

PIEDMONT CITY COUNCIL

Regular Meeting Minutes for Monday, October 2, 2017

A Regular Session of the Piedmont City Council was held October 2, 2017, in the City Hall Council Chambers at 120 Vista Avenue. In accordance with Government Code Section 54957(b), the agenda for this meeting was posted for public inspection on September 28, 2017.

CALL TO ORDER

Mayor McBain called the meeting to order at 7:30 p.m. with the Pledge of Allegiance.

Councilmember Cavanaugh requested a moment of silence for the victims of the tragedy in Las Vegas.

ROLL CALL

Present: Mayor Bob McBain, Vice Mayor Teddy Gray King, and Councilmembers Jennifer Cavanaugh and Tim Rood

Staff: City Administrator Paul Benoit, City Attorney Michelle Marchetta Kenyon, Planning Director Kevin Jackson, Senior Planner Pierce Macdonald-Powell, and City Clerk John Tulloch

CONSENT CALENDAR

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

Minutes

Approval of Council Meeting Minutes for 08/21/17, 09/05/17, 09/11/17 and 09/18/17

City of Albany Agreement

Approval of an Agreement with the City of Albany Related to PERS Liabilities for the Former Fire Chief Sharing Arrangement (0045, 0750)

Salary of the Plans Examiner

WHEREAS, the salary set for the Plans Examiner in Resolution 66-17 contained a mathematical error which results in the Plans Examiner receiving a salary lower than was budgeted for the position;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Piedmont does hereby resolve, declare, determine, and order as follows:

1. The monthly salary for the Plans Examiner position is set at \$9,145.
 2. All of the other provisions of Resolution 66-17 related to the Plans Examiner remain in force.
- (0045, 0750)

Funding for 2017 Pavement Project

WHEREAS, Senate Bill 1 (SB 1), the Road Repair and Accountability Act of 2017 (Chapter 5, Statutes of 2017) was passed by the Legislature and Signed into law by the Governor in April 2017 in order to address the significant multi-modal transportation funding shortfalls statewide; and

WHEREAS, SB 1 includes accountability and transparency provisions that will ensure the residents of our City are aware of the projects proposed for funding in our community and which projects have been completed each fiscal year; and

WHEREAS, the City must include a list of all projects proposed to receive funding from the Road Maintenance and Rehabilitation Account (RMRA), created by SB 1, in the City budget, which must include a description and the

location of each proposed project, a proposed schedule for the project's completion, and the estimated useful life of the improvement; and

WHEREAS, the City will receive and estimated \$63,388 in RMRA funding in Fiscal Year 2017-18 from SB 1; and

WHEREAS, the City has undergone a public process in July 2017 to ensure public input into our community's pavement rehabilitation project list; and

WHEREAS, the City used the City's Pavement Management System to develop the SB 1 project list to ensure revenues are being used on the most high-priority and cost-effective projects that also meet the City's priorities for transportation investment; and

WHEREAS, the funding from SB 1 in FY 2017-18 will help the City maintain and rehabilitate 8 streets, add complete streets infrastructure on many of the roads receiving treatment this year and dozens of similar projects into the future; and

WHEREAS, the 2016 California Statewide Local Streets and Roads Needs Assessment found that the City's streets and roads are in a "good to at-risk" condition and this revenue will help us increase the overall quality of our road system and over the next decade will help to bring our streets and roads into a "good" condition; and

WHEREAS, revenue from SB 1 will allow the City to treat more streets with preventative maintenance measures; and

WHEREAS, if the Legislature and Governor failed to act, City streets and county roads would have continued to deteriorate, having many and varied negative impacts on our community; and

WHEREAS, cities and counties own and operate more than 81 percent of streets and roads in California, and from the moment we open our front door to drive to work, bike to school, or walk to the bus station, people are dependent upon a safe, reliable local transportation network; and

WHEREAS, modernizing the local street and road system provides well-paying construction jobs and boosts local economies; and

WHEREAS, the local street and road system is also critical for interconnectivity, multimodal needs, and commerce; and

WHEREAS, police, fire, and emergency medical services all need safe reliable roads to react quickly to emergency calls and a few minutes of delay can be a matter of life and death; and

WHEREAS, maintaining and preserving the local street and road system in good condition will reduce drive times and traffic congestion, improve bicycle safety, and make the pedestrian experience safer and more appealing, which leads to reduce vehicle emissions helping the State achieve its air quality and greenhouse gas emissions reductions goals; and

WHEREAS, restoring roads before they fail also reduces construction time which results in less air pollution from heavy equipment and less water pollution from site run-off; and

WHEREAS, the SB 1 project list and overall investment in our local streets and roads infrastructure with a focus on basic maintenance and safety, investing in complete streets infrastructure, and using new technology, materials and practices, will have significant positive co-benefits statewide.

NOW, THEREFORE IT IS HEREBY RESOLVED, ORDERED AND FOUND by the City Council of the City of Piedmont, State of California, as follows:

1. The foregoing recitals are true and correct.
2. The budget for fiscal year 2017-18 is amended to incorporate the 2017 Pavement Restoration Project planned to be funded with Road Maintenance and Rehabilitation Account revenues:
3. The budget for fiscal year 2017-18 is amended to appropriate the \$63,388 in SB 1 monies received from the State for the 2017 Pavement Restoration Project. (0088, 0165)

**1ST Reading of
Ord. 735 N.S. for
Nuisance Abatement**

Introduction and 1st Reading of Ord. 735 N.S. Revising Nuisance Abatement and Administrative Citation Procedures (0705)

**Underground Bond
Refinancing**

Direction to Staff Regarding the Possible Refinancing of the Bonds of the Dudley, Mountain, and Blair Avenues Underground Assessment District; the Wildwood and Crocker Avenues Underground Assessment District; and the Piedmont Hills Underground Assessment District (1075)

Resolution No. 71-17

RESOLVED, that the City Council approves the Consent Calendar Items 1 through 6.

Moved by Rood, Seconded by Cavanaugh

Ayes: Cavanaugh, King, Rood, McBain

Noes: None

Note: Mayor McBain recused himself from consideration of Item 6.

Councilmember King abstained from the vote approving the September 18, 2017 minutes. Councilmember Rood abstained from the vote approving the August 21, 2017 minutes.

PUBLIC FORUM

Lane Bentley and Julian Turner addressed the Council regarding the need for student parking near Piedmont High School and suggested opening the Community Hall parking lot to students.

REGULAR AGENDA

The Council considered the following items of regular business:

**Wireless
Communication
Facilities Permits**

Planning Director Kevin Jackson provided an overview of the regulatory landscape applying to wireless telecommunication facilities in the public right of way. He presented the history of the applications.

Senior Planner Pierce Macdonald-Powell summarized the required findings and Park Commission and Planning Commission recommendations for denial. She reviewed Group 1 applications, in the residential zone with potential adverse impacts to City trees; Group 2, also in the residential zone but not impacting trees; and staff's recommendation of denial. She discussed Group 3, sites in the

public facilities zone, and staff's recommendation of conditional approval. Ms. Macdonald-Powell presented Group 4 in Piedmont Park and staff's recommendation to direct staff to work with applicant to improve the design and present it to the Park Commission at a public hearing. She stated staff recommended 24 conditions of approval for the Group 3 sites, including a condition to require further testing and evaluation of radio frequency and electromagnetic field exposure related to the antennas to ensure compliance with federal regulations.

City Attorney Michelle Marchetta Kenyon detailed the City's authority to regulate wireless communications sites and the significant limitations placed on that authority by federal and state law. She specifically noted that the City is prohibited from basing its decision on health effects of the proposed sites, so long as the applicant certified that the radio frequency emissions met the FCC guidelines. She indicated that she had received and read the letter from the applicant Crown Castle NG West LLC's attorney and while she concurred with portions of the letter, it left out significant areas in which the City had authority to regulate.

In response to a question from Council, Ms. Macdonald-Powell explained the condition of approval requiring annual testing of the maximum power of the equipment.

Planning Director Jackson stated staff and the City's wireless consultants had reviewed the applicant's evidence showing a need for additional capacity. City Attorney Marchetta Kenyon clarified that, although the coverage maps included proprietary information, staff has not found or been presented with any substantial evidence that would overcome the coverage evidence provided by Crown Castle. Mr. Jackson discussed precedent being set should approval of the proposed designs occur, as well as the potential issue of proliferation and effect on the application of SB649.

Public Testimony was received from:

Sharon James, Michael Shonafelt, and Todd Threw, representing applicant Crown Castle NG West LLC, presented the applications, how they had been modified to respond to the recommendations of the Planning Commission, including grouping the applications, reduction and/or relocation of antennas, as well as relocation and addition of non-slip lids on vaults. In addition, federal regulation of telecommunications was explained along with the need for coverage and increased capacity. They also presented Crown Castle's efforts to work with the community.

Amber Brumfiel, Donald Sande, Stan Silverman, Lionel Chan, Garrett Schwartz, Will Holt, Sherk Chung, Sherry Nunan, Joyce Rickenbacker, Stephen Kozinchik, Lisa Carnazzo, Erin Rickenbacker, Peter Harvey, Sophia Hiestand, Paul McGavin, Matt Neelon, Gao Liu, Lorraine Chan, Kirsten Meyers, Mary Wood, Tom Lee, Jonathan Becker, Ina Kim, Hilary Gitter, Joy Neiman, Jeanne Alvis, Emily Weisner, and Jeff Scofield spoke in opposition to the applications, citing possible impact to property values, aesthetics, and possible health effects. Speakers questioned the appropriateness and safety of the design of the proposed wireless communication facilities and their supporting equipment. The possible damage to the City's urban forest was also cited as a reason to deny the applications. Alternative methods of data communications, such as fiber optic were suggested as better alternatives to provide data service than wireless

technology. Speakers questioned whether the applicant had properly or adequately demonstrated a coverage gap, as required by City Code. A video was shown which speakers indicated conclusively proved adequate Verizon coverage at the site of each of the nine proposed wireless communication facilities. Many speakers cited the health effects of the proposed towers, expressing concern with the electromagnetic radiation which would be given off. Several speakers questioned whether approving these sites would be a violation of the protections afforded by the Americans with Disabilities Act to residents afflicted with Electromagnetic Sensitivity. The neutrality and accuracy of the presentation given at a previous Council meeting by Jonathan Kramer was questioned. Speakers disputed whether the City had properly interpreted state and federal law governing its authority to regulate wireless communication facility applications. Speakers cited concerns with possible traffic congestion when the sites, if approved, would undergo routine maintenance. Speakers questioned the veracity of statements made in the application and by the applicants and expressed hope that the City would independently verify information presented in the applications.

Correspondence was received from: Peter Harvey and Prudence Ashley, Jeanne Alvis, Jessica Liu, Lisa Carnazzo, Rick Schiller, Stephen Kozinchik, Dennis & Kathy Miller, Yushuang Zhou, Gao Liu, Jennifer Marinelly, Anita Stapen, Jeff Scofield, Paul McGavin, Lionel Chan, Wendi Sue, Amber and Chris Brumfiel, Susan Campodonico, Robert Williamson, Jeff Shea, Yu-Te and Judy Lee, Pedro Gonzalez, Erin Schultz, Andrew Schultz, Lynda Kwong, Amy Ajello, John Hiestand, Lindsay Snyder, Lincoln Silver, Shayne Adler, Kathryn Patton, Lee Chin, Noura Fakoury, Bob Meade, Jason Ring, Elisabeth Schleuning, The Schackers, Robert O'Donnell, Phyllis Luckman, Galyn Susman, Rose Marie Sarfaty, Paul Gerken, Helen Gerken, Camilla McCalmont, Stephan Blich, Beth Hurwich, Siobhan A Hughes, Sinead Quinn-Biskup, Jane Klein, Rebekah Owen, Alan Kong, Adam and Janice Thacher, Eunice Ashizawa, Liz and Stan Silverman, Mark Ludwig, Julia Lindsey, Banafsheh, Reid Steiner, Mark Harris, Margaret Bridges, Jeff Shea, Julie Stein, Bruce and Gala Mowat, Wendi Lelke-Wallway, Robert and Susie Woo, Kristin Parkhurst, Patty and Dan White, Jenny Chung, John Hiestand, Mary Purcell, Kristin Kozinchik, Shary Nunan, and Miranda Liu.

The Council thanked the residents who spoke and corresponded for sharing their opinions.

Councilmember Cavanaugh disclosed that, at the League of California Cities (LCC) annual conference, a representative of Crown Castle introduced himself and represented their interest in developing a long-term working relationship with Piedmont. Councilmember King stated she had conversations with the presenters at the LCC.

Mayor McBain requested that the applicant address resident concerns regarding gaps in coverage and capacity. Michael Shonafelt, attorney for applicant Crown Castle NG West LLC discussed the need for wireless antennas. He provided statistics on hard lines and connectivity. He stated significant gap was a legal issue that the 9th Circuit had not clearly defined. He stated property values were a proxy for health objections. He also addressed the video presented by the public speakers indicating adequate coverage.

Morgan Hunt, RF Engineering Manager for Crown Castle, discussed the coverage maps and explained capacity, the Verizon necessity case, and small cells versus macrocells. He explained the difference in coverage provided by macrocells rather than small cell sites.

A Crown Castle representative discussed issues with entitling monopolies and explained the move from towers and monopolies to small cell sites. He discussed the use of co-location and his experience in other jurisdictions.

City Attorney Marchetta Kenyon stated ADA did not specifically address EMF sensitivity and she was not aware of the City's legal ability to regulate the hours of operation of facilities. Ms. Kenyon indicated her understanding that should the City deny the applications and the applicant challenge the denial in court, damages would not be limited to injunctive relief, and that other monetary damages, including attorney's fees could be awarded by a court.

Council asked questions regarding the possibility of requiring the applicant to provide service using other means, such as the installation of a macrocell or providing service via fiber optics to residences. Mr. Jackson and Ms. Kenyon indicated that the Council needed to take action on the applications before it. Further, they stated that there would be legal issues with telling the providers to engage in some other form of data provision. Ms. Kenyon emphasized that unlike other areas in which the City has regulatory authority, federal law has restricted the ability of the City to regulate wireless communications facilities to a fairly narrow scope. She assured the Council that staff has worked diligently to thoroughly review these applications with the City Attorney's office and specialized outside counsel. In response to a question from Council, she also stated that the California Environmental Quality Act exemption for small structures was being properly applied.

Council began discussion of the sites as grouped in the staff report. First, the Group I sites - PHS06 across from 428 El Cerrito Avenue, PHS07 across from 352 Jerome Avenue, and PHS08 at 1159 Winsor Avenue. Staff reviewed the specifics of the applications. Council directed that these applications be continued to the Council's regular meeting of October 16, 2017 and that resolutions of denial for the proposed wireless communication facilities permit applications proposed for sites PHS06, PHS07, and PHS08, be prepared, making specific findings as recommended by staff, including that the plans submitted are inadequate, the proposed sites do not comply with City Code wireless communication facilities standards, nor the Piedmont Design Guidelines, nor the General Plan.

Council discussed application PHS05 at 303 Hillside Avenue. Staff reviewed the specifics of the application. Council directed that this application be continued to the Council's regular meeting of October 16, 2017 and that a resolution of denial for the proposed wireless communication facilities permit application proposed for site PHS05, be prepared, making specific findings as recommended by staff, including that the plans submitted are inadequate, the proposed sites do not comply with City Code wireless communication facilities standards, nor the Piedmont Design Guidelines, nor the General Plan.

Council discussed application PHS02 at 150 Highland Avenue. Staff reviewed the specifics of the application and indicated that it had been recommended for denial. Staff indicated that, if Council wished to do so, the site could be conditionally approved if Council found merit in the pole top design of the antenna and the applicant was willing to change the location of the equipment from a faux mail box to an underground vault.

Council asked the applicant to clarify details regarding the vault which could possibly be installed at site PHS02 to replace the faux mailbox. Sharon James,

representing the applicant, explained the size of and equipment within the proposed vaults and the existence of a noise study confirming compliance with the City of Piedmont's decibel regulations. The Council asked the applicant to provide information on the equipment that would be contained in the vault as well as the the total excavated size of the proposed vault. The applicant referred to the drawings it had submitted with the applications, but was not able to answer the question of the total excavated size of the vault to Council's satisfaction.

After an extensive discussion of whether there was merit in the pole top design, Council directed that this application be continued to the Council's regular meeting of October 16, 2017 and that a resolution of denial for the proposed wireless communication facilities permit applications proposed for site PHS02, be prepared, making specific findings as recommended by staff, including that the plans submitted are inadequate, the proposed sites do not comply with City Code wireless communication facilities standards, nor the Piedmont Design Guidelines, nor the General Plan.

The Council discussed the Group III sites - PHS01 across from 340-370 Highland Avenue, PHS03 at 799 Magnolia Avenue, and PHS04 across from 740 Magnolia Avenue. Staff reviewed the specifics of the applications.

In response to questions from Council regarding the fire danger of the proposed equipment, Mr. Shonafelt stated there had been no fire hazards in any Crown Castle sites nationwide. In response to a Council question regarding whether the equipment for sites in this group could be placed out of the right of way on City property, Ms. James indicated they were amenable to placing equipment on City property if they were afforded the same rights as if the equipment was in the right of way.

Council directed that these applications be continued to the Council's regular meeting of October 16, 2017 and that staff prepare resolutions of conditional approval for the proposed wireless communication facilities permit application proposed for sites PHS01, PHS03, and PHS04, with the conditions of approval recommended in the staff report for each site. In addition, staff was directed to include conditions to require the equipment be placed in the smallest available vault, with the final location and design of the vault subject to staff review and approval based on Council direction, and to provide detailed information on noise impacts.

The Council discussed the application in Group IV at Site PHS09 across from 314 Wildwood Avenue. Staff reviewed the specifics of the application and recommended that the application for this site be continued to a date uncertain and that prior to Council consideration this application be considered by Park Commission for a recommendation to Council. Mr. Jackson indicated that the applicant had agreed to an extension of the shot clock on this site to December 5th in order to allow for Park Commission and Council consideration of the application.

Council agreed with staff's recommendation, directed staff to work with the applicant to bring an appropriate design for this site first to the Park Commission and then to the Council, utilizing an appropriate light fixture.
(1127)

**REPORTS AND
ANNOUNCEMENTS**

Councilmember King announced that progress continues on the aquatics center project development. She encouraged residents to participate in the department's

upcoming Halloween programs as well as to sign up for other upcoming events and holiday camps.

Councilmember Cavanaugh stated she met with the Dee Rosario, who represents Piedmont on the board of the East Bay Regional Park District. She announced the Public Safety Open House on October 14. She stated there was the possibility of a public-private partnership with regard to “Piedmont Stands United Against Hate” signs, similar to those in several neighboring communities.

ADJOURNMENT

There being no further business, Mayor McBain adjourned the meeting at 11:25 p.m.