her knowledge, the Board had never conducted exit interviews to find out why the District's employees, particularly the good ones,

were leaving. She said the Board should have known there were serious personnel matters rather than just ignoring them. She said this was another example of the Board's failure of oversight. She said her criticisms of the police department were meant to improve it. She said that, at the prior month's meeting she had raised questions:

- What was the District's interest in the officers' weapons?
- Was there going to be any discussion about authorizing a study of the community's policing needs?

She addressed Ms. Lipscomb and said she agreed that police investigation records should be opened up. She said there was a Senate bill that would make all complaint records open to the public and said she supported passage of this. She said that, when police refused to make records public, it begged the question, "What are they hiding?" She said this protected the bad police and did a disservice to the good police.

Andrew Gutierrez said that he had been mentioned in the Rains document and that the language was unprofessional. He said the community should be ashamed that it occurred here and that the POA hired such people. He said that, with respect to his own complaint, Dr. and Mrs. Fouda had not been interviewed. He said there had been one person, not two people involved in the incident, and it had been Officer Turner. He said the report had said the incident had occurred on the Arlington but it had occurred at the approach to the Blake Estate. He said it was not dark but that the officer had said the taillight was out and that, to catch him, the officer had to have traveled at a high rate of speed. He said he had said this was harassment. He said the report was fiction. He said Kensington was no longer Mayberry: It was more like a little Chicago. He said the language used to describe Ms. Cordova was unprofessional and that the incident, as reviewed by another police department, was not trustworthy and shouldn't be released. He said that, when his son had been recovering from cancer, Officer Ramos had found that his son's license sticker hadn't been current, that his son had been cited in the middle of the night, and that his son's car had been legally parked on the street. He said the fee had been paid; his son just hadn't affixed the sticker because it hadn't arrived. He said he did not have confidence in the police department; although some of the officers were really nice law abiding people, some were not.

Marilyn Stollon said she wanted assurance that she would not be subjected to retaliation by the police force for her comments. She said that, because they had received Police Officers' Association endorsements, she wondered if President Welsh, Director Toombs and Director Gillette would denounce the smear tactics of the Police Officers' Association's attorney. She asked if the police officers deserved a pay increase after having resorted to these tactics. She said that the Board majority wasn't providing oversight of the Interim Chief and that the Police Officer's Association was running the town. She said that, with respect to the Richmond Police Department's investigation of the traffic stop, IGM/COP Hart had said the report would be impartial and thorough, that he would get the Richmond officer's recommendations, and that he may or may not follow them. She said that IGM/COP Hart had said that personnel information would not be released but that he would release as much as he could. She said she had been somewhat encouraged, even though it would be police investigating police. She asked how IGM/COP Hart could have all the relevant information if only KPD officers who hadn't there had been interviewed, but Berkeley residents on Ensenada who had seen the stop hadn't been interviewed. She said the smog test hadn't been interviewed nor had Vice President Sherris-Watt, who had publicly verified information. She asked if it was proper for a city manager to leave town for several days, the day after a crisis. She said that, by doing so, IGM/COP Hart had delayed filing documents. She asked if the investigator had looked into how the Directors had supervised this. She said she would be interested in seeing what the investigator's recommendations might be for these issues, should the report be released. She asked if the press release, which referred to parts of the investigation, was an indication of the fabrication that existed in the Richmond IA report – cops investigating cops. She said this would be the second road to litigation. She said that she advocated adherence to the Brown Act but that the Board majority was continuing to maneuver behind the scenes, with quickly scheduled Closed Sessions to approve an MOU in 2015 and to extend the contract of the current IGM/COP. She said there was documentation that several of the Directors had been contacted by phone when the Reno scandal had occurred, despite having said that they knew nothing until the investigation had been completed. She said she had lost faith in the majority Board. She said President Welsh and Directors Toombs and Gillette should resign.

Lori Trevino said she wanted to talk about Justin Buffington's press release, which she said was shameful and disgusting and a transparent attempt to smear someone who had been a longtime resident of the community. She said it was an attempt to divert attention away from something important. She said that there likely were strings attached to asking the Director if she would agree to releasing the report. She said the press release reported that the allegations of harassment and stalking had been determined to be unfounded because the traffic stop had been found to be lawful. She said the investigator didn't interview all the witnesses and that he didn't interview anyone who could have validated Director Cordova's claims. She questioned whether it had been a lawful stop. She said that the press release said that Director Cordova had been driving without a license and that she didn't have valid registration. Ms. Trevino said there was documentation that these were not true statements. She said Director Cordova had had a valid driver's license and a moving permit in her possession. She said that Director Cordova had been cited for having expired tabs and that, on the day of the citation, Director Cordova was going to get the smog certification to complete her registration process. She said Director Cordova had been cited for not having a front license plate, something she claimed not to have known was a requirement and had not intended to dispute. Ms. Trevino said this had been selective enforcement. She said that, on that day, there had been four cars parked within close proximity to the Police Station and that one of them was parked outside the Community Center that night. She said that it was believed that at least two of the vehicles belonged to police personnel and she provided copies of photos of the vehicles. She said that officers didn't cite vehicles if they belonged to friends and colleagues but they did cite the "crazy Board member" two miles away, in a different county, while getting food. She asked if data about other vehicles missing front license plates would be provided to the investigator. She said that several District vehicles didn't have front license plates at the time of Director Cordova's stop, including one that had been owned by the District for years. She said she understood there had been a reason for this – an officer had been out for an extended period of time, due to illness. She said she would like to see evidence that Kensington Police had ever initiated pursuit of someone in a traffic stop outside Kensington. She said that, when officers issue a citation in a different county they were supposed to find out the location of the courthouse where the citation was to be filed. She said she didn't believe the citation had been filed yet. She said she would like to know how this had been a valid traffic stop.

Jim Watt said that he had attended the prior night's Fire Board meeting. He said that meeting's purpose had been to hear from the structural engineer that the Fire Board had hired to assess the Public Safety Building, which he said is jointly used by the police and fire departments. He said there would be actions taken in an attempt to rectify the defects associated with the building. He said he had been attending Fire Board meetings since the start of the year and that the concerns about the building had been discussed since then and prior to that time. He said that the Fire Board President, Don Dommer, had spoken with President Welsh and IGM/COP Hart about the retrofitting, or possible replacement, of the Public Safety Building. He said the Public Safety Building had been built in 1969, to standards that no longer apply for seismic safety purposes. He said the building had been upgraded with retrofits, but these had been just partial and had encompassed just part of the building. He said the structural engineer had said the Fire Board needed to do something about this essential services building; whether it involved a full tear-down and rebuild or a major retrofit wasn't known. He said the Fire Board anticipated having that information within the next four months. He said this would cost a significant sum of money and could easily involve disruption of the police department and the fire department, which may have to move out during the work. He said there would be a significant cost to the District, when it looks to find a place to re-locate the police department. He said that, assuming the police reoccupy the space, the KPPCSD would no longer receive the benefit of the \$1.00 per year rent. He said he was mentioning this because he sits on the Finance Committee and on the Parks Building Committee, and the KPPCSD has the same problem with the Community Center. He said there were still some unknown costs of what it would take to fix the Community Center and that there were some who would like to bring the Community Center up to more than just seismic standards and ADA compliance. He said that the community was facing two issues that were going to result in significant cost. He said he requested that President Welsh, IGM/COP Hart, and others put this issue on the agenda in order to bring it to the public's attention.

President Welsh announced that he was suspending public comments because Director Gillette needed to leave at 9:30 P.M. and there were significant things on the agenda that needed to be discussed. He said he would accommodate those who still wanted to comment later in the agenda. Director Gillette added that it wasn't just that she had to leave; there were people in the audience who had come to hear about specific agenda items.

Director Cordova noted that the LAFCO agenda item would take about two minutes and asked that it be addressed. President Welsh responded that he wanted to take up the MOU first and would then address the LAFCO item.

BOARD COMMENTS

Vice President Sherris-Watt reported that the Park Buildings Committee had submitted a grant request to the East Bay Regional Park District for \$158,358 of Measure WW funds. She said the grant documents had appeared in the prior month's Board Packet. She said the District would be part of the grant review in late May or early June.

Vice President Sherris-Watt reported that, the prior night, she had attended the Fire Board meeting. She said that the Fire Board had released the Biggs Cardoza seismic assessment and that this report would appear on the Fire District's website.

Vice President Sherris-Watt asked if the Rains Lucia Stern (Buffington) press release would be on the May agenda. President Welsh responded in the negative. President Welsh said he wanted to make it clear that the KPPCSD had nothing to do with the press release but that it would appear as part of the record in the agenda packet because anything that was submitted would appear. Vice President Sherris-Watt said that, therefore, she was submitting, for the record, her response to the Rains Lucia Sterns press release, dated April 12, 2016.

Vice President Sherris-Watt announced that the Park Buildings Committee would meet again in a few weeks.

President Welsh reported that, when he had spoken with Mr. Dommer, the Fire Board's intention had been to have a town hall meeting at which issues related to the Public Safety Building would be discussed and that this meeting would likely happen at the end of May or early June.

President Welsh said the Board would discuss the MOU, Item 7b.
IGM/COP Hart left the dais.

- 7b. The Board received a report regarding a proposed contract with the Kensington Police Officers' Association and the Kensington Police Protection and Community Services District. The Board reviewed the terms and condition of the contract and considered taking action to approve the contract. This was the second reading of the MOU.

Adam Benson provided a summary of the proposed MOU. He referred to a one-page summary that had been handed out as a supplemental document and that provided the high-level parameters of the tentative MOU. IGM/COP Hart distributed copies of this document, and it is included in the May Board Packet, under correspondence. Mr. Benson provided highlights of the proposed MOU:

- The agreement would run from July 1, 2014 through December 31, 2017.
- There would be no wage increase for the period 7/1/14 through 2/29/16
- There would be a 3% across-the-board increase plus a \$1,000 non-recurring lump sum payment on 3/1/16.
- There would be a 3% across-the-board-increase on 3/1/17

- Employees would contribute 2% and the District would contribute 7% of EPMC beginning 3/1/16.
- Employees would contribute 4% and the District would contribute 5% of EPMC effective 3/1/17.
- Employees would contribute \$85 per month toward the cost of healthcare effective 1/1/17 and would contribute \$125 toward this cost effective 6/30/17.
- Retirees would make the same contributions toward healthcare costs.

Mr. Benson noted that, beginning on page 116, the Board Packet contained a compensation analysis, which compared Kensington to Berkeley, Albany, Broadmoor Police Protection District, Central Marine Police Authority, East Bay Regional Park District Police, El Cerrito, Moraga, Piedmont, and Richmond. He said that, from a total compensation perspective, KPPCSD officers were about 4.2% behind the market median and 5.9% behind the market average. He noted that this comparison included healthcare and retiree medical. He said that, on page 117, there was a compensation analysis that compared Kensington officers' total compensation to Broadmoor, Central Marin Police Authority, and the East Bay Regional Park District (only Special Districts) and that this analysis showed that Kensington Officer's position improved in this isolated analysis such that the officers' total compensation was about 3.7% above the market median. He said that this analysis contained a small number of employers and that such analyses usually included ten agencies. He said that, on page 118, there was an analysis comparing Kensington officers' total compensation to that of an El Cerrito Firefighter, which showed that Kensington officers were about 1.5% behind.

Mr. Benson said that, in response to information received from a community member about compensation for officers in Moraga, Ross, Tiburon, Belvedere, and Clayton, he had prepared an analysis that appeared on page 119 of the Board Packet. He said that this analysis showed information about MOUs recently enter into, with respect to wages, EPMC give-backs, and the net changes over the life of each agency's MOU. He said that Kensington's proposed MOU would result in about a 1% net increase. He said, using the same methodology for each of the other jurisdictions over the life of each agency's most recent MOU, Moraga would see a 3.25% increase, Tiburon a 3% increase, Belvedere a 1% increase, Clayton a 1% increase, and Ross a 2% increase. He noted there would be similar increases in medical care costs among all the agencies.

Mr. Benson said that, on page 120 of the Agenda Packet, there was a cost analysis. He reported that the analysis showed information contained in the 2015-16 budget, an estimated impact on the 2015-16 budget if the proposed MOU were to be adopted, and forecasts for the fiscal years 2016-17, 2017-18 and 2018-19. He reported that most of the increase, during the years covered, would be driven by increases in PERS rates. He noted however that, because of the significant decrease in the amount needing to be paid for the UAAL Side Fund (where the District pays for unfunded liabilities) in Fiscal Year 2018-19, there would be a resulting 2.83% decrease in the total wages and benefits with the adoption of the proposed MOU. He said this analysis showed that the net increase would be relatively low. President Welsh asked Mr. Benson to explain what the impact would be if the District were to make no changes – not to adopt the proposed MOU. Mr. Benson responded that personnel costs would still increase, citing CalPERS and Kaiser healthcare costs in particular. Mr. Benson said that, as compared to the existing MOU, the proposed MOU would be net neutral. In response to a question posed by a member of the audience, Mr. Benson said the proposed MOU would not result in any greater cost increases than what would result from maintaining the status quo.

John Holtzman said that, if the Board took a position and the Police Officers' Association didn't agree, the Board would have the legal right to impose a contract on the union, over its objection, after the Board had completed all the required impasse procedures. President Welsh asked how long that would take. Mr. Holtzman responded this would take about six months and money. He added that the difficulty of imposing a contract was that it could be imposed for only one year and so it didn't fix much because everyone would need to be back at the bargaining table almost right away.

Mr. Benson said that page 121 of the Board Packet contained an analysis comparing the previously proposed MOU and the currently proposed MOU. He said this comparison showed that, over the same duration, the previously proposed MOU would result in a 5% increase in costs and the currently proposed MOU would result in a 0.32% increase.

Director Cordova asked why Mr. Benson had compared a Kensington officer's compensation to that of an El Cerrito Firefighter. Mr. Holtzman responded that he may have been the one to have asked for this. Director Cordova responded that this had not been a great comparison. President Welsh noted that he, too, had been curious about this comparison. Director Cordova noted that El Cerrito Firefighters do not receive retiree medical benefits; instead, the retirees receive a medical allowance. Mr. Holtzman noted that the comparison may have arisen because of the retiree medical benefits issue. Mr. Holtzman clarified that the El Cerrito Firefighters had a defined medical benefit plan and that the difference between what Kensington provided to its retired officers and what El Cerrito provided to its retired firefighters was about \$150 per month. He noted that it was more beneficial for an employer to have a defined benefit program. Mr. Benson noted that El Cerrito officers' total compensation ranked fourth out of the ten agencies included in the comparative analysis and that their total compensation was \$11,341 per month. He said Kensington officers' total compensation for the same rank and step was \$10,575. Mr. Holtzman also noted that the Fire District's retiree medical trust was almost fully funded because it no longer had a defined benefit plan, it no longer had its own new firefighters, its plan was closed, and it had had money to fully fund its OPEB.

Director Cordova said she wanted to discuss the safety equipment clause. She said it looked like redundant funding. She said the Board had recently approved the purchase of new safety equipment and then the proposed MOU contained a \$250 safety equipment allowance per officer. She asked whether the District would own the equipment that officers would purchase with this allowance. Mr. Holtzman responded that, generally speaking, an allowance meant that the employee owned what was purchased with it. IGM/COP Hart reiterated that the employee, not the District, would own items purchased with a safety allowance. Director Cordova asked if the allowance was a "use it or lose it" and if it was a "reimbursable." IGM/COP Hart responded that an employee would have to submit a receipt in order to be reimbursed for safety equipment purchased under the safety equipment allowance clause. He clarified that the District did not give each employee a check for \$250 each year.

Director Gillette said she supported the agreement, and she thanked those who worked on getting the agreement before the Board. She said that the fact that the officers would not have had a wage increase from July 1, 2014 through February 29, 2016 was significant and was a big bonus for the District. She said the duration of the contract would provide stability for the time it would take if the District were to decide to make changes, such as contracting out or consolidation. She said she didn't think the probability was very high that the District would make a decision to make changes prior to November 2016. She said the contract would extend one year beyond that and so would allow for a smooth transition, if one were to occur. She noted that this had been the first time in Kensington's history that the District had used professional negotiators and that this had made a real difference. She said that the cost of the contract was minimal to the District, and that it was important to be able to attract new officers and maintain existing officers.

Director Toombs said he had participated in the negotiations with Mr. Holtzman and Mr. Benson. He said that he had concluded that this would be a revenue neutral agreement and that the District would incur costs, whether the Board passed the proposed MOU or not. He noted that, with the proposed contract, officers would begin to contribute to their healthcare costs for the first time, and there would be cost savings because retirees would begin contributing to healthcare costs the first time. And, he noted that the officers would begin contributing to their pension costs. He said that it was a fair contract for both sides and that neither side had gotten what it had hoped for. He said the agreement would last just long enough for the community to decide what it wanted the future to look like. He said that, if changes in service were elected, then the District would need to meet and confer with the bargaining unit over aspects of any transition. He clarified that the agreement would come to an end at about the time that any transition would become effective. He said that delaying the MOU would only delay costs. He concluded by saying he supported the MOU.

President Welsh asked Vice President Sherris-Watt if she had comments. She responded that she wanted to wait until after the public had commented.

Linda Lipscomb said she strongly urged the Board to vote to approve the MOU. She said it was a revenue neutral proposal that would provide stability to Kensington. She said everyone deserved to be congratulated for the expense-neutral contract. She said she wanted to thank the officers for their patience in having the contract re-negotiated so long after the initial negotiations had begun in 2013. She said that, when compared to the salaries of Kensington's four surrounding communities, Kensington's officers' salaries were 24% lower. She said Kensington would not be contracting out with Clayton, Moraga, or the falling-apart Contra Costa Sheriff's Department. She said the salaries in the proposed MOU were 20% lower than those of El Cerrito officers. She said that, for the period 2014 through 2016, El Cerrito officers' salaries had been and would be raised by 16.5% so that the employees could give back part of that for pension and medical contributions. She said Kensington's agreement underscored why it would not be wise to contract out with El Cerrito. She said that Kensington's contract with the El Cerrito Fire Department showed that Kensington was bearing almost 30% of the entire El Cerrito Fire Department budget. She said Kensington did not want to repeat that mistake with a police contract. She noted that the structure of the proposed MOU included employee participation in medical and pension contributions. She said this worked toward the implementation of the PEPRAs laws, which would be in effect in 2018. She urged the Board not to risk violations of various government code sections by failing to give the agreement an up or down vote, and she urged the Board to vote yes on the agreement.

Jim Watt provided a handout, which is included in the May Board Packet under correspondence, and said he wanted to present the other side of the story. He said information had been presented showing that salaries were below those of other jurisdictions, that the District should not be concerned about expenses exceeding revenue, and that there could be difficulties in attracting new officers. He said he had done a study in December that had been posted on the Ad Hoc Committee's website. He said he had compared Kensington's officers' compensation to that of Moraga, Clayton, Tiburon, Belvedere, and Ross primarily because they had similar demographics, had a low incidence of violent crime, were small, and had small police departments. He said that; when the costs of salaries, overtime, PERS, medical and medical costs for retirees, dispatch, fuel, and vehicle maintenance were allocated among Kensington's ten officers; it equaled just over \$200,000. He said these costs averaged \$167,000 per officer for the other jurisdictions he had examined. He said his numbers differed from those of Mr. Benson because of different methodology. He said that the process of examining a step against a step didn't address the fact that Kensington had a lot of senior officers: 50% of the police force held the rank of Corporal or above, and they were well paid. He said that the average salary for each officer, excluding the IGM/COP, was \$95,000. He said that, with the new MOU this average would increase by 6.09% to \$101,600. He said that, for the period 2006 through 2016, revenue had increased by a compounded rate of 2%, while expenditures had increased by 6.5%. He said that expenses were outstripping the revenue stream. He said that, during the past two years, the community had enjoyed a significant increase in its tax revenue because property values had risen but that, during some prior years, the tax revenues had declined. He said that salary increases would equal about \$60,000 with the new MOU, that this amount would be pensionable, and that the resulting pension obligation for Kensington would be about \$38,000 per year for the officers' retired lifespan. He said the net annual gain to the nine officers would be \$24,000 over the term of the contract. He concluded that the officers were not being penalized, that, as he had pointed out earlier in the evening, the community was facing some significant expenses between the Community Center and the Public Safety Building. He said that these costs were unknown and that, until the community knew what these costs were going to be, there would be no way to understand the impact of the MOU.

Celia Concus said to Mr. Benson that, when comparing the El Cerrito firefighters and their benefits with those of Kensington's officers, there were no dependents receiving benefits; only the retiree received a lump sum each month. She said that, every time some residents ask for some type of change or the ability to try something new, they are told there is an Ad Hoc Committee, and there are findings

expected. She said that, with respect to the MOU, that should also follow. She said the MOU would freeze any kind of change in the District and that, therefore, it should not be voted upon.

Mr. Holtzman responded that, under Government Code 3505.1, the Board was legally required to vote, either up or down, on the MOU that night.

Karl Kruger said he was a member of the Finance Committee and had been for a number of years. He said he was asking the Board to support the MOU. He said District had been without a contract with its officers since July 2014. He said the contract would be revenue neutral and was probably the best that could be negotiated. He said one of the things he hoped would be addressed in future negotiations was the number of holidays (14), which he said was excessive. He said that, if people wanted to talk about fairness, he wanted to know how it was fair to have gone this long without a contract. He said that, if anyone in the audience were the employee and were being treated this poorly, they'd probably look for another employer. He said he was happy the agreement was revenue neutral. He noted there had been objections to a previous proposed MOU because of who had negotiated on behalf of the officers. He said that it wasn't up to the community who negotiated on behalf of the officers: The officers selected their own negotiators. He said that, in the interest of fairness, the Board should vote to accept the contract.

Gayle Tapscott said she wanted to read something she had received by email from a retired Alameda County attorney and Kensington resident. She read:

- The police officers' union had agreed to renegotiate a previous tentative agreement rather than filing an unfair labor practice charge with the Public Employees' Retirement Board (PERB).
- Kensington then hired one of the best law firms in the State to negotiate on its behalf and came up with an essentially revenue neutral agreement.
- While there have been complaints that there should be fewer benefits and lower wages, that is not the reality.
- To refuse this revenue neutral agreement would invite an unfair labor practice by PERB, which would have a dim view of Kensington, given all its politics of the past few years.
- Kensington got the best it could get, remembering there are two sides to agreement. A settlement means that neither side got what it wanted.

Ms. Tapscott said she had attended the earlier Finance Committee meeting at which it had discussed the proposed MOU, and it had appeared that some on the Committee wanted to contract out for police services. She said that, knowing the history of the negotiations, she feared the community would face another lawsuit, based on the law requiring the District to negotiate in good faith. She said that, if the Board didn't pass the MOU, it would be because they were faced with an onslaught of negative comments from citizens who don't want the agreement because they don't want the Kensington police doing Kensington jobs anymore: They want to outsource police services. She said the County and El Cerrito, and likely UC Berkeley, paid higher wages than Kensington; thus, it would be difficult to get the same services for less. She said that, more importantly, case law established that you cannot simply replace Kensington officers to do the same work by an outside agency – there would be requirements to meet and confer with the existing officers on the terms and conditions. She said a reasonable demand would be that the officers be hired by a new entity. She said this likely would take a minimum of six months, assuming no unfair practice charges were filed. She said there also would need to be negotiations between a new entity and Kensington about the cost of services provided as well as the level of service. She said this would take about another six months and probably longer, as it would involve the entire community. She said, assuming a new entity would be assigning its officers to Kensington, this would take another six months for a meet and confer. She noted that it would take at least three months for the Committee to present its findings to the Board and more time for the Board to make a decision. She concluded by saying the Board should approve the contract.

Gail Feldman introduced herself as the president of the Kensington Property Owners' Association and said she was speaking on behalf of that organization's board. She said her board applauded the Board returning to the negotiating table after it had received input from the community on the previous tentative agreement in 2015 and applauded the police officers for renegotiating the terms of their

contract. She said that the MOU represented first steps toward the officers picking up medical and pension costs and that she hoped there was an understanding that the community couldn't afford to continue to pay the lion's share the employees' benefits, along with the large liability risks. She said there would need to be a higher level of cost sharing in order to contain costs within the community's limited tax resources. She said that, according to the analysis done by Mr. Benson, the cost of a police officer would be almost \$9,000 more per officer by December 31, 2017. She said the total cost between July 1, 2014 and December 31, 2017, should the proposed MOU be adopted, was estimated to be \$129,000. She noted that this cost would include the costs associated with retirees and the District's unfunded liability. She said the KPOA was evaluating the MOU to determine its affordability into the future. She said she wanted to know if property tax revenue would keep up with police salaries and benefits. She said that, if the District had sufficient revenues for police salaries and benefits, would it have money available for things such as reserves and Community Center improvements. She asked if the Board would consider the MOU to be affordable if every new tax dollar would be needed to cover police salaries and benefits. She concluded by saying that she looked forward to future collaboration between the Property Owners' Association and the Board.

Paul Dorroh said that the Finance Committee had met about 10 days earlier and had reviewed the financial implications of the MOU. He reported that Mr. Benson had been present and had provided detailed information. He said that the Committee had voted, 8 to 5, to recommend to the Board that it adopt the MOU and that he had been one of the eight who had voted in favor. He explained that he had vote in the affirmative because:

- This had been a negotiation. The Committee didn't get to provide input about an ideal in the abstract. The District had been represented by experienced professional negotiators. He added that neither side had been happy with what had been negotiated and that this was usually a sign of a good result. Thus, he said, there was no reason to think the District could have done better in the negotiations.
- Important advances had been made with respect to active and retiree contributions toward medical costs and with respect to contributions to pension costs. He noted that new (PEPRA) employees would enjoy a less-rich pension benefit; retirement would be 2.7% at age 57 instead of 3% at age 50. He said this would create a significant difference over time.
- Of the issue of fairness, he said the officers had served the community well and negotiations had gone on for over two years. There was a result that would serve both sides well.

He concluded by saying that he hoped the Board would approve the MOU.

Mabry Benson said she couldn't find anything in the contract that would allow the District to consider any other mode of providing police services. Director Toombs responded that this was addressed in the contract, under management rights – paragraph 2a. She noted that this was a tentative contract until the Board approved it and that the Board had the right to reject it. She said she understood that the District had an obligation to its past retirees and asked if the agreement would obligate the District to future retirees. Mr. Holtzman responded that the District did retain the right to contract out. With respect to retirement, Mr. Holtzman said that the District had an obligation to provide the same benefits to active employees and retirees; if benefits for actives were to change in the future, the same change would apply to the retirees. Ms. Benson asked if the District had an obligation to future retirees. Mr. Holtzman responded that new retirees would receive the same benefit as active employees but that there would be nothing that would prohibit the Board from changing that in the future. She said that Directors Toombs and Gillette had been negotiating and had received a \$900 campaign donation from the Police Officers' Association. She added that, even though PLG had taken the lead in the most recent negotiations, Director Toombs had continued to be involved. She said that campaign contributions were made for the purpose of influencing decisions, that accepting the contribution was inappropriate, and that this should cause these Directors to recuse themselves from voting on the MOU.

John Gaccione said the past GM/COP and the current IGM/COP had both complained, when they had taken office, that the department had been "a mess" – the office had lacked security, the evidence room had been disorganized, computer files had not been secured, records had not been kept current, and budgets had not been completed. He said that, during this time, the officers had received top-level pay and generous benefits. He wondered what the community had been paying for and said he had a tough

time reconciling this. He asked where the oversight had been to ensure that the community was getting what it had been paying for. He said some members of the Board were in a hurry to approve the MOU, and he asked why there was a rush. He said the terms of the proposed MOU varied little from the current MOU. He said he didn't believe that this was the best deal and said the Board should negotiate tougher, instead of "giving away the store, again."

Marilyn Stollon said the proposed MOU was costly because it was starting from highly benefitted positions. She said it didn't do enough to contain costs. She said that the MOU had been negotiated by Director Toombs and that he had accepted an endorsement from the Police Officers' Association. She asked how it could be construed to be impartial when a Board member voted on what had been negotiated. She said that, in other towns, where there was a town manager, that individual could negotiate contracts but did not vote. She said it would be a conflict of interest for a Board member to vote on a contract that he/she helped to negotiate. She noted that, in Kensington, people made it up as they went along. She said the contract did not have specific language on contracting out, as was the case in Fairfax, Moraga, and Atherton. She said that the five Finance Committee members who had voted not to support the MOU had voted in the negative for various financial reasons. She said she agreed with those individuals and said the MOU needed to be "tightened up" so that it would be more fiscally conservative. She said compensation should not be driven by what other communities were paying. She said the officers should live within the community's means and should not have any pay increases. She said costs would continue to grow exponentially as the District had more retirees and increased benefits costs. She said that the proposed MOU couldn't be undone easily because the previous MOU had "given away the store" and that employees didn't give back benefits. She said that, with respect to attracting new staff and keeping existing staff, pay was not the only factor for providing stability. She said one of her former clients had worked for the Kensington Police Department for a short time. She said that this individual was a retired police officer from a large city and that this individual had been bored in Kensington and had not liked management. She added that, at the time, she hadn't known what the officer had meant; management had been GM/COP Harman. She said the MOU didn't help Kensington fiscally. She said the department was not of the type or quality she wanted to have serve and protect her. She said she needed protecting from the police department.

Rick Artis said that he agreed with things that had been said by Ms. Tapscott and Ms. Feldman and that he felt very strongly that the agreement should be supported. He said he hoped the Board would vote soon and vote in the affirmative.

Barbara Steinberg said that the community paid the police to protect it and that she thought the officers were doing a very good job. She said the officers protected in every sense of the word, including community service. She asked the Board to support the MOU.

Vice President Sherris-Watt thanked Mr. Holtzman and Mr. Benson for their work on the contract and said she admired their work. She said there were many positives about the contract for Kensington taxpayers. She noted there had been progress made on healthcare and the PERS percentage rate. She said she wanted to address some concerns. She said she found comparisons of neighboring agencies difficult because, until the Community Center was turned into a mini-mall, the community didn't have a tax base; the community relied on property taxes. She said people had mentioned to her the worry of living without a contract. She said that she believed she was the only Board member who knew what it was like to live, as a family, without a contract and that she was currently doing so because her husband's contract had expired on April 1st. She said this was the third time in eighteen years that she and her family had had to do so. She said that it was difficult but manageable for a family to live without a contract. She said that financial projections had been dismissed. She said she believed there were systemic problems with the District's financial oversight. She said she agreed with the writer Byron Whitmore, that a budget is essentially a moral document. She added that the MOU was a budget – the largest part of the District's budget. She said that she had attended the Finance Committee meeting of the prior week and that she had found more of the same; when a detailed five year projection had been sought to support the sustainability of the MOU, it had been dismissed. She said it was immoral to her to approve a contract for which she didn't have adequate documentation that the community could sustain the contract for its duration. She said that was why she would vote no.

MOTION: Director Gillette moved, and President Welsh seconded, that the Board approve the MOU as presented.

Motion passed 3 – 2.

AYES: Welsh, Gillette, Toombs NOES: Sherris-Watt, Cordova ABSENT:

Director Gillette thanked everyone for being respectful of her time; she needed to be in Chicago the following day and would be taking the “red-eye” there later in the evening.

President Welsh announced that there would be a five-minute break. Director Gillette left the meeting. The meeting resumed with the remaining four Directors at 9:40 P.M. President Welsh said he was not feeling well and that, if the meeting went past 10:00 P.M., he would ask Vice President Sherris-Watt to take over running the meeting.

- 8d. The Board received a report from Director Cordova regarding the possible reappointment of Mr. Mike McGill to a regular Special District LAFCO seat April 18, 2016.

Director Cordova provided the Board with information for its consideration. She said the item was about the reappointment of Mike McGill. She reported that Mike McGill was one of two special district representatives on the Local Agency Formation Commission (LAFCO) for Contra Costa County. She said Mr. McGill was a board member of the Central Contra Costa Sanitation District, had been elected in 2006, was up for reappointment unopposed, had been nominated by 17 other districts, and served with CSDA. She said she was not advocating for Mr. McGill. President Welsh asked if it would create a problem for LAFCO if the Board didn't vote on Mr. McGill that evening. Director Cordova responded that the LAFCO vote would take place on Monday. She said LAFCO consisted of two city representatives, two special district representatives, two members of the Board of Supervisors, and a member of the public. She said that the commission needed a quorum of 23 delegates and that KPPCSD was a delegate. She said that, if the Board members didn't give her a vote, she would render one for them. She said that, when she had been running for the Board, she had contacted Mike McGill to ask him what some of the pressing matters were. She added that she had crossed his path at LAFCO and at the CSDA conference. Vice-President Sherris-Watt said that she had met Mr. McGill and that she supported his reappointment to LAFCO.

MOTION: Director Cordova moved, and Director Toombs seconded, that the Board reappoint Michael McGill to the Local Agency Formation Commission of Contra Costa County and that the Board authorize Director Cordova, as the LAFCO delegate, to tender that vote on the coming Monday at the convening of LAFCO delegates at the Central Contra Costa County Sanitation District meeting.

Motion passed 5 – 0.

AYES: Welsh, Toombs, Sherris-Watt, Cordova NOES: 0 ABSENT: Gillette

Director Cordova noted it was 9:45 P.M. President Welsh asked if there was a motion to extend the meeting past 10:00 P.M.

MOTION: Director Toombs moved, and President Welsh seconded that the meeting be extended past 10:00 P.M., until the Board was done with the agenda.

Motion failed 2 – 2.

AYES: Welsh, Toombs NOES: Sherris-Watt, Cordova ABSENT: Gillette

7a. Update from Ad Hoc Committee on Governance

David Spath reported that the Ad Hoc Committee would be conducting an online survey about what the community wants in the way of police services. He said that, as part of that survey, the Committee wanted to know about the kinds of experiences the community had had with officers. He said that he wanted to alert the community about the survey by sending out a postcard to all residents and that the estimated cost for this was \$1,250. He said the work would be done by Mailstream, the same company that had done work on Measure L. He said Mailstream would print and mail the postcards. Dr. Spath said the survey would be done through Survey Monkey, which would compile the survey results. He said that the questions had already been prepared and vetted by the Committee and that the Committee had taken public comment on the survey questions. He said that, for people who didn't have access to a computer, the survey could be completed by using a computer at the library. He said the goal was to determine what services residents felt were most important so that the Committee could inform the Board about what residents thought police services should look like going into the future. He said the Committee would make arrangements for residents who would like to complete the survey as a printed version.

Vice President Sherris-Watt asked if there would be a control that would limit one survey per person. Dr. Spath said the Committee had not taken the step to ensure that there would be one survey per person. He added that the Committee would be trusting the honesty and integrity of the residents.

Lisa Coronna said the survey was not a scientific one; it was meant to get a sense of where people were coming from: The Committee was looking for information from each person in a home. She said it was meant to be user-friendly and to take about five minutes to complete.

Director Cordova asked if, when the Committee used the data to shape its presentation, the Committee would say the information was statistically unreliable.

Garen Corbett said the survey was meant to be an attempt to reach the broader community and to get a broader sense.

Rob Firmin said that, as a professionally trained statistician, he thought it was a great idea to conduct the survey but that it should be clearly and publically stated that the survey was meant to glean impressions, was not statistically representative, and could be biased.

The Board indicated that it wanted the Committee to proceed with sending out the postcard and wanted the Committee to work with IGM/COP Hart to ensure that the funds needed would be allocated for the printing and mailing of the postcards.

MOTION: Vice President Sherris-Watt moved, and President Welsh seconded, that the Board adjourn the April 14, 2016 meeting of the KPPCSD.

Motion Passed 4 – 0.

AYES: Welsh, Toombs, Sherris-Watt, Cordova

NOES: 0

ABSENT: Gillette

The meeting was adjourned at 10:00 P.M.



Len Welsh
KPPCSD Board President



Lynn Wolter
District Administrator