

# PIEDMONT CITY COUNCIL

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

A Regular Session of the Piedmont City Council was held November 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 November 1, 2007.

### **CALL TO ORDER**

Following a 6:30 p.m. Closed Session regarding contract negotiations with the Piedmont Police Officers Association and International Association of Firefighters and possible litigation relating to 48 Fairview Avenue held pursuant to Government Code Sections 54957.6 and 54956.8, Mayor McEnroe called the meeting to order at 7:35 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, Deputy City Attorney Judith Robbins, Finance Director Mark Bichsel, Police Chief Lisa Ravazza, City Clerk Ann Swift, City Planner Kate Black, Parks & Projects Manager Mark Feldkamp, Building Official Chester Nakahara and Recording Secretary Chris Harbert

### **CONSENT CALENDAR**

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

#### **Minutes**

Approves as amended Council meeting minutes of October 15, 2007

#### **Agreement**

Approves an amendment to the City's Ambulance Agreement with the Alameda County Emergency Medical Service Agency to increase rates for non-residents and mutual aid response outside of the City of Piedmont

#### **Agreement**

Approves an agreement with Fire Trucks Plus, Inc. for the consignment and sale of the Fire Department's surplus 1997 Ford-Road Rescue Module Ambulance in the amount of \$27,000

#### **Agreement**

Accepts as complete the contract with Ransome Company in the amount of \$324,050 for the FY 07/08 Street Resurfacing Project and authorizes an additional \$104,885 for mandatory handicapped ramps and additional grinding and asphalt

#### **Agreement**

Awards the contract for the FY 07/08 Street Tree Pruning Project to The Professional Tree Care Company in the amount of \$97,475 to prune 557 trees located throughout the City

#### **Appointment**

Appoints Councilmember Keating as the City's representative to the Alameda County Waste Management Authority and Mayor McEnroe as alternate, effective November 1, 2007 to April 1, 2008

**Resolution 82-07**

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

Moved by Barbieri, Seconded by Chiang

Ayes: McEnroe, Friedman, Barbieri, Chiang, Keating

Noes: None

Absent: None

(0045; 0085)

**PUBLIC FORUM**

George Kersh urged the Council to exercise fiscal restraint in salary/benefit negotiations with the Piedmont police and fire unions.

Neil Teixeira submitted a letter dated November 5, 2007, from Piedmont Concerned Citizen's Group entitled *Martingate* in requesting that the City authorize an independent investigation of possible misconduct on the part of City between the years 1977 and 2007 related to the Ann Martin Children's Center.

**REGULAR CALENDAR**

The Council considered the following items of regular business:

**Street Closure**

PHS Cross-Country Track Coach Doyle O'Regan requested approval to close certain streets on the morning of November 22, 2007, for the team's 6<sup>th</sup> annual *Turkey Trot* fundraiser. It was noted that the Public Works Director, Police Chief and Fire Chief have reviewed the team's request and recommend approval. Coach O'Regan emphasized that this annual footrace is a vital fundraiser for the cross-country team and a very popular community event. Councilmember Barbieri congratulated Coach O'Regan on the tremendous success of the PHS track team through the years, noting its numerous state championships and the fact that it is the most successful sports team in PHS history.

**Resolution 83-07**

RESOLVED, that the City Council approves the request of the Piedmont High School Cross-Country Track Team to close certain City streets on November 22, 2007, for the team's annual *Turkey Trot* fundraiser.

Moved by Barbieri, Seconded by Chiang

Ayes: McEnroe, Friedman, Barbieri, Chiang, Keating

Noes: None

Absent: None

(1000)

**Public Hearing:  
Appeal of Planning  
Commission Decision,  
50 Selborne Drive**

The City Planner stated that Alan Wofsy and Judith Mazia are appealing the Planning Commission's September 10, 2007, conditional approval of Sean Hilchey and Nora Canty's design review application to install two ground mounted air conditioning units on the east side of their residence at 50 Selborne Drive. The City Planner reviewed the history of this application, noting that originally staff conditionally approved the application on July 31 and this decision was appealed by Wofsy/Mazia to the Planning Commission. The Planning Commission upheld the staff's decision on September 10, requiring additional design modification of the proposed trellis screening of the units. The applicants have submitted a revised trellis design with an evergreen vine and an additional hedge to be planted at the property line to satisfy the Commission's conditional of approval. In addition, the City Planner noted a correction in the staff/Commission

approval findings. The combined sound level of the units is expected to be 49.5 decibels at the nearest property line (originally 46.5 decibels was indicated). This decibel level complies with the maximum 50 decibel level limit permitted by City Code.

**Correspondence** was received from: Alan Wofsy, June 30, July 5, August 1 & 10, September 6 & 20; Bennett Christopherson, August 30; Charles Salter, September 6; Judith Mazia, October 4 & 5.

**Public testimony** was received from:

Bobbe Stehr, Planning Commission Vice Chair, summarized the Commission's review and discussion of the proposed installation and screening of the AC units, noted that the Commission conducted site visits at both the applicant and appellant properties, felt that the visual impact of the units on the appellants was minimal given existing and proposed vegetation and the separation distance between the two residences and relied on professional testimony/documentation from both staff and acoustical consultants that the proposed units will comply with the City's noise ordinance. In addition, Ms. Stehr noted her personal research with a decibel reader in evaluating the sound level of 50 decibels and noise output from a typical air conditioning unit.

Chester Nakahara, the City's Building Official, responded to Council questions, noting in particular that the 50 decibel limit is the typical standard for municipalities and his confidence that the noise evaluation methodology used to calculate the decibel level of the proposed AC units is accurate. He also described the rather complicated process involved in measuring decibel readings, noting that the City Code requires that noise levels be certified by an acoustical engineer.

Dana Fox, attorney representing Mr. Wofsy and Ms. Mazia, noted her clients' belief that since the proposed noise output from the units is so close to the maximum permitted by law, the actual decibel level once installed will exceed the 50 decibel limit because of the likelihood of a margin of error in the calculation and the magnification factor generated by the sloping topography between the two homes. She agreed that while the revised design of the trellis helps to mitigate the units' visual impact on her clients, it does not lessen their acoustical impact. She requested the Council to overturn the Commission's decision and remand the matter back to the Commission so that sound buffering features/materials can be added to protect her client's acoustical privacy.

Thomas Schindler, an acoustical engineer, stated that he was retained by the appellants to evaluate the applicant's proposal but was requested to appear at tonight's hearing by the City's Building Official since he often serves as an acoustical consultant for the City. He responded to Council questions, noting in particular his confidence that the 49.5 decibel level for the units was properly calculated, his opinion that vegetation does not have a measurable impact in reducing noise and his belief that the topography between the two homes will not amplify the sound. He noted that a certified decibel testing report from a sound engineer typically costs between \$500 to \$1,000.

Judith Mazia noted her concern that the actual noise level from the units will exceed code limits and her desire to avoid this possibility by providing sound buffering before the units are installed. She noted her willingness to financially contribute toward the sound buffering of the units.

Alan Wofsy referenced his documentation in noting the repeated errors in indicating what the anticipated decibel level of the units will be and his belief that the current calculation of 49.5 is still inaccurate. He was convinced that the proposed trellis and vegetation screening of the units will be unsuccessful in mitigating noise impacts and instead requested that the units be concealed behind a solid 4 ft. high wall, with sound insulation material added to this enclosure. He was confident that this solid wall could be designed so as to be architecturally consistent with the walls of the applicants' existing house.

Sean Hilchey noted that the Planning Commission extensively discussed noise/sound issues at the September 10 hearing and determined that based upon expert testimony and documentation the proposed units will comply with the City's noise ordinance. He stressed that the units will be heavily screened by vegetation and will have minimal visual/acoustical impact on his neighbors.

Councilmember Keating noted that the proposed location of the AC units is in a very quiet area of the City and he suggested that once the units are installed the City pay for an acoustical testing of the units to insure that they are in compliance with City regulations. Councilmembers Barbieri and Keating felt it unfair to place the financial burden for insuring that the units comply with code noise limits on the neighbor.

**Resolution 84-07**

RESOLVED, that the City Council upholds the Planning Commission's September 10, 2007, conditional approval of Sean Hilchey and Nora Canty's design review application for the proposed installation of two ground mounted air conditioning units at 50 Selborne Drive, with the additional condition that the City undertake the acoustical testing of these units after their installation.

Moved by Keating, Seconded by Barbieri

Ayes: Barbieri, Keating

Noes: McEnroe, Friedman, Chiang

**MOTION FAILED**

The Council majority opposed requiring the City to verify the findings of professional experts on behalf of a neighbor, noting that to do so would set a costly precedent, could be interpreted as a "gift of public funds," and is contrary to City policy/practice of relying on manufacturer specifications and professional opinions in determining code compliance of mechanical equipment. In this case, all professional documentation and testimony indicate that the units comply with City Code requirements.

**Resolution 85-07**

WHEREAS, Mr. Sean Hilchey and Ms. Nora Canty are requesting permission to install two new ground mounted air conditioning units on

the east side of their residence located at 50 Selborne Drive, Piedmont, California, which construction requires design review; and

WHEREAS, the Piedmont Planning Commission conditionally approved Mr. Hilchey and Ms. Canty's application on September 10, 2007, and this approval decision was appealed by Mr. Alan Wofsy and Ms. Judith Mazia; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application and appeal, and after having visited subject property, the Piedmont City Council finds that the proposal conforms with the criteria and standards of Section 17.20.9 of the Piedmont City Code:

1. The exterior design elements (including but not limited to height, bulk, area openings, breaks in the façade, line and pitch of the roof, materials, arrangements of structures on the parcel, and concealment of mechanical and electrical equipment) are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development in that: As conditioned, the 3 ft. and 4 ft. high air conditioning units meet Residential Design Guideline II-1 in that their scale is compatible with the existing residences in the neighborhood. The proposed air conditioning units also meet Residential Design Guideline II-3© in that they are designed to be carefully integrated into the three dimensional form and proportional relationships of the existing residence. As conditioned, the proposed units will be adequately screened and will be harmonious with the existing architecture of the house. The design and placement of the proposed air conditioning units are appropriate and as conditioned, meet the criteria established in Section 17.20.9(a)(i), which calls for the concealment of mechanical and electrical equipment. According to the sound rating output information provided by the applicant which does not include the screening, the proposed air conditioning units are expected to have a combined sound level of 49.5 decibels at the nearest property line and will therefore meet the 50 decibel limit required by the Piedmont Municipal Code, Section 5.2.21.

2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light because as conditioned, the design is appropriate and will have no significant adverse effect on neighboring properties' existing views, privacy and access to direct and indirect light, in that the units are proposed to be located 30 ft. from the closest property line. Due to the down sloping shape of the lot, required screening, mature vegetation and the distance between the improvements and the adjacent neighbors, there will be no impact on light or neighboring views. The existing mature vegetation and conditioned privacy mitigation measure ensures adequate privacy between the proposed air conditioning units and the neighboring properties.

3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress. Due to the nature and location of the proposed construction, the safety

of residents, pedestrians and vehicle occupants and the free flow of vehicular traffic will not be adversely affected.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont City Council denies Mr. Wofsy and Ms. Mazia's appeal and upholds the Planning Commission's conditional approval of Mr. Hilchey and Ms. Canty's design review application for construction at 50 Selborne Drive, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. The applicants shall install, between the proposed air conditioning units and north (rear) property line, a vegetated fence approximately 7 ft. in height or of a shape determined by staff as necessary to provide adequate privacy when viewed from 66 Inverleith Terrace. The applicants have the discretion to propose either design alternative. Said design change shall be subject to staff review and approval;
2. The applicants shall maintain the dense, mature, vegetation along the rear property line to preserve the privacy screening between the air conditioning units and neighboring properties. This vegetation shall remain intact and be maintained for at least 10 years from the date of final inspection; and
3. The approved plans are those submitted on June 19, 2007, with additional sound rating information submitted on July 23, 2007, after neighbors were notified of the project and the plans were available for public review.

RESOLVED FURTHER, that the approval of the Planning Commission/City Council and any conditions of that approval shall not extend to any particulars set forth in the documents submitted for the project which are inconsistent with or in violation of any applicable law, including but not limited to Chapters 5 and 17 of the City Code, nor does the approval extend to matters not set forth, or inadequately represented, in submitted documents (whether or not consistent with applicable law). The City reserves the right to require compliance with applicable laws and to attach conditions after initial approval is given, if noncompliance is discovered or additional conditions are considered necessary and appropriate in light of Commission/Council findings.

Moved by Friedman, Seconded by Chiang

Ayes: McEnroe, Friedman, Barbieri, Chiang, Keating

Noes: None

Absent: None

(0080)

### **Ordinance**

The City Clerk recommended second reading approval of Ordinance 674 placing a municipal service tax measure on the March 4, 2008, municipal election ballot. The clerk noted that the proposed ordinance was revised in accordance with Council requests at the first reading approval on October 15.

**Public testimony** was received from:

George Childs urged the Council to keep the tax burden on residents as low as possible.

The Council requested that Section 1 (intent) of the proposed ordinance be amended to explicitly state that the maximum amount to be raised by the parcel tax would be \$1.5 Million. The proposed revision is as follows:

Section 1: It is the intent of the City Council of the City of Piedmont in adopting this ordinance to provide for the continuation of a special tax for the provision of municipal services in Piedmont *to a maximum of \$1.5 Million.* Further, the use . . . “

**Resolution 86-07**

RESOLVED, that the City Council approves the second reading of Ordinance 674 N.S., as amended herein, to place a municipal service tax measure on the March 4, 2008, municipal election ballot.

Moved by Keating, Seconded by Chiang

Ayes: McEnroe, Friedman, Barbieri, Chiang, Keating

Noes: None

Absent: None

(0765/X0435)

**Election Date**

Per Council discussions of October 1 and 15, the City Clerk submitted four possible options for amending the City Charter to change the City's regular municipal election date. She noted that three of the four options were developed this afternoon in response to a request from the Vice Mayor to consider possible dates other than just consolidation with the general election (November of even numbered years). The four options presented were:

Option 1: allow Council discretion to consolidate the municipal election with either the state primary or general November election;

Option 2: hold the municipal election on the same date as the state primary (consolidated);

Option 3: designate the first Tuesday after the first Monday of February in even numbered years (stand alone election); however, currently this is the date of the state primary and thus it would be a consolidated election as long as the state does not change its election date in the future;

Option 4: consolidate the municipal election with the general election – the first Tuesday after the first Monday of November of even numbered years.

**Correspondence** was received from: Lianne Campodonico of the League of Women Voters of Piedmont, October 14.

**Public testimony** was received from:

Ward Lindenmayer, PUSD Board of Education Member, emphasized the importance of continuing the City's past practice of staggering the years wherein the Piedmont electorate is requested to vote on City and

School District parcel tax measures to allow sufficient time between tax campaigns to optimize the likelihood of voter approval of these critically needed tax measures. He noted that a November election date is problematic for the School District's tax campaign because it would require campaign volunteers to mobilize over the summer months. From a School District perspective, he preferred a municipal election date in February, March or June.

Valerie Matzger, former Piedmont Mayor, concurred with Mr. Lindenmayer's comments, adding that a November election date is not optimum for either the City or School District because it increases the chance that important local issues can be lost/ignored in the barrage of election focus on national candidates and campaigns. She preferred Option 2 or 3.

The Vice Mayor voiced his strong support for Option 3, noting that historically Piedmont's municipal election was held in February. He felt the February date is the best in terms of City/School District tax campaigns and that it is unlikely that the state primary date will change again anytime soon, therefore this date will be a consolidated election. Councilmember Keating voiced his disappointment that the additional election date options were not submitted to the Council earlier.

**Resolution 87-07**

WHEREAS, pursuant to Section 8.01 of the Piedmont City Charter, general municipal elections have been held on the first Tuesday after the first Monday of March of even numbered years; and

WHEREAS, the selection of that date was intended to consolidate Piedmont elections with other statewide matters, reduce costs and increase voter turnout; and

WHEREAS, the California State Legislature has changed its election date on several occasions, causing the City of Piedmont to hold a stand alone election at increased costs; and

WHEREAS, the Piedmont City Council wishes to establish an election date which will reduce costs and increase voter turnout at municipal elections;

NOW, THEREFORE, BE IT RESOLVED, that Section 8.01 of the Piedmont City Charter shall be amended to read as follows, to be effective with the General Municipal Election occurring in 2010.

“SECTION 8.01 GENERAL MUNICIPAL ELECTIONS.

General Municipal elections for the election of officers and for such other purposes as the City Council may prescribe, shall be held **on the first Tuesday after the first Monday of February in even numbered years.**”

RESOLVED FURTHER, that in accordance with Section 9.07 of the Piedmont City Charter governing Charter Amendments, the following questions shall be placed before the voters of Piedmont at the General Municipal Election on March 4, 2008, and such Charter Amendment



shall not become effective unless approved by a majority of the qualified voters at such election;

“Shall Section 8.01 of the Piedmont City Charter be amended to **change the City’s general municipal election date to the first Tuesday after the first Monday of February of even numbered years** as more fully set forth in Resolution 87-07 of the Piedmont City Council on file with the Piedmont City Clerk?”

Moved by Friedman, Seconded by Barbieri

Ayes: McEnroe, Friedman, Barbieri, Chiang

Noes: Keating

Absent: None

(0435)

### **Election Details**

The City Clerk requested Council adoption of a proposed resolution requesting the services of the Alameda County Registrar of Voters for the March 4, 2008, municipal election and setting other election related details. In addition, per an earlier Council request, the proposed resolution eliminates any cost to candidates in Piedmont elections.

The Finance Director responded to Council questions concerning the municipal services tax.

The Council requested that the proposed Resolution be revised as follows with regard to the “Municipal Services Tax” and Charter Amendment to Change the City’s Election Date” sections:

Municipal Services Tax: “To maintain essential services and prevent a reduction in maintenance of city facilities, shall the City of Piedmont authorize a new Municipal Services Tax at the same level, *adjusted for inflation*, authorized by the current tax measure as more specifically set forth in Ord. 674 N.S. which is on file with the City Clerk?”

Charter Amendment to Change the City’s Election Date: “Shall Section 8.01 of the Piedmont City Charter be amended to establish the date for the general municipal elections to be on the first Tuesday after the first Monday of *February* of even numbered years, as more fully set forth in Resolution 87-07 of the Piedmont City Council on file with the Piedmont City Clerk?”

### **Resolution 88-07**

RESOLVED, that the City Council approves, as amended herein, the proposed Resolution Relating to the General Municipal Election, March 4, 2008.

Moved by Friedman, Seconded by Chiang

Ayes: McEnroe, Friedman, Barbieri, Chiang, Keating

Noes: None

Absent: None

(0435)

### **Public Hearing: Garbage Collection Proposals**

Mr. Richard Tagore-Erwin of R3 Consulting Group, the City’s solid waste refuse consultant narrated a power-point presentation summarizing the results of the City’s double-blind evaluation process of the three refuse, green waste and recycling collection proposals received in response to the City’s July RFP solicitation of bids for a

new solid waste franchise contract. The three bidders were Republic Services, Waste Management and California Waste Solutions. Mr. Tagore-Erwin reviewed the specifics of each proposal, noting that regardless of which company is ultimately awarded the contract, a significant increase in collection rates can be expected. He reviewed the reasons behind the significant cost increases, noting that since 2001 when the current contract was approved, there have been substantial increases in fuel, vehicle and labor costs, disposal and tipping fees and expansions in City collection services.

By procedural motion made by Councilmember Barbieri, seconded by Vice Mayor Friedman and unanimously carried, the Council agreed to extend tonight's meeting until 11:15 p.m. in order to complete agenda consideration.

**Correspondence** was received from: Wildwood, Beach and Havens Parent Club Presidents, November 1; Lynne Bosche, Nov. 5; Julie Gardner, Nov. 5; Fran Wolfe, Oct. 29; Tom Gandesbery, Oct. 23; Rebecca Schnier, Oct. 15; Paul Faberman, Oct. 13; Steffi Mooers, Oct. 12; Mary Lou Righellis, Oct. 10; Don Eidam, Oct. 8; Jimmy Thompson, Oct. 5; Anne Weinberger, Oct. 4; Joanne Jaffee & Jim Lawrence, Aug. 17; Phillip Cardon, Aug. 6.

**Public testimony** was received from:

George Kersh requested that the City continue with Republic Services as the franchise contractor and that green and food waste recycling not be mandatory for residents.

George Childs requested that the City not increase current service levels.

Valerie Matzger urged that the new contract require mandatory participation in green and food waste recycling, expand the types of materials acceptable for recycling, retain the 7:00 a.m. starting time for collection, require that green waste recycling be collected on a weekly rather than bi-weekly basis, retain exclusive debris box collection to maximize diversion rates and include a greater price differential between the 1<sup>st</sup> and 2<sup>nd</sup> garbage can rate to encourage recycling. In addition, as a way to lessen costs, establish curbside collection as the "default" with backyard collection service available per subscription.

Fran Wolfe read a prepared statement concurring with Ms. Matzger's requests and in addition suggesting that (1) bulky waste collection be eliminated if less than 75% of residents utilize this service; (2) hinged covers be included on all wheeled containers to minimize debris and vermin; (3) a price ceiling be included beyond which rates cannot exceed once the year 2009 ends; and (4) include a no lockout/no strike clause with mandatory arbitration.

By procedural motion made by Councilmember Barbieri, seconded by Councilmember Chiang and unanimously carried, the Council agreed to extend tonight's meeting until 11:25 p.m. in order to complete agenda consideration.

Rebecca Schnier concurred with the requests of Ms. Matzger and Wolfe, stressing the need to encourage recycling as a top priority and recognize the fact that curbside collection is now the norm.

The Council noted that the submitted proposals all provided costs based upon backyard collection. In an effort to determine accurate costs if curbside collection was the standard, the Council directed Mr. Tagore-Erwin to request each of the three bidders to submit firm costs based upon curbside collection with a backyard collection option available per subscription. If possible, the three bidders were also requested to provide costs if garbage collection remains backyard but green waste and recycling collection is curbside. Once these costs are obtained, the Council requested staff to publish a series of notices in the local press setting forth the cost options and requesting residents to contact the City and/or Council re their preferences for either retaining the City's long-standing backyard collection practice or establishing a curbside collection program. The Council also requested that press articles be published advising residents that a public hearing regarding backyard/curbside collection and the garbage franchise contract in general will be held at the Council's December 3 meeting. Wide public notification of this issue was requested, e.g. City website, press, KCOM, etc.

**ANNOUNCEMENTS**

Police Blotter – Councilmember Keating stated that neither he nor any other Councilmember called in a noise complaint against a school fundraiser as reported in a police blotter excerpt published in the October 31 *Piedmont Post*.

**ADJOURNMENT**

There being no further business, Mayor McEnroe adjourned the meeting at 11:35 p.m.