

PIEDMONT CITY COUNCIL

Regular Meeting Minutes for Monday, July 6, 2009

A Regular Session of the Piedmont City Council was held July 6, 2009, 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 July 2, 2009.

CALL TO ORDER

Following a 7:00 p.m. Closed Session regarding litigation in the matter of Kurtin v. Piedmont held pursuant to Government Code Section 54956.9(a), Mayor Friedman called the meeting to order at 7:30 p.m. with the Pledge of Allegiance.

ROLL CALL

Present: Mayor Abe Friedman, Vice Mayor Dean Barbieri and Councilmembers John Chiang, Margaret Fujioka and Garrett Keating

Staff: City Administrator Geoff Grote, City Attorney George Peyton, Acting Police Chief John Hunt, Fire Chief John Speakman, Public Works Director Larry Rosenberg, Recreation Director Mark Delventhal, City Clerk Ann Swift, City Planner Kate Black 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 June 15, 2009

Ordinance

Approves the second reading of Ordinance 689 N.S. making a technical correction to Section 9.15 of the Municipal Code regarding Solid Waste (Garbage)

Resolution 72-09

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

Moved by Chiang, Seconded by Keating

Ayes: Friedman, Barbieri, Chiang, Fujioka, Keating

Noes: None

Absent: None

(0705)

Councilmember Fujioka requested that in the future, proposed code amendments being implemented by new ordinances be red-lined and/or underlined in the ordinance to facilitate easy identification of the changes.

PUBLIC FORUM

There were no speakers for the public forum.

REGULAR CALENDAR

The Council considered the following items of regular business:

Agreement

The Public Works Director recommended Council approval of a contract with Coastland Civil Engineering Inc. for the provision of professional engineering services and the appointment of John Wanger, PE as City Engineer. The initial term of the proposed agreement with Coastland is from July 1, 2009 to June 30, 2010 with two separate one-year options. In response to questions from Councilmember Fujioka,

the Director noted that the proposed agreement is not a fixed price contract -- professional engineering services will be provided and billed based upon an agreed upon hourly rate. He added that based upon bids received in response to the City's Request For Proposal for a new engineering services contract and interviews with the three finalists firms, it was determined that Coastland was the best choice for Piedmont for a variety of reasons. The City's long-standing engineering services contract with Harris & Associates expired on June 30, 2009.

Councilmember Fujioka requested that the proposed contract be modified to include a *time of essence* provision, a *modifications* clause and list the City of Piedmont as an *additional insured*. She also requested that inconsistencies related to exhibit labeling in the contract be corrected. The City Attorney concurred with Councilmember Fujioka's requested changes to the contract.

Resolution 73-09

RESOLVED, that the City Council approves an agreement with Coastland Civil Engineering, Inc., for the provision of professional engineering services and the appointment of John Wanger, PE as City Engineer; and

RESOLVED FURTHER, that the agreement be modified in accordance with Councilmember Fujioka's requests.

Moved by Fujioka, Seconded by Chiang

Ayes: Friedman, Barbieri, Chiang, Fujioka, Keating

Noes: None

Absent: None

(0045)

Agreement

The Public Works Director recommended Council approval of a one-year agreement with Harris & Associates for engineering services related to the City's Phase IV sewer rehabilitation project. The Director explained that the City and Harris & Associates (Piedmont's former City Engineer) are in the process of completing a two-year approval process with the California Regional Water Quality Control Board for a \$3.5 million loan for the Phase IV sewer rehabilitation project. The Director stated that switching City engineering services to Coastland Engineering prior to the completion of the loan approval process would delay City receipt of the loan. Hence, the City will continue to retain Harris & Associates' services through completion of the loan process.

As with the Coastland Engineering agreement, Councilmember Fujioka requested that the proposed agreement be modified to include a *time of essence* provision, a *modifications* clause and list the City of Piedmont as an *additional insured*. She also requested that inconsistencies related to exhibit labeling in the contract be corrected. The City Attorney concurred with Councilmember Fujioka's requested changes to the contract.

Resolution 74-09

RESOLVED, that the City Council approves a one-year agreement with Harris & Associates for engineering services related to the City's Sewer Rehabilitation Project; and

RESOLVED FURTHER, that the agreement be modified in accordance with Councilmember Fujioka's requests.

Moved by Fujioka, Seconded by Chiang

Ayes: Friedman, Barbieri, Chiang, Fujioka, Keating

Noes: None

Absent: None

(0045)

**Piedmont Hills
Underground
Assessment District**

The City Clerk recommended second reading approval of Ordinance 688 N.S. regarding bond financing for the Piedmont Hills Underground Assessment District. The Council approved a first reading of Ordinance 688 N.S. on June 15, 2009. Per Council direction of June 15, the ordinance has been amended to authorize the sale of two separate bond series, one tax exempt and the other taxable.

Public testimony was received from:

George Childs repeated his objection to the Council's approval of the \$142,550 assessment for Hampton Park's inclusion in the Piedmont Hills Utility Undergrounding District.

Resolution 75-09

RESOLVED, that the City Council approves the second reading of Ordinance 688 N.S. regarding bond financing for the Piedmont Hills Underground Assessment District.

Moved by Barbieri, Seconded by Chiang

Ayes: Friedman, Barbieri, Chiang, Fujioka, Keating

Noes: None

Absent: None

(0705)

**Memorandum of
Understanding**

Based upon Closed Session negotiations, the City Administrator recommended Council approval of a two-year Memorandum of Understanding with the Services Employees International Union (SEIU), Local 1021 for the positions of Maintenance Worker I, Maintenance Worker II and Senior Maintenance Worker for the time period January 1, 2009, through December 31, 2010, authorizing a 3% salary increase effective January 1, 2009 and a 3% differential effective January 1, 2010 (up to four) Maintenance Workers who obtain California Water Environmental Association certificate for sewer collection systems.

Resolution 76-09

RESOLVED, that the City Council approves a two-year Memorandum of Understanding between the City of Piedmont and the Services Employees International Union (SEIU), Local 1021 for the positions of Maintenance Worker I, Maintenance Worker II and Senior Maintenance Worker for the time period January 1, 2009, through December 31, 2010, authorizing a 3% salary increase effective January 1, 2009 and a 3% differential effective January 1, 2010 (up to four) Maintenance Workers who obtain California Water Environmental Association certificate for sewer collection systems.

Moved by Barbieri, Seconded by Chiang
Ayes: Friedman, Barbieri, Chiang, Fujioka, Keating
Noes: None
Absent: None
(0045)

**Public Hearing:
Appeal of Planning
Commission Decision
53 Cambrian Avenue**

The City Planner stated that two separate appeals have been filed in response to the Planning Commission's February 9th conditional approval of Mr. and Mrs. Ben O'Neil's design review application for the construction of a new home at 53 Cambrian Avenue.

The O'Neil's have appealed the following 5 conditions imposed on project construction:

- Condition #6: City Facilities Security
- Condition #7: Performance Security
- Condition #19: Subsidence Security
- Condition #20: Neighboring Property Inspection
- Condition #21: Neighboring Property Damage Security

Mr. and Mrs. Bryon James have appealed Condition #26 in requesting that it be modified to require that "grading should not extend to within 4 ft. of any offsite improvements, such as the brick retaining wall along the west property line."

The City Planner noted that while both appeals were filed in February, both appellants requested numerous continuances to permit more time to evaluate property conditions.

Public testimony was received from:

David Bowie, attorney representing the O'Neils, referenced his previous correspondence in objecting to many of the imposed conditions, stressing his belief that such draconian conditions are not necessary nor warranted in this case. However, in the interests of proceeding with project construction and based upon discussions with City staff, the O'Neils have withdrawn their objections to Conditions #6 and #7. As to Condition #20, he noted that the James' have retained their own Civil & Soils Engineer, Dave Olnes, to inspect and document the existing condition of their brick retaining wall and Mr. Olnes will provide a peer review of the O'Neil's inspection report. He felt that requiring an additional inspection/report is unnecessary and therefore, Condition #20 should be considered as having been met.

As to Conditions #19 and #21, Mr. Bowie emphasized that subsidence insurance is no longer available, citing a July 6, 2009, letter from the insurance brokerage firm of R. L. Milsner, Inc. However, he proposed that the intent of Conditions #19 and #21 to provide financial safeguards in case of damage to neighboring properties can be satisfied by:

- The applicants' purchase of General Liability Insurance coverage in the amount of \$1 million each occurrence and subject to a \$2 million aggregate, with the naming of the City and the neighbors at 6 and 8 Croydon Circle as additional insureds;

- The applicants' requirement that all subcontractors shall obtain \$1 million each occurrence/\$2 million annual aggregate per occurrence coverage;
- The applicants' own personal liability insurance coverage

Mr. Bryon James read a prepared statement, stressing his request that Condition #26 be modified to include a 4 ft. buffer distance between proposed excavation and his brick retaining wall, as recommended by his soils engineer. He also requested that the City investigate all financial insurance guarantees to insure their economic viability for the two year time period of coverage. He also concurred with Mr. Bowie's statement that Condition #20 has been satisfied per the reports of his engineer (Dave Olnes) and the applicant's engineer (Cal Engineering & Geology).

Planning Commission Chair Jim Kellogg noted the Commission's broad interpretation of the term "subsidence" as it relates to earth movements resulting from construction activity and agreed with Mr. Bowie's position that the proposed liability insurance coverage cited are sufficient to satisfy the intent of Condition #19.

The Council agreed that there is no basis for overturning the Planning Commission's February 9th decision, noting that no errors were made and the Commission's actions were consistent with past decisions. The Council also concurred that Condition #20 has been met. The Council referenced Conditions #19 and #23 in noting that the Public Works Director and City Attorney have authority and discretion to modify terms of compliance as may be necessary. The Council was confident that staff would insure that reasonable solutions are reached for all parties.

Councilmember Keating encouraged the applicant and staff to favorably consider Mr. James' request that a 4 ft. buffer distance be observed between proposed excavation and Mr. James' brick retaining wall. Councilmember Fujioka requested that the City be named as an additional insured and suggested that the following language be included where appropriate in the conditions: "Naming the City of Piedmont, its Councilmembers, Directors, Officers, Agents and Employees as additional insureds, in addition to the two neighbors at 6 and 8 Croydon Circle."

Resolution 77-09

WHEREAS, Mr. and Mrs. Ben O'Neil are requesting permission to construct a new 4,347 sq. ft., 4 bedroom house with a dining room, kitchen, pantry, family room, TV room, playroom, study, 3 full baths, 2 half baths, laundry room, mud room, storage rooms, and a 2-car garage. Front and rear patios and a small upper level rear balcony are proposed. Site improvements include raising the grade near the house foundation and lowering the grade at the rear, new retaining walls, walkways, a rear spa, exterior lighting, and new landscaping (including new trees and the removal of some existing trees) located at 53 Cambrian Avenue, Piedmont, California, which construction requires design review; and

WHEREAS, the Piedmont Planning Commission conditionally approved Mr. and Mrs. O'Neil's design review application on February

9, 2009, and this conditional approval was appealed by Mr. and Mrs. O'Neil;

RESOLVED, that 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 denies Mr. and Mrs. O'Neil's appeal and upholds the Planning Commission's decision as set forth in Resolution 8-DR-09, adopted February 9, 2009; and

RESOLVED FURTHER, that City staff is instructed to reasonably implement the conditions set forth in Planning Commission Resolution 8-DR-09, modifying said conditions where appropriate to list the City of Piedmont and the property owners of 6 and 8 Croydon Circle as additional insureds.

Moved by Barbieri, Seconded by Chiang

Ayes: Friedman, Barbieri, Chiang, Fujioka, Keating

Noes: None

Absent: None

(0080)

Resolution 78-09

WHEREAS, Mr. and Mrs. Ben O'Neil are requesting permission to construct a new 4,347 sq. ft., 4 bedroom house with a dining room, kitchen, pantry, family room, TV room, playroom, study, 3 full baths, 2 half baths, laundry room, mud room, storage rooms, and a 2-car garage. Front and rear patios and a small upper level rear balcony are proposed. Site improvements include raising the grade near the house foundation and lowering the grade at the rear, new retaining walls, walkways, a rear spa, exterior lighting, and new landscaping (including new trees and the removal of some existing trees) located at 53 Cambrian Avenue, Piedmont, California, which construction requires design review; and

WHEREAS, the Piedmont Planning Commission conditionally approved Mr. and Mrs. O'Neil's design review application on February 9, 2009, and this conditional approval was appealed by Mr. and Mrs. Byron James;

RESOLVED, that 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 denies Mr. and Mrs. James' appeal and upholds the Planning Commission's decision as set forth in Resolution 8-DR-09, adopted February 9, 2009; and

RESOLVED FURTHER, that City staff is instructed to reasonably implement the conditions set forth in Planning Commission Resolution 8-DR-09, modifying said conditions where appropriate to list the City of Piedmont and the property owners of 6 and 8 Croydon Circle as additional insureds.

Moved by Barbieri, Seconded by Chiang

Ayes: Friedman, Barbieri, Chiang, Fujioka, Keating

Noes: None

Absent: None

(0080)

Ordinance

The City Administrator recommended first reading approval of Ordinance 690 N.S. approving a 14-month use agreement with Webcor for City property at 401 Highland Avenue. He stated that during the construction of the new Havens Elementary School, the project contractor (Webcor) requires a construction office in the civic center. As an alternative to locating a portable office trailer on the street that would impact traffic and parking in this congested area, it was suggested that Webcor utilize the vacant office space in the Veterans Memorial Building in return for renovating this space for City office use at the end of the lease period. The value of the proposed renovations (including electrical work, flooring, ceiling, air conditioning, etc.) is estimated to be \$25,200. While Webcor's use of the space will delay the relocation of City staff to this site, it will save the City the money it would expend making the site suitable for employee use.

Public testimony was received from:

George Childs agreed that the proposed recommendation is a good solution for the City, School District and Civic Center neighborhood.

As with the other City contracts presented tonight, Councilmember Fujioka requested that the contract include *time of essence* and *modification* clauses as well as attach the referenced exhibits.

Resolution 79-09

RESOLVED, that the City Council approves the first reading of Ordinance 690 N.S. approving a 14-month use agreement with Webcor for office space in the Veteran's Memorial Building at 401 Highland Avenue.

Moved by Fujioka, Seconded by Chiang

Ayes: Friedman, Barbieri, Chiang, Fujioka, Keating

Noes: None

Absent: None

(0705)

**Emergency
Preparedness Report**

At Councilmember Fujioka's request, the Fire Chief summarized the improvements made to the Fire Department's website concerning emergency preparedness information. Councilmember Fujioka thanked the Chief for the site upgrades and encouraged residents to visit the department's webpage to take advantage of the new information available.

Future Agenda Items

Environmental Task Force – Councilmember Fujioka requested that at a September Council meeting, staff provide an update on the implementation of Environmental Task Force recommendations.

ANNOUNCEMENTS

July 4th Celebration – The Mayor thanked event organizers, volunteers and City staff for their efforts in producing another phenomenal July 4th parade and park program.

Crossing Guard Training – The Mayor encouraged interested residents to train and serve as back-up, replacement crossing guards. The Police Department provides the required training.

Summer Recess – The Mayor announced that the Council will recess for the remainder of the summer. The next scheduled Council meeting is Tuesday, September 8.

ADJOURNMENT

There being no further business, Mayor Friedman adjourned the meeting at 9:10 p.m.