

PIEDMONT CITY COUNCIL

Regular Meeting Minutes for Tuesday, July 6, 2010

A Regular Session of the Piedmont City Council was held July 6, 2010, 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 1, 2010.

CALL TO ORDER

Following a 7:00 p.m. Closed Session to discuss pending litigation in the matter of Kurtin v. Piedmont as well as discuss initiation of litigation held pursuant to Government Code Sections 54956.9(a) and 54956.9(c) respectively, Mayor Barbieri called the meeting to order at 7:35 p.m. with the Pledge of Allegiance.

ROLL CALL

Present: Mayor Dean Barbieri, Vice Mayor John Chiang and Councilmembers Margaret Fujioka, Garrett Keating and Jeff Wieler

Staff: City Administrator Geoff Grote, City Attorney George Peyton, Acting Police Chief John Hunt, Interim Public Works Director Chester Nakahara, City Clerk Ann Swift, City Planner Kate Black, Assistant Planner Kevin Jackson 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 June 21, 2010

Resolution 63-10

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

Moved by Fujioka, Seconded by Wieler

Ayes: Barbieri, Chiang, Fujioka, Keating, Wieler

Noes: None

Absent: None

REGULAR CALENDAR

The Council considered the following items of regular business:

Crime Report

The Acting Police Chief submitted Piedmont's crime statistics for the first six months of 2010, noting a 26% decrease in the crime rate compared to 2009 and 17% below the City's 5-year average. Councilmember Fujioka thanked the Acting Chief for the positive report, believing that the department's public education and outreach programs as well as the efforts of the City's Public Safety Committee are contributing factors for Piedmont's reduced crime rate. The Mayor thanked the Acting Chief for his report.

City Attorney

The City Administrator announced that out of an outstanding field of candidates, the City Council has unanimously selected Mr. Thomas Curry of the law firm of McDonough Holland & Allen to serve as Piedmont's new City Attorney. Mr. Curry has a distinguished law career, with over 35 years of experience in municipal law. In accordance with this selection, the City Administrator recommended Council approval of a proposed agreement with McDonough

Holland & Allen to appoint Mr. Curry as City Attorney. The Council welcomed Mr. Curry and his wife Kathleen.

Councilmember Fujioka requested that the proposed employment agreement be corrected to reference Exhibit "B" in Section 2.C.

Resolution 64-10

RESOLVED, that the City Council approves a one-year employment agreement, as amended, with McDonough Holland & Allen and appoints Thomas Curry as City Attorney of the City of Piedmont, effective July 1, 2010.

Moved by Fujioka , Seconded by Chiang

Ayes: Barbieri, Chiang, Fujioka, Keating, Wieler

Noes: None

Absent: None

(0085/X0045)

**Chief Building
Official Appointment**

The City Administrator recommended that the Council appoint Robert Akiyama as City Building Official, effective July 1, 2010. Mr. Akiyama, a licensed architect with a structural engineering/energy efficiency background, has served as the City's part-time plans examiner for the last 14 years. Mr. Akiyama will take the place of Chester Nakahara who was appointed Interim Director of Public Works on June 7, 2010 (Resolution 48-10). The Administrator further recommended that Mr. Akiyama's salary be established at \$102,492, which is 13% below the current building official salary, with all other benefit provisions remaining unchanged. The Council congratulated Mr. Akiyama on his promotion.

Councilmember Fujioka requested that Section 2.1 of the agreement explicitly state that the standard work week is 37.5 hours and that since this is a full salaried position, there will be no payment for overtime. She further requested that the City's standard boiler-plate employee contract language specifically state the number of working hours per week.

Resolution 65-10

RESOLVED, that the City Council appoints Robert Akiyama as City Building Official, effective July 1, 2010, and adopts the salary and benefit resolution on file in the City Clerk's Office, as amended.

Moved by Fujioka, Seconded by Chiang

Ayes: Barbieri, Chiang, Fujioka, Keating, Wieler

Noes: None

Absent: None

(0085)

As a related issue, Councilmember Keating requested that the Council schedule discussion as a "future agenda item" the current practice, as a condition of a property sale, whereby residents and/or realtors are requesting the City's

building inspector to either verify if previous renovations/remodels were constructed pursuant to City building permits and approvals or comment on the likelihood that proposed renovations or additions are approvable.

**AT&T Wireless
Communications
Facility, 275
Sandringham Road**

The Assistant Planner stated that pursuant to Council direction of March 1, 2010, AT&T has submitted a report identifying potential alternate site locations for its originally proposed installation of two new wireless transmission antennas and 12 additional coaxial cables to its existing wireless communications installation at the site of the PG&E tower at the corner of Sandringham Road and Estates Drive. Also, in accordance with Council direction, Mr. Jonathan Kramer of Telecom Law Firm was selected by the City to perform an independent third-party review of the issues related to the original application in addition to the alternative site report. The costs of this third party review was borne by AT&T. Mr. Kramer's report, entitled *Third Party Independent Review of AT&T Mobility Application*, dated June 29, 2010, concluded the following:

- The proposed equipment will enhance existing coverage in Piedmont
- The proposed site installation is less intrusive than any of the considered alternative sites;
- An alternative installation at the proposed site, put forward by AT&T, would be relatively less visually intrusive than the current proposal but lacks approval from PG&E;
- Because the project is fully compliant with FCC rules, the City has no basis to deny it on purely Radio Frequency safety grounds;
- The project has satisfied the criteria of Municipal Code Chapter 17G in that the application has provided a reasonable basis for granting approval by showing that there will be improved service for a reasonable number of Piedmont residents.

The alternative sites examined by Mr. Kramer were:

- Corpus Christi Church
- Glenwood View Commercial District
- PG&E towers adjacent to Park Blvd.
- Zion Lutheran Church and School
- Hampton Field
- Hollywood Substation at Glendome Circle
- Crocker Park
- Piedmont Park
- Davie Tennis Stadium
- Piedmont Community Church

Correspondence was received from: Joe Hurwich; Bert & Deborah Kurtin; David Arpi

Public testimony was received from:

Matt Yergovich of AT&T stated that his company's proposed installation of the new antennas on the Sandringham tower either at the originally proposed location or at the alternative flush-mounted, mid-tower location shown as Figure 14 in the Kramer Report is acceptable to PG&E. Both location options are also acceptable to AT&T. He disputed Mr. Kramer's opinion that there is currently no gap in existing coverage west of the Sandringham site, stressing AT&T's position that there is a significant service/coverage gap during peak usage hours because of service capacity shrinkage. He also emphasized that upgrades of existing antennas at the site will not extend cell coverage and data capacity to the southwestern portion of Piedmont -- only new antennas pointed in this compass direction will provide the level of coverage needed.

Katie Goldberg disagreed with Mr. Kramer's conclusion that placing the additional antennas on existing Park Blvd. PG&E towers is less desirable because it would result in "greater site visibility." She felt that since there are no homes along that portion of Park Blvd., site visibility is not an issue. She also noted that cell coverage in the Mandana/Crocker area of Oakland is excellent and she suggested that the proposed new antennas be located on whatever tower or structure providing cell coverage for Mandana/Crocker. She agreed with Mr. Kramer's report that Corpus Christi Church and School is not interested in having telecommunication equipment on its property given parental concern over potential health hazards to children.

Stuart Schneck urged the Council to deny AT&T's application, referencing Mr. Kramer's report which stated that there is no existing gap in coverage in the Sandringham area. He felt that the current application does not comply with Sections 17G and 17G.4 of the City Code in that: (1) no evidence has been submitted indicating how many Piedmont households/customers will benefit from the proposed installation; and (2) the existing AT&T antennas on the PG&E tower could be redirected away from serving Oakland residents and more toward Piedmont as a means of providing the additional cell coverage and data capacity for the southwestern portion of Piedmont. He felt that additional antennas could then be located somewhere in Oakland to serve the customers that are impacted by the repositioning of the existing antennas at the Sandringham tower.

The Council discussed the application at length with Mr. Yergovich, criticizing AT&T for failing to provide quantitative data regarding the number of Piedmont residents who would receive improved service as a result of the installation. Councilmember Keating opposed application approval, stressing that neighborhood aesthetics are important to Piedmont, continuing to add more and more telecommunication equipment at the Sandringham site is unfair to the immediately surrounding neighborhood, and more effort should be made to find alternative sites given that additional requests for telecommunication upgrades and equipment are inevitable. He preferred that AT&T locate its new antennas

at the Hollywood Substation at Glendome Circle site. The Council majority felt that legally the Council could not deny the current application based on Federal law, the City's current Code and the importance of reliable cell/data capacity services to Piedmont residents. The majority noted that per the consultant's report, no alternative sites are suitable to provide the proposed level of improved coverage to Piedmont. However, the Council acknowledged that the City Code's regulations of the telecommunication industry is outdated in light of rapid changes in technology, the ever expanding range of services available and the impact of federal legislation and court decisions on municipal regulations. The Council requested that staff and the new City Attorney examine how other cities are responding to the proliferation of cell antennas to satisfy customer service demands as well as research legislation/court decisions affecting municipal regulatory authority and propose amendments to Piedmont's code for handling future telecommunication applications in a way that is sensitive to neighborhood aesthetics and impacts. The Vice Mayor also suggested that this matter be discussed with the Planning Commission at an upcoming joint meeting. As to the current application, the Council majority requested that Mr. Kramer's suggestion for flush-mounting the new antennas also be implemented for AT&T's existing antennas, provided such modifications are acceptable to PG&E and do not have an adverse impact on radio frequency signals.

Resolution 66-10

WHEREAS, AT&T Mobility on behalf of PG&E is requesting permission to add two wireless transmission antennae on a single bracket mount at the same height as the two existing antennae arrays and install additional coaxial cables to the new and existing antennae at the site of the PG&E tower at the corner of Sandringham Road and Estates Drive located at 275 Sandringham Road, Piedmont, California, which construction requires compliance with Chapter 17G of the City Code; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited subject property, the Piedmont City Council finds that the project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e) and the proposal conforms with the criteria and standards of Section 17G.3 of the Piedmont City Code:

- a. the new antennas are co-located with existing and previously approved wireless facilities and the manner, position and color of the installation will have the least visual impact. The proposed single sector of coverage to AT&T's existing Sandringham site is less intrusive than any of the alternative sites that the Third Party Review analyzed. The alternative design illustrated in Figure 14 of the Third Party Review, if technically feasible, will be visibly less intrusive than AT&T's current proposal.

- b. the existing PG&E tower is 80 ft. tall and the placement of the proposed antennas will be at the same height as existing AT&T antennas.
- c. the new antennas will be painted to match existing antennas.
- d. there are no changes to the existing ground-mounted equipment or to vegetation and fence screening.
- e. there are no roof-mounted equipment and antennas. The proposed new antennas will be located on an existing utility tower.
- f. the new antennas will be located on an existing PG&E utility tower.
- g. all equipment associated with the wireless communication facility shall be removed within 30 days of the discontinuation of the use and the site shall be restored to its original preconstruction condition. There are no plans to remove any equipment at this time.
- h. the applicant is responsible for complying with FCC guidelines regarding radio frequency exposure. Documentation has been submitted to the City indicating AT&T's compliance with said guidelines. The third party analysis has determined that from a radio-frequency emissions safety viewpoint, the project in either the Figure 13 or Figure 14 configuration will fully comply with federal (FCC) rules on point.
- i. AT&T's proposed sector of coverage is specifically intended to serve only the City of Piedmont, there are interjurisdictional issues that arise by asking the carrier to relocate its facility to a different city. The third party analysis has determined that the project if approved will enhance AT&T's in-build (in-home) coverage in the benefited area, which extends outwards to the west for about 1,800 feet.

and with the criteria and standards of Section 17G.4 of the Piedmont City Code:

- a. the applicant has proven beyond a reasonable doubt that there is no site within Zone B and no site outside of the City that can provide adequate wireless communication coverage to the area within the City which is in question.
- b. it has been proven that the site outside of Zone B that is being applied for is either the best site to provide wireless communications coverage for the Piedmont homes in question or that it is one of several equally good sites outside of Zone B. There were no other sites identified that were equally as good and submitted evidence indicated that the proposed site will improve the coverage for Piedmont. The proposed single sector of coverage to AT&T's existing Sandringham site is less intrusive than any of the alternative sites that the Third Party Review analyzed.

- c. cost factors for the applicant were not a consideration. Improved service for Piedmont residents is the primary consideration.
- d. the development standards in Section 17G.3 were fully considered.
- e. while the site is located in Zone A, it is not a single family residence but an existing PG&E utility tower and co-location facility for the existing AT&T wireless communication network. The proposed equipment will be located on a higher structure already in existence which will provide appropriate wireless coverage for the area in the City which cannot otherwise be served as set forth in Section 17G.4.1(a) hereof. There is no public facility zone in this part of the City.
- f. the proposed site and facilities are in as close conformance with the design review provisions of Chapter 17 of the City Code as is reasonably possible.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont City Council approves the application of AT&T Mobility on behalf of PG&E to install two wireless transmission antennae in the alternate, mid-tower location shown in Figure 14 of the Kramer law Firm Independent Review on the PG&E tower at the corner of Sandringham Road and Estates Drive located at 275 Sandringham Road, Piedmont, California, in accordance with the plans and specifications on file with the City; and

RESOLVED FURTHER, that AT&T shall relocate all of its existing antennas on the PG&E tower at the corner of Sandringham Road and Estates Drive so as to be flush-mounted as indicated in Figure 14 of the Kramer Law Firm Independent Review, unless such relocation is disallowed by PG&E or there is a significant negative impact on radio frequency, subject to staff review.

Moved by Chiang, Seconded by Wieler

Ayes: Barbieri, Chiang, Fujioka, Wieler

Noes: Keating

Absent: None

(1127)

LED Street Lights

The City Attorney reported that on December 7, 2009, the Council authorized staff to apply for grant funding from the California Energy Commission to finance the installation of 100 LED street lamps in the Civic Center as an energy-saving measure and important "green" pilot program. In response, the City has now received a 117 page Grant Agreement setting forth extensive requirements for complying with numerous federal laws. It appears that significant staff time may be required in order to satisfy the substantial reporting and paperwork necessary for the City to receive \$58,369 in grant funding. Because of the complexity of the Grant Agreement, the City Attorney was concerned that staff may not be able to satisfy the detailed reporting requirements without the assistance of an experienced Compliance Official or

run the risk that the City could be held liable for any inadvertent failure to adequately meet said requirements, thus subjecting the City to possible monetary penalties. He suggested two alternative approaches: (1) either proceed with the execution of the Grant Agreement, despite its burdensome provisions; or (2) determine that it is not in the City's best interest to proceed and therefore revoke the Grant Agreement and authorize staff to promptly notify the California Energy Commission in writing of this revocation.

Public testimony was received from:

George Childs urged the Council to pursue the revocation option, feeling that the benefits of the grant money do not outweigh the risk of possibly violating federal regulations.

In response to Council questioning, the Assistant Planner felt that he and Projects Manager Feldkamp could successfully incorporate the fulfillment of the federal reporting/paperwork into their regular workload. He added that the City of Albany recently received and processed a similar grant in stating that if necessary, he could obtain compliance assistance from Albany as well as from the California Energy Commission. The Council supported proceeding with the grant, agreeing that the federal reporting requirements were not insurmountable, especially in light of the benefits of receiving \$58,369 in grant funding to pursue this lighting efficiency project.

Resolution 67-10

RESOLVED, that the City Council authorizes staff to proceed with completing the Grant Agreement from the California Energy Commission for installation of LED street lights based upon staff assurances that it can successfully handle the project.

Moved by Wieler, Seconded by Chiang

Ayes: Barbieri, Chiang, Fujioka, Keating, Wieler

Noes: None

Absent: None

(0525)

ANNOUNCEMENTS

July 4th Celebration -- The Mayor congratulated July 4th Chairperson Carla Betts and her organizing committee for producing another outstanding parade and park program.

Thank You -- Councilmember Wieler thanked retiring City Attorney George Peyton for his exceptional service to Piedmont over the last 44 years.

Retirement Celebration -- Councilmember Fujioka announced that there will be a reception on Thursday, August 26 at the Community Hall to honor retiring City Clerk Ann Swift.

Audit Subcommittee -- The Vice Mayor announced that the next meeting of the City Council's Audit Subcommittee will be held July 8. The public is invited to attend.

Moraga Canyon Sports Field Projects -- The Mayor announced that the first of two public hearing on the Draft EIR for the proposed Moraga Canyon Sports Field Projects will be held July 19.

ADJOURNMENT

There being no further business, Mayor Barbieri adjourned the meeting at 10:20 p.m.