

PIEDMONT CITY COUNCIL

Regular Meeting Minutes for Monday, March 19, 2007

A Regular Session of the Piedmont City Council was held March 19, 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 15, 2007.

CALL TO ORDER

Following a 5:30 p.m. Open Session for the interview of candidates for vacancies on various City commissions and committees, Mayor McEnroe called the meeting to order at 7:55 p.m. Boy Scouts from Den 3, Troop 3 led the Council and audience in 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, Finance Director Mark Bichsel, Public Works Director Larry Rosenberg, Recreation Director Mark Delventhal, City Clerk Ann Swift, City Planner Kate Black, Parks & Projects Manager Mark Feldkamp and Recording Secretary Chris Harbert

CONSENT CALENDAR

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

Minutes

Approves, as amended, Council meeting minutes of March 5, 2007: Page 4 (1st paragraph, line 4): "Councilmember Chiang noted his desire for around a 60% support level to authorize district formation and was disappointed that the vote did not even reach 55%, the minimum level required for certain School bond measures. The Mayor . . ."

Resolution

Adopts the following Resolution implementing the provisions of IRC Section 414(h)(2) allowing public safety and miscellaneous City employees to purchase additional retirement service credit that can be applied toward retirement benefits:

**EMPLOYER PICKUP RESOLUTION
PRE-TAX PAYROLL DEDUCTION PLAN
FOR SERVICE CREDIT PURCHASES
(CONTRIBUTION CODE 14)**

WHEREAS, The Board of Administration of the California Public Employees' Retirement System (CalPERS) at the April 1996 meeting approved a pre-tax payroll deduction plan for service credit purchases under Internal Revenue Code (IRC) section 414(h)(2); and

WHEREAS, the City of Piedmont has the authority to implement the provisions of IRC section 414(h)(2) and has determined that even though

implementation is not required by law, the tax benefit offered by this section should be provided to those employees who are members of CalPERS; and

WHEREAS, the City of Piedmont elects to participate in the pre-tax payroll deduction plan for all employees in the following CalPERS employee groups or classifications:

Safety
Miscellaneous

NOW, THEREFORE, BE IT RESOLVED:

I. That the City of Piedmont will implement the provisions of IRC section 414(h)(2) by making employee contributions for service credit purchases pursuant to the California State Government Code on behalf of its employees who are members of CalPERS and who have made a binding irrevocable election to participate in the pre-tax payroll deduction plan. "Employee contributions" shall mean those contributions reported to CalPERS which are deducted from the salary of employees and are credited to individual employee accounts for service credit purchases, thereby resulting in tax deferral of employee contributions.

II. That the contributions made by the City of Piedmont to CalPERS, although designated as employee contributions, are being paid by the City of Piedmont in lieu of contributions by the employees who are members of CalPERS.

III. That the employees shall not have the option of choosing to receive the contributed amounts directly instead of having them paid by the City of Piedmont to CalPERS.

IV. That the City of Piedmont shall pay to CalPERS the contributions designated as employee contributions from the same source of funds as used in paying salary, thereby resulting in tax deferral of employee contributions.

V. That the effective date for commencement of the pre-tax payroll deduction plan cannot be any earlier than the date the completed resolution is received and approved by CalPERS.

VI. That the governing body of the City of Piedmont shall participate in and adhere to requirements and restrictions of the pre-tax payroll deduction plan by reporting pre-tax payroll deductions when authorized by CalPERS for those employees of the

above stated employee groups or classifications who have elected to participate in this plan.

Agreement Approves a License Agreement between the American Society of Composers, Authors and Publishers (ASCAP) and the City relating to public performances of musical compositions in the amount of \$284, as on file in the City Clerk's Office

Agreement Approves an agreement with SEIU Local 790 which transfers representation of SEIU employees from Local 790 to Local 1021 and confirms that in all other respects the current collective bargaining agreements are to be maintained

Parcel Map Approves a one-year extension of the approval of a Tentative Parcel Map subdivision at 71 Dudley Avenue

Resolution 20-07

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

Moved by Barbieri, Seconded by Friedman

Ayes: McEnroe, Friedman, Barbieri, Chiang, Keating

Noes: None

Absent: None

(0747; 0045; 0045; 1075; 1010/X0645)

PUBLIC FORUM

Ronnie Hersler, a member of the Piedmont Mediation Committee, described the types of services the Committee can provide to residents to assist in resolving disputes in a non-threatening and confidential manner. The Committee has been trained by the East Bay Mediation Group and all services are free of charge. More information re this service is available at City Hall.

Polly Rich and Roxanne Rosenthal announced the formation of a citizen advocacy group to encourage residents to become more self-sufficient and prepared for a major earthquake. The intention of the group is to supplement the City's efforts with regard to earthquake preparedness.

Jim Semitekol requested that the City's website correct misinformation relating to the Recreation Commission's recommendations regarding turf and lighting improvements at Coaches Playfield. The City Clerk responded that the website has been corrected. He also inquired whether Coaches Playfield Use Restrictions permit the Recreation Department to offer an Adult Softball Program on the field, citing his belief that organized field use is limited to youths 12 years old and younger.

REGULAR CALENDAR

The Council considered the following items of regular business:

**Central Piedmont
Utility Undergrounding
District**

Per Council direction of March 5, the City Clerk submitted for Council adoption a *Resolution Abandoning Proceedings and Voiding Assessment in the Central Piedmont Undergrounding Assessment District*.

Vice Mayor Friedman recused himself from discussion and action on this matter as he resides within the boundaries of the proposed district. He left the Council Chambers.

Correspondence was received from: Denny McLeod, March 19; Rosemary Boccio, March 19.

Public testimony was received from:

Marion Schwartz referenced a *Piedmont Post* March 5 editorial in voicing her disappointment over the Council's failure to approve the formation of the Central Piedmont Undergrounding Assessment District. She stressed her belief that the City Council should encourage neighborhoods to underground utility lines for reasons of public safety, community aesthetics and property value enhancement.

Denny McLeod and Tom McBride requested that the Council table for 90 days action on the proposed Resolution Abandoning the Central Piedmont District to give proponents additional time to try and generate greater interest and support for district formation. They noted that district proponents were caught off-guard by the Council's March 5 action and would like an opportunity to explore potential modifications to the proposal in an attempt to obtain Council approval for district formation.

Jeff Horner voiced surprise and dismay over proponents' request for a stay of implementation stressing that a decision regarding the Central Piedmont District was made on March 5, the neighborhood and public left the meeting on March 5 with the understanding that the Council denied district formation and that the only matter before the Council tonight is the formalized adoption of the resolution.

Ryan Gilbert agreed with Mr. Horner in that the decision concerning the Central Piedmont Undergrounding District was made on March 5 and it would be bad precedent and a failure of due process to re-open the matter. He emphasized that the only reason the formal Resolution abandoning the project was not adopted on March 5 was because staff failed to include this alternative resolution in the meeting packet.

Steven Block argued that no final action/decision has been reached on this matter because the Council did not adopt a Resolution formally abandoning the project on March 5.

The Council discussed with staff the legality of postponing action on the adoption of the proposed Resolution, whether the Council can reconsider its action of March 5, whether Rule 20C money can be expended in connection with this district, whether the matter can be re-balloted either with or without a new Engineer of Work report and assessment, if state law prohibits the re-petitioning for district formation for a period of one-year and what constitutes the combined procedures of CA Proposition 218 and the Municipal Improvement Act of 1913 in relation to City Council action in voting on assessment district formations. It was decided that these questions should be referred to the City's Bond Counsel (Sam Sperry) for response.

The Council, with the exception of Councilmember Keating, supported continuing until April 4 the execution and final adoption of the Resolution Abandoning Proceedings and Voiding Assessment in the Central Piedmont Undergrounding District to allow an opportunity for the City's Bond Counsel to respond to Council questions and to set forth the legal options available to the Council in this situation. Councilmember Keating felt that the decision regarding this district was made on March 5 and delaying final action to abandon proceedings would cause undue stress to district opponents who left on March 5 believing that they would not be subject to the proposed assessments.

Resolution 21-07

RESOLVED, that the City Council, at the request of Central Piedmont Underground Assessment District Steering Committee Member Denny McLeod, tables until April 4 the execution and final adoption of a Resolution Abandoning Proceedings and Voiding Assessments for the Central Piedmont District to allow an opportunity for the Council to receive input on this matter from Mr. Sam Sperry, the City's Bond Counsel.

Moved by Barbieri, Seconded by Chiang

Ayes: McEnroe, Barbieri, Chiang

Noes: Keating

Recused: Friedman

(1075)

The City Administrator stated that he would notify all residents within the boundaries of the proposed Central Piedmont Undergrounding District of the Council's consideration of this matter on April 4. He also requested that any additional questions for the Bond Counsel be submitted to the City Clerk for forwarding to Mr. Sperry.

Utility Undergrounding Policy

Per Council direction, the City Clerk reported on her research concerning the policies and procedures of other cities relating to the formation of utility undergrounding assessment districts. She requested Council input regarding possible modifications to the City's existing undergrounding policy.

Correspondence was received from: Denny McLeod, March 19; Rosemary Boccio, March 19.

Public testimony was received from:

Rosemary Boccio referenced the information sent out by the proposed Piedmont Hills Undergrounding Utility District indicating that the district had to receive a super majority percentage of "yes" votes in order to obtain Council approval for district formation. She requested that the Council reaffirm this level of support and not consider a simple majority vote to be sufficient to approve district formations, especially given the escalating costs of undergrounding projects and the corresponding level of bonded indebtedness necessary to finance such projects.

Guy Saperstein, Tom McBride, Ren Babington and Carl Anderson all urged the Council to abide by "majority rule" when it comes to authorizing the formation of utility undergrounding districts and to not require a super majority level of support. They also requested that the

Council adopt a policy expressing the City's strong support of privately financed utility undergrounding districts. They urged that the Council retain the flexibility and discretion granted by state law to approve undergrounding districts and not bind itself to an arbitrary level of support threshold – consider each district on its own merits.

Ryan Gilbert urged that the City's undergrounding policy require a 60% voter approval level to authorize district formation. He noted that if the City had a clear, concise policy setting forth the issues and answers to frequently asked questions, the level of frustration and divisiveness created by the utility undergrounding process could be significantly reduced.

Denny McLeod referenced his letter of March 19 in reviewing several reasons why the Central Piedmont Undergrounding District failed to achieve a vote percentage acceptable to the Council and proposing specific suggestions for inclusion in the City's undergrounding policy to generate greater public support of district formations.

The Council discussed this issue at length, requesting staff to draft a proposed undergrounding policy/information packet for Council review and approval which:

- Reaffirms the City's strong support of privately financed utility undergrounding projects;
- Retains the requirement for undergrounding petitions to contain signatures of support from approximately 70% of property owners within a proposed district;
- Incorporates suggestions contained in Mr. McLeod's letter of March 19;
- Does not set a "threshold percentage" of weighted ballots necessary for Council support of a district.
- Directs residents to seek tax advice from professionals;
- Incorporate and modify as necessary the City of Belvedere's *Frequently Asked Questions about Utility Undergrounding*;
- Include a spreadsheet of the cost history of undergrounding projects as a reference guide;
- Include staff discretion to update information as necessary;

In addition, the Council requested that the Municipal Tax Review Committee be requested to examine: (1) options for providing financial assistance to low-income seniors in connection with meeting utility undergrounding assessment obligations; and (2) the feasibility of establishing a Citywide utility undergrounding program.

On a Motion by Councilmember Chiang, Seconded by Vice Mayor Friedman and Unanimously Carried, the Council agreed to extend

tonight's meeting to 11:15 p.m. in order to complete consideration of the agenda.

Resolution 22-07

RESOLVED, that the City Council reaffirms its strong support of privately financed utility undergrounding projects and encourages residents throughout the City to work with their neighbors in bringing forward such projects for the benefit of their neighborhood and community.

Moved by Friedman, Seconded by Chiang

Ayes: McEnroe, Friedman, Barbieri, Chiang, Keating

Noes: None

Absent: None

(1075/X0795)

**Indian/Hampton
Traffic Median**

The Parks & Projects Manager recommended that the Council award the contract for the construction of the Indian/Hampton Road Median Improvement Project to the low bidder Rosas Brothers in the amount of \$37,350. The project will construct a new median at the intersection of Hampton and Indian Roads. Phase I involves the demolition of the existing pavement, installing new concrete curbs, new topsoil and traffic signs and striping. Phase II will follow with City staff managing the installation of the irrigation and landscaping. It is anticipated that the entire project will be completed by the end of May.

Resolution 23-07

RESOLVED, that the City Council awards the contract for the Indian/Hampton Road Median Improvement Project to Rosas Brothers in the amount of \$37,350.

Moved by Friedman, Seconded by Chiang

Ayes: McEnroe, Friedman, Barbieri, Chiang, Keating

Noes: None

Absent: None

(0045)

Reports

Election Report – The City Administrator stated that staff will report on the ramifications of the State's recent change in its Primary Election date on the City's municipal election date.

Park Commission—Councilmember Chiang reported that last month the Park Commission approved the Dale Avenue residents' request for a new street tree designation and replanting.

Planning Commission – Councilmember Keating reported on the Planning Commission's discussion regarding 22 Valant Place, noting in particular that the Commission felt stymied by the City's policy of not granting variances for new home construction when in this particular case, a front yard setback variance would have lessened adverse impact on adjacent neighbors and the applicant. Councilmember Keating suggested that this general issue be discussed at the Council's next joint session with the Planning Commission.

ADJOURNMENT

There being no further business, Mayor McEnroe adjourned the meeting at 11:15 p.m.