

Civic News Moraga

The Cost of Doing Business

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Steve Smith at the park gate.

Photo Sophie Braccini

Smith remembers the discussion with Ortiz, who Smith says had blocked the park's exit with his car. "I was sure that going to see Bob (Police Chief Robert Priebe) on Monday, he would cancel the ticket," Smith recalled.

Town Manager Jill Keimach's version of the incident is that the officer arrived at the park to lock the bathrooms and parking lot gate approximately 30 minutes after closing. She says that after the officer took time to inspect and secure the bathrooms, the individuals using the park still had made no effort to leave. At that time the officer determined that it was appropriate to issue a citation. "The officers have the right when they see an infraction to make the decision to issue a citation or not," stated the police chief firmly. "Officer Ortiz witnessed an infringement of the town's law and decided to act accordingly."

A judge upheld the citation, which Priebe points to as proof that his officer's decision was completely legal. But the judge also waived the fine, which Smith contends demonstrates the judge's acknowledgment that the town's practice had been very different before that fateful night and he should not be punished.

By the time Smith went to court to challenge the ticket, fellow Moragan and dog park friend David Shapiro had become his legal counsel. They decided to challenge the town's rule, appeal the judge's decision and

sue the town. "I felt that the town needed to fix its rules," said Smith, who thought he had been wrongly given a ticket and was never warned about this timing issue. "The fine was not the issue," added Shapiro, "it's the accusation and the conviction that is more important." They accused the town of being in violation of the Constitution of the United States, that the rule that governs when the parks close is too broad and that it allows police officers to ticket anyone on any land owned or controlled by the town an hour after sunset.

"The contention that the statute is vague or somehow applies to other property outside of Town parks is not supported by a plain reading of the 'Parks' chapter of the Municipal Code," said Keimach. "The Town has never interpreted section 12.08.020 to apply anywhere other than Town parks and thus the risk of abuse by police enforcement based on the plain reading of the statute is unlikely."

The appeal was heard in Martinez, and the town came to defend its rules. "We told the town that we would drop the appeal if they vacated the conviction and reconsidered (the town's rule)," said Shapiro. "We didn't ask them to change it, just to look at it." He suggested also that the sign at the park should clearly state at what time the park closes. "We didn't want people to be harassed by that (municipal code rule)," he said.

"We considered Mr. Shapiro's arguments and upon further review, the Town determined that the statute did not violate any constitutional provisions," said Keimach. "In order to assure that the constitutionality of the ordinance was defended and in the interest of maintaining its ability to enforce established park closure hours, the Town filed an opposition to Mr. Smith's appeal."

Smith lost the appeal. "This is the cost of doing business," concluded Priebe. "Residents have the right to use the justice system. What was done was legal and just."

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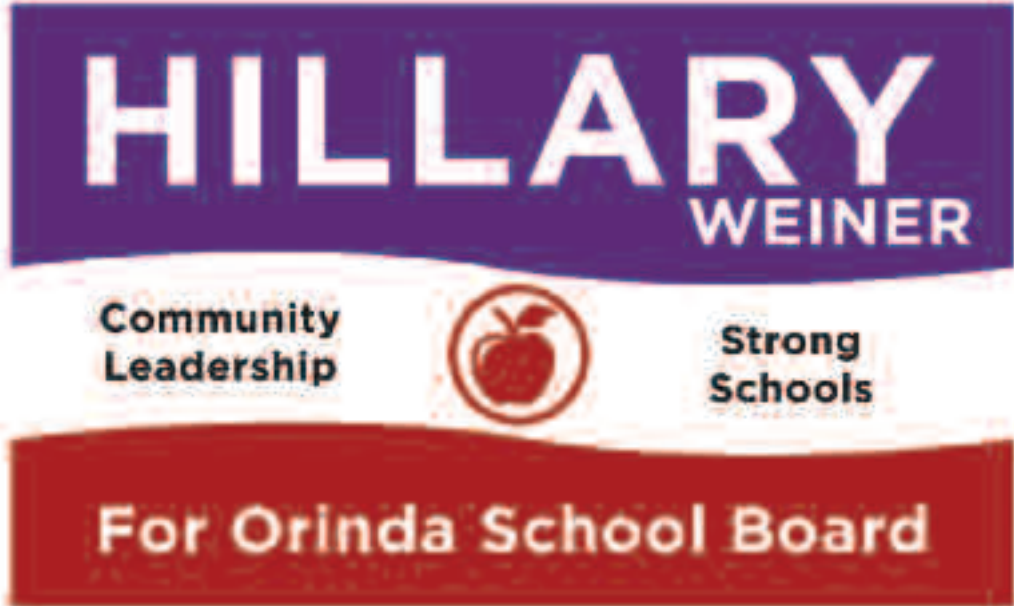
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Civic News Orinda

Orinda City Council Candidates Discuss the Importance of Engagement

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But the new bore didn't just happen. Since county voters' 1988 approval of a half-cent sales tax and CCTA formation to oversee those funds, area city councils have worked with larger agencies to prioritize the initiative above other cities' projects, resulting in \$38 million in initial state funding, \$50 million via Regional Measure 2, \$125 million via 2004's Measure J, and a \$197 million federal

stimulus in 2009.

"It's very difficult to do planning with a capital 'P' with just a local approach," explained Orr. If you make a fix to Highway 24, you may solve a problem at St. Stephens - but if you don't think about how that fix impacts the tunnel, you may make the problem worse. You can't do this sort of thing in a vacuum. That's not planning. It's problem solving."

City Council Candidates Talk Downtown Development

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Think about San Francisco's painted ladies. They're higher than 35 feet and they're beautiful."

And because "investors look at potential properties as cash cows," Orinda must develop a flexible, long-term plan. "If we make it hard for them, they'll tell us to forget it, and our town will become old and uncomfortable. Even Disneyland changes. I think we have to recognize that."

Amy Worth

"People like our charm, the architectural diversity," said Worth. "Our theatre is a jewel - an anchor for the crossroads." Still, many Orindans have told her they want revitalization. "Like anything that gets older, we need to refresh our community."

But the nips and tucks aren't easy for a city with a small downtown divided by a freeway. "That's why

council authorized sidewalk improvements and pursued funding for lighting where pedestrians walk to and from BART - to enhance access to both sides of the city."

A lot of thought also goes into how buildings look from the street and whether or not they maintain Orinda's semi-rural character, said Worth. "You can have a 35-foot building that's unattractive or a taller structure that works well because the terrain masks it. Orinda's General Plan provides a framework, but we need to continue to have a community process. And 'WE' means the whole community - all different ages of people talking about the different ways that they use the downtown and envisioning what they want to see in the future. The bottom line is making sure the aesthetics work for the community."



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