

PIEDMONT CITY COUNCIL

Regular Meeting Minutes for Monday, May 3, 2010

A Regular Session of the Piedmont City Council was held May 3, 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 April 29, 2010.

CALL TO ORDER

Following a 6:30 p.m. Closed Session regarding initiation of litigation and lease negotiations relating to City property at 777 Magnolia Avenue held pursuant to Government Code Sections 54956.9(c) and 54956.8, respectively, Mayor Barbieri called the meeting to order at 7:40 p.m. with the Pledge of Allegiance. The Mayor welcomed members of a Piedmont Boy Scout troop attending the meeting in connection with Merit Badge requirements.

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, Interim Fire Chief John Speakman, Finance Director Mark Bichsel, Public Works Director Larry Rosenberg, Recreation Director Mark Delventhal, Chief Building Official Chester Nakahara, City Engineer John Wanger, City Planner Kate Black, City Clerk Ann Swift and Recording Secretary Chris Harbert

CONSENT CALENDAR

There was no consent calendar.

PUBLIC FORUM

Lynn Dee referenced the proposed Moraga Canyon Sports Field Project in stating her belief that with the new Havens Playfield that will be completed this year, the City will have four youth sports playfields (Coaches, Beach, Hampton & Havens) and as a consequence there is no need to proceed with the proposed Moraga Canyon project.

REGULAR CALENDAR

The Council considered the following items of regular business:

Minutes

The Mayor acknowledged Council receipt of an e-mail from the project architect for 201 Park Way which was the subject of an appeal hearing before the Council on April 19. The architect questioned the accuracy of the April 19 minutes related to the Council's action regarding this appeal (Resolution 36-10). The Council, in consultation with the City Planner, agreed that the minutes were accurate as drafted. However, the Council corrected a typo on page 2 of the minutes.

Resolution 39-10

RESOLVED, that the City Council approves its April 19, 2010, meeting minutes as amended to correct a typo on page 2.

Moved by Fujioka, Seconded by Keating

Ayes: Barbieri, Fujioka, Keating, Wieler

Noes: None

Abstain: Chiang
Absent: None

**Piedmont Hills
Underground
Project Update**

The Chief Building Official and Finance Director highlighted the major points in their written status report regarding the Piedmont Hills Underground Construction Project for the period April 14 through 28. In general, the project is proceeding on schedule and within the budget projected at the February 6 special meeting. Councilmember Fujioka requested staff at the next meeting to provide a list of specific project items where construction cost savings have been realized as well as the total amount of estimated savings to be attained below the "Not to Exceed" cost of the project.

**Crest Road/Sotelo
Avenue Repaving**

The City Engineer recommended Council approval of a contract in the amount of \$133,312.41 to American Asphalt Repair & Resurfacing for the Crest Road-Sotelo Avenue Overlay Project. He explained the scope of the repaving project, noted recent changes in the City's standard bid specifications and construction contract language and stated that of the four bids received for this project, American Asphalt was the low bidder. The Public Works Director added that the repaving of Crest Road/Sotelo Avenue was originally scheduled for last fiscal year but deferred pending completion of the Piedmont Hills Utility Undergrounding trenching project.

Resolution 40-10

RESOLVED, that the City Council finds that in accordance with California Public Contract Code Section 20160 and following other applicable laws, the bid of American Asphalt Repair & Resurfacing Co., Inc. for the Crest Road - Sotelo Avenue Overlay Project (Project) to be the lowest, responsive bid and waive any irregularities in such bid in accordance with applicable law; and

RESOLVED FURTHER, awards a construction Agreement for the Crest Road - Sotelo Avenue Overlay Project to American Asphalt Repair & Resurfacing Co., Inc. in the amount of \$133,312.41; and

RESOLVED FURTHER, approves an overall budget of \$165,680 which includes the design, construction, a 10% contingency and monies for construction management and inspection; and

RESOLVED FURTHER, authorizes the Chief Building Official/Project Manager to execute any contract change orders in accordance with the Project contract documents so long as the total Project Cost does not exceed the total funding for this Project in the adopted budget; and

RESOLVED FURTHER, finds that the Project is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15301(c) of Title 14 of the California Code of Regulations for operation and maintenance of existing streets, sidewalks, gutters and similar facilities.

Moved by Chiang, Seconded by Wieler

Ayes: Barbieri, Chiang, Fujioka, Keating, Wieler

Noes: None

Absent: None
(0045)

Prior to the Council's consideration of the next agenda item (Hampton/Sea View Underground Assessment District), Vice Mayor Chiang and Councilmember Fujioka recused themselves from discussion and action on this item, stating that they live within 300 ft. and within the district, respectively. They then left the chambers. Councilmember Wieler stated that he also lives within 300 ft. of the district but pursuant to the Doctrine of Necessity and in accordance with the Council's March 1 action taken pursuant to Government Code Section 87100 and California Code Section 18708, it was determined that he would be the third voting Councilmember on this matter for the duration of the Council's consideration of the Hampton/Sea View Assessment District and related litigation.

**Hampton/Sea View
Underground
Assessment District**

Per Council direction of April 19, the City Administrator submitted two proposed resolutions: one clarifying future Council action with regard to the Hampton/Sea View Utility Undergrounding District and the second abandoning the district. The Administrator stated that all residents within the district were notified of tonight's hearing and encouraged to submit comments with regard to the two proposed actions. Thirty-eight of the 104 households within the district responded, with 81.2% of those respondents supporting abandonment and 18.8% supporting proceeding with the district. The Administrator regrettably recommended that the Council abandon district proceedings, stating that the project has become an exceedingly divisive issue within the district itself and the community at large, significant professional review and engineering work would be required to proceed with the project and substantial additional financial resources would also be required from district property owners in order for the project to continue.

Correspondence was received from: Pamela & Robert Majteles; Bridget & Randy Harris; Jennifer Trainor; Gordon Linden; John Mead; Adrian & Mehrdad Talaifar; Albert Edgerton; Karen & Steve Roland; Rafail & Valentiana Pozin; Jim Bert; Michael & Elyse O'Sullivan; Marsha & Larry Robkin; Robert & Rosalind Chow; Jennifer Tse; Nancy Lenahan; Beth Hurwich; Robert Livsey; Nance & Melvin Donaldson; Katharine & Ennix; James Meagher; Dai Meagher; Deborah & Bert Kurtin; Randolph Deutsch; Mr. Sutton; Linda Huber; Pat Milligan; Thomas Meagher; William & Elizabeth Schultz; Diane Allen; Bill & Nan Massengill; Ralph & Linda Kaffel; Dean & Nancy Johnson; Bob Russell; Barbara Bysiek; Rob Williamson; Jon & Carolyn Schmidt; John Shrewsberry; Kenneth Millhiser; Margaret Thomas/Marlene Settlemier/Charles Reese; Ken & Carla Betts; Charlotte Russell; Sindy Mikkelsen

Public testimony was received from:

Margaret Thomas and Dale Block encouraged the Council to continue district proceedings, stressing the public safety benefits of underground utilities and noting that the district was legally established. They emphasized that litigation disrupted the project from progressing and felt that once the Council has refined the City's utility undergrounding procedures and contracts, the project should proceed.

Aaron Salloway inquired re specific issues raised in the Kurtin lawsuit. His questions were answered by the Mayor. He noted his personal support, as a non-district resident, for abandonment.

Michael Dukas, a PHS student, inquired regarding the financial impacts on the City caused by the Piedmont Hills Project cost overruns and the Hampton/Sea View litigation.

James Meagher and Diane Allen supported district abandonment, stressing that the problems encountered by the Piedmont Hills Utility Undergrounding District have exposed flaws in the City's utility undergrounding process and underscores the significant change in circumstances from when the Hampton/Sea View District was initially approved. They indicated that there is no longer strong support within the District to proceed with the project.

George Childs had no opinion as to whether the Hampton/Sea View project should proceed but he was adamant that no City taxpayer funds be expended in behalf of this project or any future private undergrounding district.

The Council voiced its unenthusiastic support for district abandonment, agreeing that it is the only practical course of action given the existing situation. The Council acknowledged the significant change in circumstance since the district was originally approved, noting in particular that in order to proceed: on-going litigation would have to be settled, geo-technical examination of the district would be required; a professional review of the engineering reports and construction contracts would be necessary; rebidding the construction project would be required and re-negotiations with PG&E would have to occur. All this additional work would undoubtedly require substantial additional financial support from district residents. The Council stressed that its support for district abandonment was "without prejudice" and it voiced its hope that some of the engineering and assessment work prepared in connection with this project could be of use should proponents initiate another effort once the City's current moratorium on utility undergrounding districts is lifted. In light of this position, a suggestion was made to amend the proposed Resolution Abandoning Proceedings to state that: (1) district abandonment is being made without prejudice; and (2) the area within district boundaries will be placed under the City's current moratorium on utility undergrounding districts (Resolution 19-10, adopted March 1, 2010). The City Attorney recommended against amending the proposed Resolution, noting that it was prepared by the City's bond counsel for recordation with Alameda County. The City Attorney recommended instead that the Council's intent be set forth in a separate resolution.

Resolution 41-10

WHEREAS, by resolution adopted on May 5, 2009, this City Council formed the Hampton – Sea View Avenues Underground Assessment District (the "Assessment District"), approved the Amended Engineer's Report respecting the Assessment District, and levied assessments upon the designated parcels in accordance with the Amended Engineer's Report; and

WHEREAS, following the formation of the Assessment District and levy of the assessments, the legally-prescribed steps were taken by the City (a) to provide for the recordation of an Assessment Diagram and a Notice of Assessment in the official records of the Alameda County Recorder, (b) to conduct a cash collection process by which property owners wishing to do so were invited to prepay their respective assessments in cash, without interest, and thereby obtain a discharge of the assessment lien encumbering their respective parcels, and (c) to determine and declare by resolution adopted on June 15, 2009, the principal

amount of assessments remaining unpaid and to request that the Alameda County Auditor provide for the posting of installments on account of unpaid assessments on the secured property tax roll for 2009-2010; and

WHEREAS, as a result of litigation challenging the validity of the assessments, the City was unable to move forward with issuance and sale of limited obligation improvement bonds on account of unpaid assessments, and by resolution adopted on September 8, 2009, this City Council ordered the return of those cash prepayments received and cancelled the request that the County Auditor provide for posting installments on account of unpaid assessments on the secured property tax roll; and

WHEREAS, due to the passage of a significant period of time without any resolution of the litigation, the related and continuing litigation expense and the likelihood that costs for implementing the proposed utility undergrounding project have gone up substantially, this City Council believes that it is not in the public interest to continue efforts to proceed with the Assessment District and to implement the proposed utility undergrounding project; and

WHEREAS, by this resolution this City Council wishes to abandon the proceedings for the Assessment District and to provide for the recordation of a certified copy of this resolution with the Alameda County Recorder in accordance with Section 3117 of the California Streets and Highways Code so as to discharge the lien of the assessments;

NOW, THEREFORE, THE CITY COUNCIL HEREBY FINDS, DETERMINES AND RESOLVES as follows:

1. The foregoing recitals are true and correct, and this City Council hereby expressly so finds and determines.
2. The proceedings for the Assessment District are hereby abandoned.
3. Pursuant to Section 3117 of the California Streets and Highways Code, the City Clerk is hereby authorized and directed to record a certified copy of this resolution with the Alameda County Recorder. As further specified by Section 3117, the following information pertains to the proceedings respecting the Assessment District:
 - (a) The date of adoption of this resolution is May 3, 2010.
 - (b) The date of adoption of the resolution of intention was August 20, 2007.
 - (c) The boundary map for the Assessment District was recorded on February 6, 2009, at Book 17 of Maps of Assessment and Community Facilities Districts, at pages 29-31, official

records of the Alameda County Recorder.

- (d) The Assessment Diagram for the Assessment District was recorded on May 7, 2009, at Book 17 of Maps of Assessment and Community Facilities Districts, at pages 41-43, official records of the Alameda County Recorder.
- (e) The Notice of Assessment for the Assessment District was recorded on May 7, 2009, as Document No. 2009146125 in the official records of the Alameda County Recorder.

By the recordation of this resolution, the lien of the respective assessments is hereby released and discharged and shall be of no further force or effect.

4. This resolution shall take effect immediately upon adoption by this City Council.

Moved by Keating, Seconded by Wieler

Ayes: Barbieri, Keating, Wieler

Noes: None

Recused: Chiang, Fujioka

(1075)

Ordinance

The Recreation Director recommended first reading approval of proposed Ordinance 693 amending Section 3.7 of the City Code to limit portable furniture in Dracena Park as well as make minor language changes to this section of the code. The Council briefly discussed whether Councilmember Keating should recuse himself from discussion and action on this matter since he lives within 300 ft. of Dracena Park. In the end, the Council agreed that since there is no financial issues/interest involved with the proposed ordinance, no recusal is necessary.

Correspondence was received from: John Moss & Lisa Scimens

Public testimony was received from:

Leesy Taggart of the Recreation Commission summarized the Commission's extensive consideration of ways to mitigate the impact the very popular park is having on the surrounding neighborhood. She stated that the proposed revisions to the park's use restrictions were prepared based upon input from the neighborhood, Park Commission, park staff and Acting Police Chief. She also reviewed the Commission's consideration of instituting a park reservation system, stating that such a system was strongly opposed by most neighborhood residents, was deemed unworkable since without picnic tables/benches there would be nothing in the park to "reserve," would require staff time and costs to administer and would create enforcement problems for the police. Commissioner Taggart also felt that the ban on bringing chairs to the park would not impose an undue hardship on visitors because the park has several benches along the perimeter where people can sit and read and/or enjoy the park.

During discussion, the Council inquired why the entire park, as opposed to just the quarry, children's play area and panhandle, was not subject to the proposed use restrictions. Commissioner Taggart agreed that an additional revision to include the entire park under the proposed use restrictions would be acceptable to the Commission. Therefore, the Council requested that the proposed ordinance be amended as follows:

Section 3.7.1 (second sentence) -- "The Recreation Director shall establish such procedures as are necessary to administer and supervise use of Dracena Park *in its entirety, including but not limited to the Quarry, Children's Play Area and "Panhandle" turf area bordered by Artuna and El Cerrito Avenues.*"

The Council supported implementing the proposed new use restrictions on a trial basis, requesting that in late fall the Recreation Commission review the effectiveness/impact of these changes. Councilmember Keating reiterated his preference that a reservation system be implemented to better control the number and frequency of private parties being held in the park and noted that while park neighbors strongly opposed a reservation system implemented in conjunction with the installation of picnic tables at the park, they fully supported a reservation system for parties at the park, as stipulated in the City Code. Councilmember Fujioka voiced concern over a total furniture ban. She acknowledged that while the intent of the furniture ban is to prevent people from bringing tables, chairs and tents that create large private party areas within the park, she voiced her concern that a ban against visitors from bringing even a lawn chair imposes a hardship on parents/grandparents who bring small children to the park to play or the casual visitor who wishes to sit comfortably and read the paper/slip coffee in the park. She was concerned that while such activities would probably not trigger complaints and result in police enforcement of the furniture ban, she objected on philosophical grounds of having restrictions that would not be evenly enforced in all incidents of violation. She felt that the ordinance could be revised to include exceptions for the types of activities she mentioned. In the end, the Council agreed to approve the ordinance as proposed, noting that the restrictions could be revised in the future based upon input provided at Recreation Commission hearings re the impact of the restrictions on park usage and enjoyment.

Resolution 42-10

RESOLVED, that the City Council approves, as amended herein, the first reading of Ordinance 693 amending Section 3.7 of the City Code to limit portable furniture in Dracena Park and make minor language changes to the section.

Moved by Chiang, Seconded by Wieler

Ayes: Barbieri, Chiang, Fujioka, Keating, Wieler

Noes: None

Absent: None

(0705)

**Proposed FY 10-11
City Budget**

As required by the City Charter, the City Administrator presented the City's proposed FY 10-11 operations and capital improvements budget, noting that for the first time in over 20 years, the proposed budget is not balanced. He stated that the \$315,000 deficit is caused by two short-term expenses: a 3-year \$1.2 Million commitment to the Piedmont Unified School District and a \$2.1 Million payment for the Piedmont Hills Utility Underground Project. He briefly highlighted the difficult decisions facing the Council in approving a final budget for FY 10-11. He announced that the Council will consider the proposed budget at a special work session on Saturday, May 22 as well as at two public hearings on June 7 and 21 -- the public is invited to attend these meetings. Copies of the proposed budget are available at City Hall and on the City's website.

ANNOUNCEMENTS

Arbor/Earth Day Celebration -- the Mayor thanked Park Commissioner Sue Herrick and her organizing committee for arranging this year's combined Arbor/Earth Day Celebration held April 29, noting that the event is great fun for participants and attendees alike.

CONNECT -- the Vice Mayor and Councilmember Keating briefly reported on the good turnout at CONNECT's first meeting on April 27. CONNECT is a new community organization intended to explore ways to make Piedmont a more environmentally sustainable community.

Public Safety Committee -- Councilmember Fujioka announced that the next meeting of the Committee will be on May 11.

Election Forum -- Councilmember Fujioka encouraged residents to attend the Piedmont League of Women Voters' *election forum* on May 6 to discuss the propositions and candidates on the June 6 state primary ballot.

Design Awards -- Councilmember Fujioka announced that the Planning Commission will recognize outstanding design projects at a special reception and award presentation on May 10.

Audit Subcommittee -- the Vice Mayor announced that the second meeting of the Council's audit subcommittee will be held May 13.

ADJOURNMENT

There being no further business, Mayor Barbieri adjourned the meeting at 10:00 p.m.

