

PIEDMONT CITY COUNCIL

Regular Meeting Minutes for Monday, June 15, 2009

A Regular Session of the Piedmont City Council was held June 15, 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 June 11, 2009.

CALL TO ORDER

Following a 7:00 p.m. Closed Session regarding negotiations with SEIU Local 1021 and litigation in the matter of Kurtin v. Piedmont held pursuant to Government Code Sections 54957.6 and 54956.9(a), Mayor Friedman called the meeting to order at 7:40 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, Fire Chief John Speakman, Acting Police Chief John Hunt, Finance Director Mark Bichsel, Public Works Director Larry Rosenberg, Recreation Director Mark Delventhal, City Clerk Ann Swift, City Planner Kate Black, Assistant Planner Kevin Jackson, Planning Technicians Sylvia Toruno and Gabe Baracker 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 June 1, 2009

Agreement

Approves an agreement with the County of Alameda for the purpose of receiving 09-10 Community Development Block Grant Program funding

Agreement

Approves a Certification and Mutual Indemnification Agreement with Alameda County regarding the collection of taxes

Conditional Use Permit

Grants a 10-year Conditional Use Permit to Todd Yerondopoulos, D.D.S, to operate an existing dental office at 1337 Grand Avenue, incorporating the findings and conditions set forth in Planning Commission Resolution 76-CUP-09, adopted June 8, 2009

Ordinance

Approves the first reading of Ordinance 689 N.S. amending Section 9.15 of the City Code to correct clerical errors in Chapter 9 relating to solid waste monitoring

Resolution 53-09

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

Moved by Barbieri, Seconded by Chiang

Ayes: Friedman, Barbieri, Chiang, Fujioka, Keating

Noes: None

Absent: None

(0045; 0340; 0705)

(Note: Councilmember Chiang abstained from the vote approving the June 1, 2009, Council minutes)

REGULAR CALENDAR

The Council considered the following items of regular business:

FY 08-09 Year-End Appropriations

The Finance Director recommended Council approval of \$206,868 in year-end appropriation requests from Police, Fire, Recreation and Schoolmates, of which \$53,228 will be funded by the General Fund and \$153,640 will be transfers/other revenue. The Fire Chief and Acting Police Chief responded to Council questions concerning the reasons for their year-end appropriation requests. The Mayor requested that next year, year-end appropriation requests be submitted for Council review and consideration earlier in the budget review/adoption process to enable more time for Council examination of the requests.

Resolution 54-09

RESOLVED, that the City Council approves year-end appropriation requests of \$206,868 of which \$53,228 will be funded by the General Fund and \$153,640 will be transfers/other revenue.

Moved by Barbieri, Seconded by Chiang

Ayes: Friedman, Barbieri, Chiang, Fujioka, Keating

Noes: None

Absent: None

(0165)

**Public Hearing:
Proposed FY 09-10
City Budget and the
Levy of the Municipal
Services Tax and
Sewer Tax**

The Mayor opened the second of two public hearings on the proposed FY 09-10 budget. The Finance Director noted that the proposed budget assumes the possible borrowing by the state of \$800,000 in Piedmont property tax revenue as well as reflecting expenditure reductions totaling \$440,451 proposed by staff and Council requests, in addition to the transfer into the general fund of \$74,411 from the CIP fund for Measure B projects and the reduction of \$476,147 in general fund transfers to the worker's compensation and liability funds, to arrive at a revised estimated general fund balance at June 30, 2010 of \$2,100,000.

Public testimony was received from:

George Childs voiced concern that the proposal to charge residents an ambulance transport fee could jeopardize health and safety by discouraging residents from requesting emergency medical assistance. He also reiterated his June 1 comments that the Council has engaged in wasteful spending practices, citing specifically the approval of the \$142,550 assessment for Hampton Park's inclusion in the Piedmont Hills Utility Undergrounding District, in urging that the Council suspend the levy of the Municipal Services Tax for 09-10. The Mayor clarified that the ambulance transport fee is intended to recoup costs from private insurance carriers. The City fully intends to maintain its policy of not pursuing ambulance collections from non-insured or under-insured residents. The Mayor emphasized that no resident should ever hesitate to call for emergency medical service because of financial concerns. The Fire Chief added that other cities he contacted which have imposed ambulance transport fees have reported that they have not realized any reduction in ambulance service calls as a result of the fee.

The Council engaged in a lengthy review of additional expenditure reductions and/or revenue increases. Based upon the discussion, consensus was reached regarding the following budget adjustments:

- Planning Fees – impose a 10% fee increase (an estimated \$20,000 in additional revenue generation)
- Skate Park – reduce budgeted amount to \$12,500 (a savings of \$7,500) – staff to develop a new park operation schedule reflecting a reduction in days and hours when the park will be open for use. Staff also to examine the feasibility of allowing the park to be rented as a means of generating additional revenue. Staff to provide a future status report regarding the impacts of this reduced operation schedule
- KCOM – reduce budgeted amount to \$178,101 (a savings of \$20,000). Staff to examine utilizing the City’s website to keep residents informed as an alternative to the KCOM Reader Board as a cost savings measure and explore ways that KCOM could possibly generate revenue
- Measure B – Transfer \$74,411 in CIP Projects to the Measure B Account
- Police Radar Vehicle Speed Display—eliminate this proposed expenditure (a savings of \$20,000)
- Animal Control Officer—eliminate one of the two positions (a cost savings of \$81,105). Staff to explore with the City of Emeryville any interest in Emeryville assuming the majority of cost necessary to retain this 2nd officer. City Administrator to determine the process and timing for laying off this employee. Staff to report mid-year on the impact of this cut-back in terms of cost savings, service levels, Emeryville contract, etc.

The Council acknowledged that given the State of California’s dire economic/budget situation, additional state borrowing of City revenue remains a possibility. Therefore, the Council requested staff to prepare a prioritized contingency plan for implementing additional budget cuts should the situation dictate such reductions. The Council suggested that the following be included on such a list:

- *Oakland Library Contract* – determine how many residents actually check out books from the Oakland Library; is this number different from that when an evaluation was done of over 10 years ago; the potential hardships/impacts library termination would impose on residents, etc.
- *One Planning Technician* – termination, seasonal position or reduction in hours.
- *KCOM*

During the budget review discussion, Vice Mayor Barbieri repeatedly emphasized his support for the budget as presented, noting that it is

balanced and an appropriate response to the City's current economic situation. He felt that at this time, additional cuts from that proposed in the draft are not necessary and a more prudent approach would be to maintain the City's existing service levels and utilize reserves intended for the purposes of riding out economic downturns unless and until economic necessity dictates that more severe cut-backs are required. He was especially opposed to the termination of the Animal Control Officer position.

Councilmember Chiang requested the Finance Director to submit monthly financial reports related to the 09-10 budget, starting in September. Councilmember Keating requested that an examination of potential additional cuts be considered in September/October rather than waiting until the mid-year review process.

**FY 09-10
Budget Adoption**

Resolution 55-09

RESOLVED, that the City Council appropriates all fund balances at the close of the fiscal year ending June 30, 2009, to applicable reserves in the various funds.

Moved by Keating, Seconded by Fujioka

Ayes: Friedman, Barbieri, Chiang, Fujioka, Keating

Noes: None

Absent: None

(0165)

Resolution 56-09

RESOLVED, that the City Council adopts the City's proposed FY 2009-10 operation budget in the amount of \$20,588,752.

Moved by Chiang, Seconded by Fujioka

Ayes: Friedman, Barbieri, Chiang, Fujioka, Keating

Noes: None

Absent: None

(0165)

Resolution 57-09

RESOLVED, that the City Council adopts the City's proposed FY 2009-10 capital projects budget in the amount of \$2,379,000.

Moved by Chiang, Seconded by Fujioka

Ayes: Friedman, Barbieri, Chiang, Fujioka, Keating

Noes: None

Absent: None

(0165)

Resolution 58-09

RESOLVED, that the City Council adopts the City's FY 09-10 proposed planning fee increase of 10% and all other FY 09-10 fees and charges.

Moved by Chiang, Seconded by Fujioka

Ayes: Friedman, Barbieri, Chiang, Fujioka, Keating

Noes: None

Absent: None

(0165)

Resolution 59-09

RESOLVED, that the population percentage increase for the County of Alameda be used for computing the 2009-10 appropriation limit for the City of Piedmont; and

RESOLVED FURTHER, that the use of growth in the California Per Capita Income be used for computing the appropriation limit for the City of Piedmont for fiscal year 2009-10; and

RESOLVED FURTHER, that following public notice of the availability of the documentation used in the determination of the appropriation limit pursuant to Section 7910 of the Government Code and Article XIII(B) of the California Constitution, as amended by Proposition 111 and SB 88, the City Council does hereby establish the appropriation limit for fiscal year 2009-10 at \$17,513,504.

Moved by Chiang, Seconded by Fujioka

Ayes: Friedman, Barbieri, Chiang, Fujioka, Keating

Noes: None

Absent: None

(0165)

Resolution 60-09

WHEREAS, the City Council in accordance with the provisions of Chapter 20B of the City Code has held a public hearing relating to the need to assess the Municipal Services Tax for the 2009-10 tax year commencing July 1, 2009; and

WHEREAS, the City Council, after fully considering all of the information and materials before it, determines in accordance with Section 20B.2 of the City Code that the cost of providing the general municipal services for the 2009-10 tax year exceeds the amount of funds generated through other revenue and income for such services; and

WHEREAS, the City Council further determines that a general Municipal Services Tax must be levied for the 2009-10 tax year in order to provide the municipal services required by the residents of the City; and

WHEREAS, after reviewing the financial and tax data available, the City Council determines that the amount to be raised by the Municipal Services Tax is **\$1,500,000** and that the tax should be set at the rates set forth hereafter.

RESOLVED, that based upon the foregoing findings and determinations the City Council does hereby levy a general Municipal Services Tax in the amount of **\$1,500,000** for the 2009-10 tax year pursuant to Chapter 20B of the City Code at the rates set forth hereafter:

Single Family Residence

0 to 4,999 sq. ft.	\$342
5,000 to 9,999 sq. ft.	\$383
10,000 to 14,999 sq. ft.	\$444
15,000 to 20,000 sq. ft.	\$506
Over 20,000 sq. ft.	\$576

Commercial Properties

0 to 10,000 sq. ft. \$576
Over 10,000 sq. ft. \$864

Multi-Family Residence per unit \$237

Parcels Divided by Tax Code Area Line \$350

Moved by Chiang, Seconded by Keating
Ayes: Friedman, Barbieri, Chiang, Fujioka, Keating
Noes: None
Absent: None
(0165)

Resolution 61-09

WHEREAS, the City Council in accordance with the provisions of Chapter 20E.4 of the Piedmont Municipal Code has held a public hearing relating to the need to assess the Municipal Sewer Tax for the 2009-10 tax year commencing July 1, 2009; and

WHEREAS, the City Council, after fully considering all of the information and materials before it, determines in accordance with Section 20E.2 of the City Code that the maximum amount to be raised by the Municipal Sewer Tax is **\$2,030,000** and

WHEREAS, under the provisions of Section 20E.3, the tax for the fiscal year beginning July 1, 2009 shall be set forth hereafter;

WHEREAS, that based upon the foregoing findings and determinations, the City Council does hereby levy a Municipal Sewer Tax in the amount of **\$2,030,000** for the 2009-10 tax year pursuant to Chapter 20E of the Piedmont Municipal Code at the rates set forth hereafter.

RESOLVED, that based upon the foregoing findings and determinations the City Council does hereby levy a Municipal Sewer Tax in the amount of **\$2,030,000** for the 2009-10 tax year pursuant to Chapter 20E of the City Code at the rates set forth hereafter:

Single Family Residence

0 to 4,999 sq. ft. \$452
5,000 to 9,999 sq. ft. \$515
10,000 to 14,999 sq. ft. \$594
15,000 to 20,000 sq. ft. \$693
Over 20,000 sq. ft. \$815

Commercial Properties

0 to 10,000 sq. ft. \$815
Over 10,000 sq. ft. \$1,123

Multi-Family Residence per unit \$377

Parcels Divided by Tax Code Area Line \$452

Moved by Chiang, Seconded by Barbieri
Ayes: Friedman, Barbieri, Chiang, Fujioka, Keating
Noes: None

Absent: None
(0165)

Climate Action Plan

The Assistant Planner updated the Council on the on-going preparation of the City's Climate Action Plan, noting in particular a well-attended May 27th community forum held on the subject. Based upon input received at the forum and from the City's Environmental Task Force and staff, the City's consultant in this matter (EDAW) will prepare a draft Climate Action Plan. It is anticipated that the draft plan will be available for a 30-day public comment period beginning in late July (tentatively July 24). An on-line survey will also be available for residents to provide input and comments regarding the draft plan. Following the review period, a final version of the Plan will be prepared and submitted for Council review and adoption in the fall. Councilmember Keating requested staff to contact EDAW to determine: (1) if the initial analysis of the resident participation level necessary for the City to achieve its greenhouse gas emissions reduction target should be modified based upon PG&E's standards for renewable energy and fuel discussed at the community forum; and (2) if the 30-day public comment period can be rescheduled or extended to overlap into early September so that residents away on vacation in August will have an opportunity to review and comment on the draft Plan.

On a motion by Councilmember Chiang, seconded by the Vice Mayor and unanimously carried, the Council agreed to extend tonight's meeting to 11:30 p.m. in order to complete agenda consideration.

**Piedmont Hills
Undergrounding
District**

The City Clerk outlined several actions necessary to proceed with the Piedmont Hills Underground Assessment District established on May 4, 2009. She noted in particular that district residents had 30 days in which they could either pay cash for their individual service connection work and receive a 7% discount or include this connection cost into the unpaid assessment amount of the bond financing to the extent allowed by law. However, the Clerk noted that today it was learned that the aggregate dollar amount of private individual service connection costs elected by individuals to be incorporated into the assessment bond has exceeded the 5% cap limited by federal income tax laws on the aggregate dollar amount of private individual service connection costs that can be incorporated into the assessment bond and still qualify as tax exempt bonds. Therefore, for most residents who opted for connection cost inclusion, approximately only half of their individual service connection costs can be incorporated into the tax-exempt bond financing, leaving the other half to be paid in cash or to be covered by other financing alternatives. The Clerk added that residents have been informed and are aware of the specific 5% cap throughout the entire process and they were always cautioned that their individual service connection cost could be added to their assessment "to the extent allowed by law."

The Council discussed this situation with Sam Sperry, the City's Bond Counsel, and Eileen Gallagher, Managing Director of Stone & Youngberg, the district's bond purchaser. The Council voiced concern with proceeding with the necessary actions given that some residents are not aware that only a portion of their connection costs can be incorporated into the tax-exempt bond financing. However, concerns

regarding meeting construction contract award and bond financing deadlines were also of paramount importance in terms of risking missing these deadlines if tonight's action is postponed. In the end, Mr. Sperry and Ms. Gallagher suggested that the amount of connection costs that cannot be incorporated into the Series A tax-exempt bond financing could be financed through a separate "taxable tail" or Series B bond series. The interest rate for this Series B bond financing would be higher. Mr. Sperry and Ms. Gallagher agreed that if the Council authorized this Series B option, there would be sufficient time to consult with residents regarding their financing preferences before the bond issuance deadline.

Public testimony was received from:

Vince Monical reiterated his May 4 comments and frustration regarding the lack of responsiveness from City staff and the Project Engineer of Work in responding to his concern that a telephone pole in front of his boundary edge property will remain. He demanded that either this pole be removed from his property or that his assessment be reduced since he will not be receiving the full aesthetic benefit from the undergrounding project. Mr. Monical referenced conversations with the Director of Public Works who told him that the pole cannot be relocated, citing the opinion of the Engineer of Work that moving the pole would involve additional costs and extend the undergrounding district to include the adjacent neighbor who is not a part of the district. The Mayor referenced his May 4th assurances that the pole will be moved from in front of his property based on comments made at the May 4th meeting that the approved project plans indicate that this pole will be relocated. The City Clerk clarified that the plans indicate that the pole will be moved off of Mr. Monical's property. However, the exact location of the relocated pole will not be determined until PG&E conducts its field measurements, at which time staff will notify Mr. Monical of the location of the new pole. The Mayor apologized to Mr. Monical for the confusion regarding this matter and assured him that the telephone pole will not remain in the same position in front of his house.

On a motion by Councilmember Chiang, seconded by the Vice Mayor and unanimously carried, the Council agreed to extend tonight's meeting to 12 midnight in order to complete agenda consideration.

Resolution 62-09

RESOLVED, that the City Council approves a *Resolution Ordering a Change of Proceedings to Add Individual Service Connection Work* to the unpaid assessment amount for homeowners' who have chosen this option, subject to authorization to staff to contact the individual property owners who have authorized increases in their assessments to finance this connection work so they can express a preference to reduce their assessment to kick-out the taxable portion.

Moved by Barbieri, Seconded by Chiang

Ayes: Friedman, Barbieri, Chiang, Fujioka, Keating

Noes: None

Absent: None

(1075)

Resolution 63-09

RESOLVED, that the City Council accepts a *Certificate Regarding Paid and Unpaid Assessments* and approves a *Resolution Determining Unpaid Assessments* to be transmitted to the Alameda County Auditor/Tax Collector, subject to authorization to staff to contact the individual property owners who have authorized increases in their assessments to finance this connection work so they can express a preference to reduce their assessment to kick-out the taxable portion.

Moved by Barbieri, Seconded by Chiang

Ayes: Friedman, Barbieri, Chiang, Fujioka, Keating

Noes: None

Absent: None

(1075)

Resolution 64-09

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

- a. Approve a fiscal agent agreement with Union Bank under which the bonds are to be issued and administered; and
- b. Approve the bond purchase contract with Stone & Youngberg LLC under which the City agrees to sell and Stone & Youngberg agrees to purchase the bonds; and
- c. Approve a Preliminary Official Statement respecting the assessment district and bonds; and
- d. Approve a Continuing Disclosure Agreement as required for compliance with Rule 15c2-12 of the United States Securities and Exchange Commission; and

RESOLVED FURTHER, that said ordinance be subject to the modification that:

1. staff, bond counsel, disclosure counsel and underwriter are authorized to provide for the issuance of two separate series of bonds, rather than just the one; and
2. the interest rate permissible for the taxable bonds shall not exceed 10%

Moved by Barbieri, Seconded by Chiang

Ayes: Friedman, Barbieri, Chiang, Fujioka, Keating

Noes: None

Absent: None

(1075)

Resolution 65-09

RESOLVED, that the City Council approves an agreement with Pacific Gas & Electric for construction and coordination.

Moved by Barbieri, Seconded by Chiang

Ayes: Friedman, Barbieri, Chiang, Fujioka, Keating

Noes: None

Absent: None

(1075)

Resolution 66-09

RESOLVED, that the City Council approves an agreement with A.T. & T. for construction and coordination.

Moved by Barbieri, Seconded by Chiang

Ayes: Friedman, Barbieri, Chiang, Fujioka, Keating
Noes: None
Absent: None
(1075)

Resolution 67-09

RESOLVED, that the City Council approves an agreement with Valley Utility for construction of the joint trench.

Moved by Barbieri, Seconded by Chiang

Ayes: Friedman, Barbieri, Chiang, Fujioka, Keating
Noes: None
Absent: None
(1075)

Resolution 68-09

RESOLVED, that the City Council approves an agreement with Robert Gray and Associates for project inspection for both the Piedmont Hills and Hampton-Sea View Underground Assessment Districts.

Moved by Barbieri, Seconded by Chiang

Ayes: Friedman, Barbieri, Chiang, Fujioka, Keating
Noes: None
Absent: None
(1075)

Resolution 69-09

RESOLVED, that the City Council approves an agreement with NBS Government Finance Group for management of assessment levies for both the Piedmont Hills and Hampton-Sea View Underground Assessment Districts.

Moved by Barbieri, Seconded by Chiang

Ayes: Friedman, Barbieri, Chiang, Fujioka, Keating
Noes: None
Absent: None
(1075)

**Hampton/Sea View
Underground
Assessment District**

Per Council action of October 20, 2008, based on the Doctrine of Necessity and pursuant to Government Code Section 87100 and California Code Section 18708, Councilmembers Chiang and Fujioka recused themselves from discussing and acting on the Hampton/Sea View Underground Assessment District (both Councilmembers live within 500 ft. of district boundaries) and Mayor Friedman remained as the designated "third" voting member on the Council, even though he too lives within 500 ft. of district boundaries. Councilmembers Chiang and Fujioka left the meeting at 11:45 p.m.

The City Clerk reported that the Hampton/Sea View Underground Assessment District was approved by the City on May 4, 2009. However, on June 4th, the City and the District were served with a lawsuit. That action precludes many of the steps that normally would be taken at this time. The Clerk stated that since the City still wishes to honor the decision of the majority of the homeowners in this district to construct utility improvements, the City's bond counsel has advised that the City should take action at this time to increase assessments for individual service connections similar to the action taken for the Piedmont Hills Underground Assessment District. In the event the pending litigation extends indefinitely and it is unlikely that

construction of the utility improvements will proceed, the Council has the authority to rescind the assessments from the FY 09-10 tax roll. The City Clerk stated that like the Piedmont Hills Assessment District, property owners in the Hampton/Sea View District are also subject to the 5% cap on private individual service connection costs that can be incorporated into the tax-exempt assessment bond.

No **public testimony** was received.

Resolution 70-09

RESOLVED, that the City Council approves a *Resolution Ordering a Change of Proceedings to Add Individual Service Connection Work* to the unpaid assessment amount for homeowner's who have chosen this option, subject to staff authorization to contact the affected property owners who elected to increase their assessments to finance this connection work and provide them an opportunity to request a reduction in their assessment to exclude the taxable portion.

Moved by Barbieri, Seconded by Keating

Ayes: Friedman, Barbieri, Keating

Noes: None

Recused: Chiang, Fujioka
(1075)

Resolution 71-09

RESOLVED, that the City Council accepts a *Certificate Regarding Paid and Unpaid Assessments* and approves a *Resolution Determining Unpaid Assessments* to be transmitted to the Alameda County Auditor/Tax Collector, subject to staff authorization to contact the affected property owners who elected to increase their assessments to finance this connection work and provide them an opportunity to request a reduction in their assessment to exclude the taxable portion.

Moved by Barbieri, Seconded by Keating

Ayes: Friedman, Barbieri, Keating

Noes: None

Recused: Chiang, Fujioka
(1075)

ANNOUNCEMENTS

July 4th—The Mayor encouraged residents to participate and enjoy the various events associated with the City's annual *July 4th* celebration.

ADJOURNMENT

There being no further business, Mayor Friedman adjourned the meeting at 11:50 p.m.