

# PIEDMONT CITY COUNCIL

## Regular Meeting Minutes for Monday, March 5, 2007

A Regular Session of the Piedmont City Council was held March 5, 2007, in the City Hall Council Chambers at 120 Vista Avenue. In accordance with Government Code Section 54954.2(a) the agenda for this meeting was posted for public inspection on March 1, 2007.

### **CALL TO ORDER**

Mayor McEnroe called the meeting to order at 7:30 p.m. with the Pledge of Allegiance.

### **ROLL CALL**

Present: Mayor Nancy McEnroe, Vice Mayor Abe Friedman and Councilmembers Dean Barbieri, John Chiang and Garrett Keating

Staff: City Administrator Geoff Grote, City Attorney George Peyton, Police Chief Lisa Ravazza, Fire Chief John Speakman, Public Works Director Larry Rosenberg, Recreation Director Mark Delventhal, City Clerk Ann Swift, Administrative Services Technician John Tulloch and Recording Secretary Chris Harbert

### **CONSENT CALENDAR**

The following items were considered under one vote by the Council:

#### **Minutes**

Approves as submitted Council meeting minutes of February 20, 2007

#### **Ordinance**

Approves the second reading of Ordinance 668 N.S. implementing a use agreement with Piedmont Choirs for office space in the Veterans' Hall for the period from January 1, 2007 through December 31, 2010

#### **Ordinance**

Approves the second reading of Ordinance 669 N.S. providing protection for the City against the expenses and liability relating to CEQA litigation

#### **Gift**

Accepts a gift in the amount of \$15,000 from the Piedmont Historical Society for the Piedmont History Trail and Grotto Restoration CIP Project

#### **Resolution**

Adopts a resolution commending the following residents who will be honored at the Annual Volunteer Reception on March 15, 2007:

- Arleta Chang
- Tamra Hege
- Terry London
- Nancy Weaver

#### **Resolution 18-07**

RESOLVED, that the City Council adopts the consent calendar as noted.

Moved by Friedman, Seconded by Barbieri

Ayes: McEnroe, Friedman, Barbieri, Chiang, Keating

Noes: None

Absent: None

(0705; 0520; 0890)

*(Note: Councilmember Chiang abstained from the vote approving the February 20, 2007, Council minutes)*

**PUBLIC FORUM**

There were no speakers for the public forum.

**REGULAR CALENDAR**

The Council considered the following items of regular business:

**Public Hearing:  
Central Piedmont  
Undergrounding  
Assessment District**

Pursuant to Council direction of January 16, the City Clerk recommended that the Council hold a public hearing relating to the establishment of the Central Piedmont Underground Assessment District. She announced that this is the second assessment hearing for this district – the first being held on November 7, 2005, at which time 74% of the ballots cast were in favor of district formation. However, when construction bids for the project were received, the low bid exceeded the engineer's estimate by approximately \$1,950,000. On January 16, 2007, the Council approved an Amended Engineer's Report and authorized the reballoting of this project. Following tonight's public hearing, the ballots cast for this project will be counted and if there is no majority protest against district formation, the Council will consider if there is sufficient public support and benefit to form the district.

The Vice Mayor recused himself from discussion and action on this matter as he resides within the proposed boundaries of the Central Piedmont Undergrounding Assessment District. He left the Council Chambers.

**Correspondence** was received from: Ryan Gilbert, January 23; Fred & Wendy Pomerantz, January 25; Gene & JoAnn Gould, undated; Lynn & Jim Saunders, February 26; Denny McLeod, February 8; Mary Davis, March 5; George Childs, March 5.

**Public testimony** was received from:

Jeff Horner, Bob Leslie, David Alexander and Fred Pomerantz strongly urged the Council to retain the 70% support level benchmark set for the district's first balloting and relied on in approving previous undergrounding districts. They felt that the request of district proponents to lower this benchmark in connection with this second balloting would be unfair and unjustified and they requested that the Council announce prior to tonight's ballot counting that the 70% level of support threshold will remain in effect. They emphasized the importance of requiring a high level of support for district formation given the 43% increase in project costs from that originally approved, the severe economic burden the proposed higher assessment rates will impose on many elderly/fixed income residents as well as new property owners within the district and the fact that not all costs associated with the undergrounding project have been finalized (e.g., individual service connections). They urged the Council to be sensitive to the significant financial obligation that will be imposed on residents if district formation is authorized.

Ryan Gilbert agreed with previous speakers regarding the need to retain the 70% support threshold. He also noted that there is a broad cross-section of opposition to district formation from property owners within the proposed boundary, based upon the belief that: (1) the proposal is essentially a private beautification project and is too expensive for such a purpose; (2) inaccurate information regarding tax deductibility and service connection costs have been disseminated; (3) it is a bad public

policy when in the interest of public safety only wealthy areas of the City are able to underground utilities; and (4) there are more cost effective ways to improve public safety in Piedmont.

Joseph Sheehan opposed district formation, stressing that the huge amount of money necessary to underground utilities could be better spent improving the City's police and fire services.

Denny McLeod, Bill Kadi, Ted Buttner and Guy Saperstein urged the Council to consider how action on this undergrounding project may affect the success of future undergrounding efforts to enhance the safety and aesthetics of the community. They emphasized that a super majority/70% level of support is not justified for undergrounding districts given that: (1) state law requires only a simple majority for approval; (2) unlike other tax proposals, only property owners within a proposed district are allowed to vote for the levy of an assessment; (3) assessment costs will be financed over a 25 year bond period, making annual costs relatively modest and on average only one-tenth of one percent of the value of the property – these costs are outweighed by the increase in property values that utility undergrounding provides; (4) a super majority level of support is undemocratic in that it gives more decision-making weight to “no” votes than “yes” votes; and (5) minority rule is regressive, bad policy.

Bob Lally inquired whether assessment levies are tax deductible, if there are financial aid programs available to assist seniors/fixed income residents with utility assessments, and if residents use a different contractor from that of the project contractor to provide individual service connections, can the cost of this independent contractor be added to the bond assessment amount. Sam Sperry, the City's Bond Counsel, and City staff responded by stating: (1) that residents should contact their own tax consultants regarding tax deductibility issues, but in general only the interest on assessments is deductible; (2) City loan programs are problematic and it is unlikely that Piedmont residents would be eligible for low income loans; and (3) if a contractor other than the project contractor is used for individual service connections, the costs for his services cannot be added to the bond assessment.

There being no more speakers, the Mayor closed the public hearing and asked if there is any property owner who wished to submit a ballot or change a previously submitted ballot. The Mayor then recessed the Council at 8:30 p.m. to Closed Session in the Conference Room to discuss management and mid-management compensation pursuant to Government Code Section 54957.6. During this recess, the City Clerk counted the ballots received in connection with the Central Piedmont Utility Undergrounding District. The meeting reconvened at 9:50 p.m.

The City Clerk announced that 94.5% of mailed ballots were cast, with 53% yes and 47% no. The ballot tally consisted of 166 parcels, with 74 parcels voting “no.”

Councilmember Barbieri supported Council approval of district formation, supporting majority rule in this type of matter. He noted that the 70% threshold referenced by opponents pertained to the level of support desired at the preliminary stage of consideration to assess whether there is sufficient support to initiate district formation

proceedings, and even then it is a non-binding policy established by a previous Council. The remaining Councilmembers opposed district formation based upon a 53% level of support. Councilmember Chiang noted his desire for at least a 60% support level to authorize district formation, the Mayor reiterated her preference for a two-thirds support level for assessment levy and Councilmember Keating voiced support for adhering to past Council practice of requiring an approximately 70% support level, especially since this standard was originally set for the Central Piedmont District in 2005.

**Resolution 19-07**

RESOLVED, that the City Council directs staff to prepare a Resolution to Abandon Proceedings regarding the Central Piedmont Undergrounding Assessment District and submit said Resolution for Council review and approval at the next meeting.

Moved by Barbieri, Seconded by Chiang

Ayes: McEnroe, Barbieri, Chiang, Keating

Noes: None

Recused: Friedman  
(1075)

The Council requested staff to: (1) determine if any of the work product generated by the Central Piedmont Engineer of Work could be utilized by the City and if so, propose monetary compensation to Central Piedmont proponents for this work; (2) examine potential options for assisting fixed income residents with meeting their financial obligations relating to utility undergrounding assessment districts; and (3) consider how boundary maps of potential undergrounding districts can be configured so as to maximize the likelihood of achieving a 70% level of support for district formation.

**Reports**

CIP Committee—Councilmember Keating reported on CIP Committee deliberations, noting a suggestion that funding for sidewalk, curb and gutter be transferred out of the CIP Budget and into the City’s Operating Budget. The Mayor requested Councilmember Keating to pose this suggestion to the CIP Committee for review and comment.

**Future Council  
Agenda Items**

Utility Undergrounding Threshold of Support—The Council agreed to discuss the general issue of whether there should be a policy or guideline with regard to the level of support required by the Council to authorize utility undergrounding district formation. It was agreed that discussion of this matter would be scheduled so as not to occur at any meeting where a proposed utility undergrounding district is being considered.

Loan Programs – Staff was requested to report at a future meeting regarding the feasibility of offering loan programs to residents in connection with meeting the financial obligations of utility undergrounding districts.

Swim Club Lease Renewal– The Council requested that the issue of Piedmont Swim Club lease renewal be scheduled for Council consideration in June.

**ADJOURNMENT**

There being no further business, Mayor McEnroe adjourned the meeting at 10:50 p.m.