

PIEDMONT CITY COUNCIL

Regular Meeting Minutes for Monday, March 1, 2010

A Regular Session of the Piedmont City Council was held March 1, 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 February 25, 2010.

PRE-MEETING

Mayor Barbieri convened the Council at 6:30 p.m. for the purposes of selecting a new third voting member for the duration of the Council's consideration of the Hampton-Sea View Assessment District and related litigation (formerly this third voting member was Mayor Friedman). City Administrator Geoff Grote explained that three Councilmembers (Chiang, Fujioka, Wieler) all live within 300 ft. of the district boundaries. Normally, these members would recuse themselves from all discussions and actions on this issue. But the City Charter requires that no action of the Council shall be valid without the affirmative vote of three or more members. Therefore, under Government Code Section 87100 and California Code Section 18708, the Council must choose by random which individual shall be the third voting Councilmember on this matter. The Vice Mayor and Councilmembers Fujioka and Wieler then drew straws and it was determined that Councilmember Wieler would be the third voting member for the duration of the Council's consideration of the Hampton-Sea View Assessment District and related litigation. The Mayor then adjourned the Council to Closed Session at 6:45 p.m.

CALL TO ORDER

Following a 6:45 p.m. Closed Session regarding pending litigation in the matter of Kurtin v. Piedmont and possible litigation regarding the Piedmont Hills Underground Assessment District held pursuant to Government Code Sections 54956.9(a) and 54956.8, Mayor Barbieri called the meeting to order at 7:40 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, Fire Chief John Speakman, Acting Police Chief John Hunt, Finance Director Mark Bichsel, Recreation Director Mark Delventhal, City Clerk Ann Swift, City Planner Kate Black, Assistant Planner Kevin Jackson, Chief Building Official Chester Nakahara 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 February 1, 6 and 16, 2010

Resolution Approves the Resolution on file in the City Clerk's Office establishing procedures, fees and charges for the recovery of public safety costs for emergency response directly related to driving under the influence incidents

Agreement Awards a contract to AECOM Technical Services, Inc. in the amount of \$3,890 for the preparation of a revised Draft Climate Action Plan as requested by Council at its January 4, 2010 hearing and authorizes the use of Import Mitigation grant funds provided by StopWaste.Org to cover the cost of said contract

Liaison Assignments Approves City Council liaison assignments proposed by Mayor Barbieri for the period March 1, 2010 to February 28, 2011

Resolution 16-10

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

Moved by Chiang, Seconded by Keating

Ayes: Barbieri, Chiang, Fujioka, Keating, Wieler

Noes: None

Absent: None

(0465; 0045;0085)

(Note: Councilmember Wieler abstained from the vote approving Council meeting minutes of February 1 and 6, 2010)

PUBLIC FORUM

Tim Rood requested the Council to rescind Resolution 11-10, adopted February 6, 2010, appropriating and authorizing the expenditure of up to \$1,060,000 in City funds for the completion of all construction work for the Piedmont Hills Underground Utility District. He questioned the legality of the expenditure of public funds for a special benefit and requested the Council to disclose the legal authority used in determining that the appropriation was lawful. He urged the Council to obtain an independent legal opinion re this action and suggested that the Council pursue a validation action in order to protect the City and Councilmembers from potential liability exposure. Mr. Rood also criticized the Council, former Mayor Friedman and staff for failing to keep the citizenry adequately and timely informed regarding the problems and mistakes that have plagued the Piedmont Hills Undergrounding Assessment District, citing his belief that material information was deliberately kept from the public until after the February 2 municipal election.

George Childs referenced the Council's consent calendar approval of a consultant's preparation of revisions to the City's draft Climate Action Plan in stressing his belief that the minor, technical changes required could be accomplished by City staff at much less expense.

Ralph Catalano and Rick Schiller urged the Council to settle the Kurtin v. Piedmont lawsuit pertaining to the Hampton-Sea View Undergrounding Assessment District. They stressed that for all practical purposes the district is defunct -- no bonds have been issued, assessment money has been returned to residents and construction contracts have expired. They felt that too much money has already been expended with regard to this issue and the matter has proven to be extremely divisive for the community.

REGULAR CALENDAR

The Council considered the following items of regular business:

408 Linda Avenue

The City Planner recommended Council approval of a contract with LSA Associates, Inc. in the amount not to exceed \$60,105 for services related to the preparation of environmental documents pursuant to the California Environmental Quality Act, related to the proposed townhouse development at 408 Linda Avenue and to authorize the Finance Director to establish a "pass-through" account in the amount of \$60,105, funded by the Piedmont Station LLC, developers of the proposed development at 408 Linda Avenue, to pay for the afore-mentioned services with LSA.

Public testimony was received from:

George Childs questioned why the City has to be contractually involved with a private development project on private property. He cited concerns for potential City liability if there are contract cost overruns.

Rick Schiller felt that the traffic data and analysis contained in the project's Initial Study was outdated and failed to consider the likelihood that the temporary cross-walks at Beach School which have eliminated a significant amount of street parking may remain in place at the urging of Beach parents even after Havens school children leave Beach School to return to their new school.

The City Planner explained that traffic and parking issues will continue to be addressed and analyzed during the preparation of the proposed contractual environmental work as well as when the environmental documents are released for public, state and regional agency review and comment. There will be ample opportunity for additional information to be collected, analysis performed, concerns raised and mitigation

measures proposed. The Planner added that the proposed environmental review is prescribed by state CEQA law, all costs will be borne by the developers and no work will proceed nor the scope of work expanded until funding for said costs have been deposited with the City -- all money is received up-front. In addition, the City charges a 30% fee to oversee the environmental review process. There is no financial risk to the City.

In response to contractual language changes proposed by Councilmember Fujioka, the City Attorney reported that LSA has agreed to add the following language to Section 16 of the Contract related to Termination: "The City may terminate this agreement without cause upon giving 30 days calendar, written notice to independent contractor." In addition, LSA is agreeable to the inclusion of a contract termination date, suggesting a date of "June 30, 2011" to insure adequate time in case the scope of work is expanded. As a side issue, Councilmember Fujioka voiced her reluctance to negotiate contractual terms with prospective contractors, preferring that the City's contractual boiler-plate language be standard for all contracts. The City Attorney noted the difficulty that Piedmont has, as a small city, to attract contractors and as a result contractual flexibility has typically been necessary to entice bidders.

Resolution 17-10

RESOLVED, that the City Council approves a contract, as amended herein, with LSA Associates, Inc., in an amount not to exceed \$60,105 for services related to the preparation of environmental documents pursuant to the California Environmental Quality Act, related to the proposed townhouse development at 408 Linda Avenue; and

RESOLVED FURTHER, authorizes the Finance Director to establish a "pass-through" account in the amount of \$60,105, funded by the Piedmont Station LLC, developers of the proposed development at 408 Linda Avenue, to pay for the afore-mentioned services with LSA.

Moved by Chiang, Seconded by Keating

Ayes: Barbieri, Chiang, Fujioka, Keating, Wieler

Noes: None

Absent: None

(0045)

Appointment

Mayor Barbieri proposed the interim appointment of Judge Ken Kawaichi (Ret.) to the City Council Audit Subcommittee for the purposes of investigating the Piedmont Hills Underground Assessment District. The Mayor referenced Council direction of February 6 (Resolution 12-10) authorizing the appointment of a non-Councilmember

resident to assist the Council's Audit Subcommittee in investigating the bidding, contracting and construction management of the Piedmont Hills Undergrounding Project. He stated that Judge Kawaichi's extensive experience with legal cases involving issues similar to those in the Hills Project will greatly assist the Audit Subcommittee in analyzing the circumstances and problems encountered with this project.

Correspondence was received from: Ryan Gilbert, February 27

Public testimony was received from:

George Childs emphasized the community's continued outrage over the failures of the Hills Project and the need for a thorough and careful examination of all the issues involved, including: (1) whether the Council's appropriation of \$2+ Million in City funds to complete the construction project without a vote of the electorate was legal; and (2) whether the October 2009 washout of the trench on Crest Road was the project contractor's fault and the costs to repair the damage should have been the contractor's financial responsibility rather than the City's.

Councilmember Keating supported Judge Kawaichi's appointment but noted that many other highly qualified residents have also volunteered to assist in the investigation. The Mayor agreed, adding that several residents have volunteered to assist the City through this difficult time. Their offers are welcomed, appreciated and their expertise will be utilized in a manner to insure that the mistakes made in connection with the Piedmont Hills Project will never be repeated. The Council acknowledged that all the plans, specifications and contractual documents related to the Piedmont Hills Underground District have been posted on the City's website for public review.

Resolution 18-10

RESOLVED, that the City Council approves the interim appointment of Judge Ken Kawaichi (Ret.) to the City Council Audit Subcommittee for the purposes of investigating the Piedmont Hills Underground Assessment District.

Moved by Wieler, Seconded by Chiang

Ayes: Barbieri, Chiang, Fujioka, Keating, Wieler

Noes: None

Absent: None

(0085)

**Piedmont Hills
Underground**

The Finance Director and Chief Building Official highlighted the major points in their written update reports regarding the Piedmont Hills

Project Update

Underground District, noting in particular construction activity details and the fact that the project is on-budget as projected at the February 6 special meeting. Construction and financial update reports will continue be provided to the Council's Audit Committee Subcommittee on a weekly basis and to the entire Council at each Council meeting.

Public testimony was received from:

George Childs commented on specific report details, urging district residents to consider waiving the City's repayment of \$250,671 in seed money and instead allow the City to retain these funds to help cover the cost of project overruns.

**Undergrounding
Moratorium**

Per Council direction of February 6, the City Administrator submitted a proposed resolution to prohibit any new underground assessment districts for a period of two years. He felt that a 2-year moratorium would allow sufficient time for the completion of personnel performance evaluations currently underway with regard to the Piedmont Hills Underground Assessment District, a final report from the Audit Subcommittee related to the bidding, contracting and construction management of the district as well as additional time for the Council to review and amend the City's underground assessment district policies and procedures. The proposed moratorium will apply to districts which are in the formation process (Scenic Avenue) as well as to areas which have expressed tentative interest in the process (Wildwood Gardens). Nothing in the resolution will preclude residents in any given area from petitioning the Council for the return of funds which may have been deposited for development costs related to a district. However, the resolution will not apply to a legally formed underground assessment district such as Hampton-Sea View where litigation is pending. He added that excluding the Hampton-Sea View District from this proposed moratorium allows the entire Council to participate in the public policy discussions regarding this issue. Otherwise, Vice Mayor Chiang and Councilmember Fujioka would be required to recuse themselves from discussion and any action.

Correspondence was received from: Diane Allen; Bill Massengill; Jennifer Trainor

Public testimony was received from:

Tim Rood criticized the City for the late posting on the City's website of e-mails received relating to this issue and reiterated his request that the Council obtain an outside legal opinion re the legality of its appropriation

of \$2+ Million in City funds to complete construction of the Piedmont Hills Underground Project.

George Childs felt that the proposed moratorium should be expanded to include other pending capital projects that benefit certain groups, namely the Blair Park Sports Field Project and the Civic Center Master Plan Improvements. He also urged that a ballot measure be included in the next election requiring a two-thirds electorate vote of approval for proposed large-scale projects.

Kathleen Quenneville urged that the Hampton-Sea View Underground Project be included in the proposed moratorium, fearing that once the Kurtin v. Piedmont lawsuit is resolved, there is nothing to protect residents and the City from the district proceeding with the project, thus exposing the community to the same risks and costs encountered with the Piedmont Hills Project. She also repeated her February 6 requests that the City provide a summary of the impacts the \$2+ Million unanticipated appropriation to the Piedmont Hills Project has had on scheduled and pending CIP projects as well as general City budgetary operations.

Aaron Salloway stated his preference for a 3-year moratorium term and reiterated his request for an independent legal review of the Audit Subcommittee's report.

David Alexander concurred with Mr. Rood that e-mails sent to the City on this issue were either not posted or posted late on the City's website. He suggested that residents be allowed to directly post their e-mails on the website to expedite publication. He strongly supported the moratorium, a thorough review of all the issues related to the Piedmont Hills Project and a significant revision of the City's current, badly flawed utility undergrounding policies and practices.

Diane Allen also urged that the Hampton-Sea View Underground District be included in the moratorium, stressing that the situation and circumstances have drastically changed since the project was initially approved and residents have serious concerns over the project proceeding.

The Council was unanimous in its support of the moratorium, agreeing that the moratorium should stay in place until: (1) completion of the Audit Subcommittee's investigation and report concerning the Piedmont Hills Assessment District/Project; and (2) the Council's completion of its comprehensive review of the City's utility undergrounding policies and contractual practices and the implementation of new policies, procedures

and practices. The Council, with the exception of Councilmember Keating, supported the City Administrator's recommendation that the Hampton-Sea View Assessment District not be included in the moratorium in order to allow the entire Council to participate in the policy review discussion and because Hampton-Sea View District residents were not notified that consideration was being given to including their district in the moratorium. In fact, the staff report on this matter specifically stated that the moratorium would not apply to Hampton-Sea View. The Council majority preferred that the Hampton-Sea View matter be addressed separately from the moratorium issue, requesting that district residents be notified of the Council's intention to re-examine the matter at a future Council meeting, with the understanding that options such as district abandonment, nullification or other alternatives may be considered. Councilmember Keating reiterated his support for including Hampton-Sea View in the proposed moratorium in recognition of the overwhelming number of e-mails and correspondence supporting such inclusion.

Resolution 19-10

WHEREAS, it is the intent of the City Council in adopting this resolution to impose a moratorium on underground assessment districts until the completion of investigations regarding the Piedmont Hills Underground Assessment District which are now underway; and

WHEREAS, following the completion of the pending investigations, additional time will be required to study, review and possibly amend the city's Underground Utility Formation Policy to better protect the financial resources of the city; and

WHEREAS, until the completion of such study and review of the city's policy it is not in the best interest of the residents of this city to invest city funds in support of new underground assessment development, including but not limited to expenditure of staff time and resources or the promissory use of the city's 20A funds from PG&E; and

WHEREAS, it is difficult to predict exactly the time required for the above actions but the council wishes to allow sufficient time for a comprehensive public process; and

WHEREAS, this moratorium does not apply to already established underground assessment districts, including the Piedmont Hills Assessment District and the Hampton Sea View Assessment District;

NOW, THEREFORE, BE IT RESOLVED, that the Piedmont City Council establishes a moratorium on all new underground assessment districts in the City of Piedmont for a period of two years until March 2012 or until the completion of the Audit Subcommittee's investigation of the Piedmont Hills Underground Assessment District and the completion of the Council's re-evaluation of the City's underground policies, contract administration procedures and construction management practices -- whichever is later; and

BE IT FURTHER RESOLVED, that nothing in this resolution shall prohibit residents who have deposited money with the city for development costs related to proposed underground assessment projects from petitioning the city council for the return of such funds prior to the expiration of the moratorium.

Moved by Fujioka, Seconded by Chiang

Ayes: Barbieri, Chiang, Fujioka, Wieler

Noes: Keating

Absent: None

(1075)

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

The City Planner reported that AT&T Mobility on behalf of AT&T and PG&E is requesting permission to install two new wireless transmission antennas on a single bracket mount at the same height as two existing antenna arrays and the installation of 12 additional coaxial cables to the new and existing antennas at the site of the PG&E tower at the corner of Sandringham Road and Estates Drive. The Planning Commission recommended by a 3 to 2 vote approval of said installation on February 8, 2010.

Public testimony was received from:

Stuart Schneck distributed photographs of the existing tower and transmission antennas, reviewed the history of wireless equipment being placed on the tower, noted the fact that the tower currently has 7 transmission antennas and voiced the neighborhood's growing frustration that there appears to be no end to the addition of more and more wireless facilities at the site. He urged that AT&T be required to improve their service capability by upgrading their existing equipment rather than adding more antennas.

Katie Goldberg agreed with Mr. Schneck regarding the cumulative impact of more and more antennas at the site as well as voiced her strong concern over potential health hazards to Corpus Christi school children from radio frequency emissions.

Matt Yergovich, AT&T representative, stressed that the proposed application is consistent with the City Code encouraging the co-location of wireless facilities, stated that the antennas comply with FCC guidelines regarding cell site emissions, noted that the proposed antennas are required to extend cell coverage and data capacity to the southwestern portion of Piedmont, felt the addition of the two antennas would have minimal visual impact and stressed the proposed location is the only one available to provide the desired range of coverage. He stated that alternative location sites were examined but were found unsatisfactory for a variety of reasons -- insufficient tower strength, inadequate space for ground-level equipment cabinets, terrain and signal transmission interference and an inability to service the gap in existing coverage.

Jim Kellogg, Planning Commission Chairman, summarized the issues considered by the Commission in reaching its approval recommendation.

The Vice Mayor moved, seconded by Councilmember Wieler to approve AT&T's application based on the findings and recommendations of the Planning Commission. As discussion continued, THIS MOTION WAS WITHDRAWN.

The Council questioned Mr. Yergovich at length regarding potential alternative sites or other options for providing the desired coverage. In the end, the Council was unconvinced that alternative sites and options were not available to lessen the cumulative impact on the Sandringham neighborhood that repeated antenna installations on the existing PG&E tower have had over the years. The Council voiced concern that demand for more and more cell and data service will continue to result in more and more wireless equipment being added to meet this demand. Per the authority granted in the City Code, the Council requested AT&T to fund an independent third party analysis of its application to determine if the proposed site and proposal is the only feasible one for providing cell/data service to the area of Piedmont not currently covered by the tower's existing antennas. Mr. Yergovich agreed to finance an independent review of his application, requesting a 90-day extension of the Permit Streamlining Act in order to complete the third party examination.

Resolution 20-10

RESOLVED, that the City Council continues further consideration of AT&T's wireless communication facility application until such time as an independent review of AT&T's application is completed, with the understanding that the City shall select the consultant to perform this

evaluation and that AT&T shall pay the cost for said consultant review;
and

RESOLVED FURTHER, that this independent review and subsequent Council reconsideration of AT&T's application shall occur before the expiration of the 90-day extension of the Permit Streamlining Act.

Moved by Wieler, Seconded by Chiang

Ayes: Barbieri, Chiang, Fujioka, Keating, Wieler

Noes: None

Absent: None

(1127)

**City Attorney
Recruitment**

The City Administrator requested Council approval of a proposed *Request for Proposals* for the recruitment of a new City Attorney. Mr. George Peyton, the City's Attorney for the last 44 years will be retiring in July. The Administrator explained that there are two basic options: hire an individual or firm to work under contract or recruit a full-time City employee. The proposed RFP will solicit legal services on a contractual basis.

Councilmember Fujioka requested that the RFP be redrafted to make it more concise and in addition, requested the following specific revisions:

General Scope of Service Requested:

- change the proposed "15 plus hours" to approximately 20 hours of legal time per week in the 1st sentence of the 1st paragraph;
- add labor and employment law to the last sentence of the 3rd paragraph

Qualifications to Provide Services:

- add to the 9th bullet: deputy or assistant
- add to the 16th bullet: Conflict of Interest Code

Councilmember Fujioka also volunteered to serve on the proposed Ad Hoc Committee to assist the City Administrator in negotiating the terms and conditions of a contract.

Public testimony was received from:

Aaron Salloway concurred with Councilmember Fujioka's proposed revisions.

The Mayor requested the Council to provide any additional language changes to the City Administrator this week for incorporation into the RFP.

**Fire Chief
Recruitment**

The City Administrator stated that Fire Chief John Speakman has given notice that he will be retiring as of May 1. The recruitment process to fill this vacancy has begun but it will not be possible to fill this vacancy by April 30. Therefore, the Administrator recommended that attempts be made to either identify a retired Fire Chief who would be willing to serve in the interim or ask Chief Speakman to serve under contract until the new full-time Chief is hired. He also noted the possibility of sharing a fire chief with the City of Albany is being explored. The Administrator stated that he will report next month on the shared fire chief option.

On a motion by the Vice Mayor, seconded by Councilmember Fujioka and unanimously carried, the Council agreed to extend tonight's meeting to 11:15 p.m. in order to complete agenda consideration.

Correspondence was received from: Rick Schiller; Ryan Gilbert

Public testimony was received from:

Aaron Salloway suggested that the Council consider combining the police and fire chief into one position. He also supported the possibility of sharing a fire chief with another city.

ANNOUNCEMENTS

Congratulations -- The Mayor congratulated Vice Mayor Chiang and Councilmembers Keating and Wieler on their re-election to the Council. Councilmember Keating thanked the Mayor and his wife for hosting a post *swearing-in* reception at his home on February 16.

Commission Vacancies -- Councilmember Fujioka encouraged residents to apply for appointment to vacancies on the City's CIP Committee, Civil Service Commission, Park, Planning and Recreation Commissions and Public Safety Committee. The application submittal deadline is March 5.

FUTURE AGENDA ITEMS

Hampton-Sea View Underground Assessment District -- Councilmember Keating requested the Mayor to schedule discussion of the Hampton-Sea View Underground Assessment District on a future agenda.

ADJOURNMENT

There being no further business, Mayor Barbieri adjourned the meeting at 11:10 p.m.

