

PIEDMONT CITY COUNCIL

Regular Meeting Minutes for Monday, July 19, 2010

A Regular Session of the Piedmont City Council was held July 19, 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 15, 2010.

CALL TO ORDER

Following a 6:30 p.m. Closed Session regarding pending litigation in the matter of Kurtin v. Piedmont, the initiation of litigation and the lease of City property at 777 Magnolia Avenue held pursuant to Government Code Sections 54956.9(a), 54956.9(c) and 54956.8 respectively, Mayor Barbieri called the meeting to order at 7:30 p.m. with the Pledge of Allegiance. The Mayor announced that during the Closed Session, the Council by a 3-0 vote (Vice Mayor Chiang and Councilmember Fujioka recused) authorized staff to execute a settlement agreement in the Kurtin v. Piedmont litigation. The terms of this full and final resolution agreement will be available for public review tomorrow on the City's website and at City Hall.

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 Thomas Curry, Interim Fire Chief John Speakman, Interim Public Works Director Chester Nakahara, Recreation Director Mark Delventhal, City Clerk Ann Swift, City Planner Kate Black, Assistant Planner Kevin Jackson, Deputy City Clerk John Tulloch and Recording Secretary Chris Harbert

PROCLAMATION

Mayor Barbieri presented retired City Attorney George S. Peyton, Jr. with a proclamation declaring July 19, 2010, as *George S. Peyton, Jr. Day* in recognition and gratitude for his 44 years of outstanding service as Piedmont City Attorney. Mr. Peyton thanked this City Council and all the former Councils he served in voicing his appreciation for the opportunity through the years of working with them as well as with an exceptional City staff.

INTRODUCTION

The Interim Fire Chief introduced newly promoted Fire Lieutenant Justin McNulty and his family.

CONSENT CALENDAR

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

Minutes

Approves as amended Council meeting minutes of July 6, 2010

MOU

Approves a Memorandum of Understanding (MOU) with the City of El Cerrito for the Small Cities Climate Action Partnership Environmental Protection Agency Grant in the amount of \$497,488 that provides Piedmont with \$75,202 in pass-through funds and commits the City to a match of \$38,700; and authorizes the City Administrator to execute the MOU and make minor modifications to it as needed throughout its term and that of the grant agreement

Resolution 68-10

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

Moved by Fujioka, Seconded by Chiang

Ayes: Barbieri, Chiang, Fujioka, Keating, Wieler

Noes: None

Absent: None

(0045)

PUBLIC FORUM

Tamara Hege, in-coming President of the Piedmont League of Women Voters, highlighted the major activities of the League planned for 2010-2011, noting in particular that the League's primary focus will be on "the City of Piedmont." Specifically, the League will be closely following developments with regard to the City's Audit Subcommittee's examination and recommendations, the Moraga Canyon Environmental Impact Report process, the library service contract with the City of Oakland, the Civic Center Master Plan and the update of the City's General Plan Housing Element.

Stuart Schneck referenced his recent letter to *The Piedmont Post* in requesting the Council to rescind its July 6 approval of AT&T's application to install two new antennas on the PG&E tower at the corner of Sandringham Road and Estates Drive. He reiterated his opinion that in approving the application, the Council failed to abide by Section 17G of the City Code, stressed that recent court decisions have ruled in favor of municipalities imposing and enforcing regulations on the telecommunication industry and urged the Council to deny AT&T's previous application and request that the company reapply.

Paul Kuroda also referenced recent court decisions supporting the rights of municipalities to impose and enforce restrictions on telecommunication installations. He also submitted research information concerning radio frequency radiation in terms of potential public safety health hazards and the inadequacy of current government standards in regulating and setting safe levels for such radiation exposure. He requested the Council to adopt better ordinances for regulating the telecommunication industry, including the possibility of requiring telecommunication applicants to obtain a conditional use permit.

Eva Denes referenced her e-mail in inquiring why Piedmont's garbage collection rates are so high when compared to other municipalities, noting in particular that her rates have increased 100% over the last two years. She requested that the Council freeze current rate levels pending a public review of this matter.

Ray Catalano requested that the City provide estimated maintenance costs for its existing recreational facilities covering the next 10 years. He felt that this information should be disclosed and available to the public in advance of considering the additional maintenance obligations that will be required in connection with the proposed Moraga Canyon sports field development in Blair Park.

REGULAR CALENDAR

The Council considered the following items of regular business:

**Fire Chief
Appointment**

The City Administrator announced that Fire Chief Michael W. McLaughlin who was selected by the Council from an outstanding field of candidates to serve as Piedmont's new Fire Chief withdrew his acceptance of the position today, citing personal reasons. Specifically, Chief McLaughlin determined that he could not afford to move to the Bay Area. The Administrator stated that he will resume the employment search for a new chief, noting that Interim Chief Speakman will continue to serve as Fire Chief during this period.

**Interim City Clerk
Appointment**

The City Administrator recommended that Deputy City Clerk John Tulloch be appointed Interim City Clerk, effective September 4, 2010, at a salary of \$94,725. The City's current City Clerk, Ann Swift, is retiring on September 3. The Administrator highlighted Mr. Tulloch's qualifications for this position, noting his intention that this interim appointment be for six months. Thereafter, the Council can consider either making this appointment permanent or proceed with an internal or outside recruitment process to fill the city clerk position. The Administrator also briefly highlighted cost saving, reorganizational changes in the City Clerk Office which will take place during this transitional period. As a related issue, Councilmember Wieler reiterated his previous request that the City conduct an examination of its information management systems and suggested that a city clerk salary survey of Piedmont's benchmark cities be performed. The Administrator agreed, noting that these two tasks will be completed within the next six months.

Resolution 69-10

RESOLVED, that the City Council appoints John Tulloch as Interim City Clerk, effective September 4, 2010, and adopts the salary and benefit resolution on file in the City Clerk's Office setting compensation at \$94,725.

Moved by Chiang, Seconded by Keating

Ayes: Barbieri, Chiang, Fujioka, Keating, Wieler

Noes: None

Absent: None

(0085)

**Piedmont Hills
Underground
District**

The City Administrator and Interim Public Works Director recommended that the Council formally accept the Piedmont Hills Underground Utility District as completed by Valley Utility Services, authorize the recording of the Notice of Completion of the project with the Alameda County Recorder's Office to begin the 35-day waiting period for potential liens to be filed and consider a request by Valley Utility for early release of up to 50% of the retention. The Director added that the City has received construction acceptance letters from PG&E, AT&T and Comcast and the City's Engineer, Coastland Civil Engineering, has deemed the project satisfactorily completed. As to the request for an early release of a portion of the retention, the City Administrator stated that this is a standard practice. The project retention is approximately \$475,381. To-date, staff has determined that \$159,548.77 is owed to subcontractors and/ or

material suppliers and he recommended that two-party checks be issued for these outstanding invoices, with the remainder of the 50% retention release paid to Valley Utility. The remaining 50% of the retention would then be held for the 35-day waiting period in case any other liens are filed. The Interim Director voiced confidence that there are no other claimants; adding however, that should there be additional liens, the remaining 50% retention amount will be adequate to cover such invoices.

Councilmember Wieler recused himself from discussion and action on this matter, stating that he lives within 300 ft. of the Piedmont Hills Utility Underground District boundary.

Councilmembers Fujioka and Keating requested staff to examine the City's franchise contractual agreements with PG&E, AT&T and Comcast to insure that the City has no liability if any future defects or problems with the underground construction project or system are encountered.

Resolution 70-10

RESOLVED, that the City Council: (1) formally accepts the Piedmont Hills Underground Utility District as completed by Valley Utility Services of Sacramento, CA; (2) authorizes the recording of the Notice of Completion for the Piedmont Hills Underground Utility District with the Alameda County Recorder's Office to begin the 35 day waiting period for potential liens to be filed and (3) releases 50% of the project retention, with known outstanding invoices by subcontractors/material suppliers to be paid by two-party checks from the released retention amount and the remaining balance of the 50% retention release paid to Valley Utility Services.

Moved by Chiang, Seconded by Keating

Ayes: Barbieri, Chiang, Fujioka, Keating

Noes: None

Recused: Wieler

(0045)

**Public Hearing:
Draft EIR for
Moraga Canyon
Sports Fields Project**

In accordance with California Environmental Quality Act provisions, the Recreation Director recommended the Council conduct a hearing to receive public comment on the Moraga Canyon Sports Field Project Draft Environmental Impact Report (EIR). The Draft EIR involves two projects: (1) the proposed installation of field lighting and synthetic turf at Coaches Playfield; and (2) the development of two new youth sports fields and related improvements in Blair Park. The Director summarized the history of the two proposed sports field improvement projects and the preparation of the combined environmental impact study. He stated that the Draft EIR was prepared by the City's environmental consultants, LSA Associates, and made public on June 21, 2010. The CEQA required 45-day public comment period began on June 24 and concludes on August 9. A second public hearing on this Draft EIR has been scheduled for August 2.

Correspondence was received from: Joannie Semitekoi; Jonathan Quint; Marjorie Blackwell; Cheryl & Rick Rowe; Richard Grasseti of Grasseti Environmental Consulting.

The Mayor opened the public hearing, encouraging speakers to focus their comments on the adequacy of the Draft EIR and not specifics of the proposed development improvement projects or whether the projects should be approved or denied.

Public testimony was received from:

Susan Piper, aide to Oakland Vice Mayor Jean Quan, voiced disappointment that the Draft EIR failed to address potential impacts on City of Oakland residents, noting in particular the failure of the Draft EIR to address potential traffic delays at the Harbord/Estates intersection on Moraga Avenue, increased traffic flow volume along Harbord Drive and increased traffic congestion along Moraga Avenue caused by increased traffic volume and U-turns. She stated that a letter detailing the Draft EIR's review by Oakland planning, watershed and traffic engineering departments will be forthcoming from the Vice Mayor's office. She criticized the consultants for failing to consult with the City of Oakland during preparation of the Administrative Draft EIR so that the aforementioned issues could have been addressed prior to the report's release. She also noted her concern that seven of the most significant impacts with no mitigation measures set forth in the Draft EIR directly impact Oakland residents.

Sandra Pohutsky felt that the traffic assumptions contained in the Draft EIR were flawed. In particular, she cited: (1) the assumption that there will be only a 3% annual increase in traffic flow along Moraga Avenue, when another agency referenced in the EIR indicated a 8% increase. She felt that given Alameda County's current 11% unemployment rate and the corresponding reduction in traffic, it is inappropriate to extrapolate future traffic flow assumptions based on this short-term trend; and (2) the volume of traffic flow assumed for the Blair Project being based upon one Saturday soccer game at Coaches Playfield. She inquired if the Draft EIR is assuming that there will be only one game per day per field at the new Blair sports complex?

Al Peters voiced strong concern over pedestrian safety, stressing that the Draft EIR's assumption that bike riders to and from the Blair Park fields will utilize the pedestrian bridge and pathways is flawed. He felt that it was much more realistic to assume that kids will take the shortest, easiest route and ride along dangerous Moraga Avenue.

George Childs felt that the proposed projects violate previous promises made to neighboring residents (e.g. no lights at Coaches Playfield), jeopardize the stability of Scenic Avenue homes/properties (i.e., massive fill and excavation at Blair Park) and fail to mitigate vehicle and pedestrian safety concerns. He agreed with Mr. Peters that kids will not climb the stairs to use the pedestrian bridge but instead will take the quickest route across the street. He also felt that

the pedestrian bridge will become a target for graffiti, adding to the City's maintenance costs, as well as a potential launching pad for people throwing items into on-coming traffic along Moraga. He also inquired how the City will respond to potential liability claims as a result of emergency vehicle response and transport personnel being delayed because of backed-up traffic along Moraga Avenue.

Marjorie Blackwell cited three inadequacies of the Draft EIR: (1) its failure to mitigate the Blair Park proposal's 19 violations of the City's General Plan Open Space Element and address the fact that since the Blair proposal violates the General Plan, the General Plan needs to be amended in order to allow the project, in which case another EIR may be required to amend the General Plan; (2) its failure to address the impacts of increased traffic volume along Pala Avenue and other nearby streets which will be used as "short-cuts" by drivers wishing to avoid congestion along Moraga Avenue; and (3) its failure to recognize that the two bus lines cited as convenient means of traveling to the Blair fields do not serve Piedmont residents and in any case do not travel near Blair Park.

William Blackwell felt that the alternative, single field design included in the Draft EIR is inadequate and fails to incorporate the beneficial mitigation measures contained in the single-field design he previously submitted to the City for consideration. He requested that the Draft EIR be revised to include a more comprehensive single-field design, similar to the one he proposed.

Ray Catalano requested that the Draft EIR be revised to address the following: (1) identify the alternate routes drivers will use to and from the Blair fields and address the neighborhood impacts in terms of public safety and noise pollution which will be generated by these additional trips; (2) include a description prepared by the Alameda County Vector Control District regarding potential vector and pathogen health risks during project construction; and (3) address the unavoidable significant traffic/pedestrian safety risk finding for a previous proposal involving the construction of an over-flow parking lot in Blair Park contained in an 1987 EIR related to a City upgrade of recreational facilities.

Ralph Kanz urged the Council to negotiate with all parties with an interest in the Blair Park Project in an attempt to reach a mutually agreeable proposal. He supported the recommendations of Mr. Richard Grassetto of Grassetto Environmental Consulting and cautioned that proceeding with the Blair Project as proposed will result in costly and time-consuming litigation.

Barbara Peters concurred with Mr. Grassetto's comments and criticized the Draft EIR for the following omissions or inaccuracies: (1) its dismissal of the potential for field development outside of Piedmont; (2) its listing of the new Havens Playfield as "existing" when it is not even completed yet; (3) its finding that eliminating the smaller of the two fields will lessen impacts, when in fact it would have no effect in reducing the visual impact of the development, the loss of oak trees, the enormous traffic safety problems or mitigating "sudden" noise;

(4) its finding that the proposed sound wall along Moraga Avenue will mitigate noise, when in fact this sound barrier will not help Scenic Avenue properties and may in fact make noise impacts worse for the Scenic neighborhood; and (5) its failure to address the visual impact the massive retaining walls and fences will have along the Moraga streetscape.

Margaret Ovendin inquired why retaining a grass playing surface at Coaches Playfield wasn't addressed in the Draft EIR as an alternative option. She voiced support for retaining an improved grass surface at Coaches and cited various studies indicating that the chemicals contained in crumb-rubber based artificial surfaces may be hazardous to children's health. She criticized the Draft EIR for accepting on face-value, industry sponsored studies which report no health concerns with artificial turf surfaces. She suggested that the Draft focus more on the debate and lack of scientific consensus regarding the safety of artificial surfaces. She also felt the Draft EIR mitigation measures proposing that the crumb-rubber surface material be "aired out" prior to installation as well as the posting of warning signs were insufficient.

Robin Altman cited the following deficiencies of the Draft EIR: (1) assumptions related to pedestrians crossing Moraga Avenue; (2) failing to address the difficulties Moraga Avenue residents will have in backing out of their driveways -- given the street's configuration, blind spots and heavy traffic flow, waiting for traffic gaps in order to ingress/egress private driveways will be dangerous and difficult; (3) inadequate compilation of Moraga Avenue traffic counts and accident history statistics; (4) failing to address that left-hand turns at the Harbord/Moraga intersection, which are commonplace, will back up traffic, especially if the existing heavy traffic flow is increased because of traffic to and from the Blair sports fields; and (5) failing to address all the concerns from Oakland residents raised at the scoping meeting.

Joannie Semitekoll felt the Draft EIR failed to adequately address traffic and noise impacts from sports field development. In particular, she cited her belief that: (1) the Draft EIR failed to adequately address traffic issues related to Maxwellton Road and the east parking lot; (2) the noise measurements taken were too short in duration, occurred on a "quiet" day at Coaches Playfield and failed to calculate the "canyon effect" of noise on neighborhoods; and (3) the Draft EIR's assumption that there would be no significant noise impacts on residents who live 300 ft. away from the proposed field was wrong, adding that her house is 425 ft. from Coaches Playfield and she can frequently hear spectator cheering longer in duration than 10 minutes per game.

Lynn Dee requested that the Draft EIR address the following: (1) the impact the new field at Havens School will have on decreasing the demand for youth sports fields in Piedmont; (2) quantify the actual need for such a large sports development at Blair Park; (3) the canyon effect of noise produced at both Coaches and Blair sports fields; (4) an examination of the impacts created by drivers using alternate routes to the Blair and Coaches fields as a means of avoiding congestion along Moraga; (5) the costly impact of having the

foundations of Scenic Avenue residences checked and monitored during Blair Park excavation/construction; and (6) the need for more examination of Blair Park alternatives.

Jill Broadhurst stated that the proposed mitigation measure in the Draft EIR suggesting that a traffic signal could be installed at the Moraga/Harbord intersection is unacceptable to the City of Oakland.

The Mayor thanked the speakers for their comments and announced that a second hearing on the Draft EIR will be held August 2. He also advised that public comments on the Draft EIR can also be submitted in writing to City Hall.

**PG&E Site at
408 Linda Avenue**

The City Planner reported that the Piedmont Station Limited Liability Corporation which has submitted an application to redevelop the abandoned PG&E substation site at 408 Linda Avenue with seven new 4-story townhouses is requesting permission to split the \$78,136 payment for the preparation of the required Environmental Impact Report (EIR) into monthly payments of \$10,000. The \$78,136 amount reflects a "not to exceed" bid of \$60,105 from the City's environmental consultants, LSA Associates, to prepare a focused Environmental Impact Report for the project as well as the City's 30% administrative fee. The City Planner summarized staff's review of Piedmont Station's request, proposing two alternative payment schedule options:

1. Requesting Piedmont Station to make an initial payment of \$45,610, covering the costs of the City's 30% Administrative fee and the preparation of the Administrative Draft EIR (first and most labor intensive costs of LSA). Thereafter, smaller payments that range from \$5,408 to \$11,687 can be made to cover LSA costs incurred in revising the Draft EIR, response to comments, EIR certification hearings, etc.. This is the staff preferred option;

or

2. Piedmont Station could make monthly payments of \$10,000, or payments as funds are available, and the City would authorize the commencement of each task when payment for that task is received in full. This option has the potential to slow the EIR preparation process.

The City Administrator stated that historically Piedmont has always required the costs of EIR preparation to be paid up front. However, given the current economy and size of the proposed project, staff is comfortable with a task-based approach in this particular case (Option 1 above).

The Council supported staff's recommendation for a task-based approach for funding the preparation of Piedmont Station's EIR, provided the funding agreement with LSA Associates is carefully drafted, periodic progress updates are provided to the Council and Piedmont Station agrees to and understands that project progress will be halted if it fails to make all required payments.

Resolution 71-10

RESOLVED, that the City Council authorizes that the work on the environmental impact report for 408 Linda Avenue (Application #08-099) be paid in task-based installments, including the payment of the City administrative fee, as set forth in Exhibit B in the staff report dated July 19, 2010; and

RESOLVED FURTHER, that staff shall modify the agreement with the City's environmental consultant, LSA Associates, to accommodate this change in payment schedule, with the understanding that LSA is not to proceed with any task until full payment for that task has been received by the City and LSA has been authorized to proceed; and

RESOLVED FURTHER, that staff shall prepare an agreement with project developer Piedmont Station Limited Liability Corporation that sets forth the modified payment schedule and terms and includes Piedmont Stations' agreement and acceptance that progress on its project at 408 Linda Avenue will be halted by the City if it fails to make all the required payments for EIR preparation as set forth in Exhibit B of the aforementioned staff report; and

RESOLVED FURTHER, that staff shall provide periodic updates to the Council regarding the payment plan and EIR progress.

Moved by Wieler, Seconded by Chiang

Ayes: Barbieri, Chiang, Fujioka, Keating, Wieler

Noes: None

Absent: None

(0025)

The City Planner stated that the 408 Linda Avenue project has been determined provisionally complete, pending payment for EIR preparation.

ANNOUNCEMENTS

Audit Subcommittee -- next meeting is Wednesday, July 21 at 7:30 p.m. in the Council Chambers. The public is invited to attend.

Public Safety Committee -- next meeting is Thursday, July 29 at 7:30 p.m. in the Council Chambers. The public is invited to attend.

ADJOURNMENT

There being no further business, Mayor Barbieri adjourned the meeting at 10:17 p.m.