

## PIEDMONT CITY COUNCIL

### Special and Regular Meeting Minutes for Tuesday, September 18, 2012

A Special and Regular session of the Piedmont City Council was held September 18, 2012, in the EOC at 403 Highland Avenue and in the City Hall Council Chambers at 120 Vista Avenue, respectively. In accordance with Government Code Section 54954.2(a) the agenda for this meeting was posted for public inspection on September 13, 2012.

#### CALL TO ORDER

Mayor Chiang called a joint session of the Planning Commission and City Council to order at 5:05 p.m. with the Pledge of Allegiance.

#### ROLL CALL

*City Council:* Mayor John Chiang, Vice Mayor Margaret Fujioka and Councilmembers Garrett Keating, Robert McBain and Jeff Wieler

*Planning Commission:* Vice Chairman Tom Zhang and Commissioners Michael Henn, Jim Kellogg, Melanie Robertson and Alternate Commissioner Susan Ode

Absent: Chairman Philip Chase

*Staff:* City Administrator Geoff Grote, City Attorney Tom Curry, Public Works Director Chester Nakahara, City Clerk John Tulloch, City Planner Kate Black, Assistant Planner Kevin Jackson, Planning Technicians Sylvia Toruno and Jennifer Feeley and Recording Secretary Chris Harbert

#### PUBLIC FORUM

There were no speakers for the public forum.

#### JOINT SESSION

The Council and Commission discussed the following two topics:

##### **Proposed Expansion of the City's Bicycle Plan**

The City Planner reported that several action items of the City's General Plan call for the implementation of a bicycle plan, a pedestrian plan and a "safe routes to school" plan. In addition, the state is requiring all California cities to prepare a "complete streets" plan. In response, Alameda County is now requiring all cities within its Master Programs Funding Agreement (Piedmont included) to adopt a Complete Streets Policy by January 2013 in order to continue to receive annual allotments of Measure B funding. Staff is proposing that the bicycle, pedestrian and safe routes projects be combined into one comprehensive plan for the following reasons:

- it enables the City to apply for discretionary, competitive federal, state and regional grant funding for projects of this scale. Initial indications are that Piedmont would be favorably considered to receive such funding. Receiving these competitive grants would enable the City to use its annual allocation of Measure B monies to fund the required Complete Streets Plan, future sidewalk and handicap access projects and the construction of infrastructure proposed under the combined Bike and Pedestrian Plan;
- it enables the Pedestrian Plan and Safe Routes to School Plan to be prepared sooner than currently planned -- something Piedmont residents desire;
- it enables the preparation of a more comprehensive Bicycle Plan;
- it provides for the coordination of bicycle and pedestrian goals -- and even infrastructure improvements -- more effectively than if they are prepared independently at different times; and

- it will involve economies of scale that will result in overall lower plan preparation costs than if the plans are prepared separately.

Staff is further recommending that the City's General Plan Housing Element consultant, Barry Miller, in coordination with Niko Letunic of Eisen Letunic, a transportation consultant with special expertise in the preparation of bicycle plans, be retained to develop this combined plan. The estimated cost for this professional consultant service is \$94,360 or \$101,360 if a citizens advisory committee is appointed by the Council. If the Council and Commission support this recommendation, staff will submit for Council approval within the next few months the scope and budget for this expanded project as well as a draft Complete Streets Policy prior to January 31, 2013.

**Correspondence** was received from: Karen Westmont; Eric Downing; Rob Gotto; Peter Sherris; Tom Gandesbery; Rick Schiller; Tom Willging; Neil Chadha; Rachael Murray; Victoria Anderson; Scott Donahue; Dave Campbell; Margaret Ovendon; Duncan Watry

**Public testimony** was received from:

Niko Letunic briefed the Council/Commission on his firm's expertise and experience in developing bicycle plans for numerous Bay Area municipalities and agencies.

Kimberly Moses, Tim Rood, Margaret Ovendon, Hope Salzer, Sinan Sabuncuoglu, Andy Keating and Eric Downing all voiced support for staff's proposal, emphasizing (1) the great need in Piedmont for a comprehensive bike and pedestrian plan; (2) the financial benefits of preparing a grant eligible project; and (3) the tremendous community support from residents, especially parents, for safe pedestrian and bike routes to and from schools and other community venues. In addition, individual speakers requested that any resulting plan include (i) posting signs at Piedmont's Grand and Moraga Avenue entrances advising drivers that Piedmont is a bike and pedestrian friendly community to encourage drivers to be alert and cautious; (ii) clearly identify that Wildwood Avenue is a designated bike route via pavement markings and signage; and (iii) post 15 MPH traffic signs in all school zones.

Karen Westmont referenced her letter in encouraging the Council/Commission to consider carving out sites within large avenues and intersections to facilitate the location of housing units. Thereby narrowing roadway widths which in turn would force drivers to slow down. She requested that the City's bicycle/pedestrian/safe routes plan not preclude this option.

George Childs encouraged that any proposed new plan, re-examine and incorporate the findings and recommendations of past pedestrian safety studies conducted in Piedmont.

The City Council and Planning Commission voiced support for staff's recommendation, requesting that the proposed expanded project:

- closely coordinate with the School District's *safe routes to school* program;
- coordinate with the City of Oakland's bike/pedestrian plan to provide wherever possible seamless integration/continuation of routes;

- include traffic calming measures and sidewalk gap infill as high priority objectives;
- solicit public comment/input regarding plan priorities;
- refine the proposal's scope to provide more specific detail regarding bike and pedestrian concepts;
- consider proposing the appointment of a citizens advisory committee, which could include representatives/experts from the City of Oakland -- such an addition could increase Piedmont's chances of receiving grant funding because of the indication of a countywide outlook; and
- public hearings regarding the plan's preparation and review be conducted by the Planning Commission, with the Commission forwarding its recommendations to the City Council.

**Proposed Changes to the City's Wireless Telecommunication  
Facility Review Procedures**

The City Planner briefly reviewed the City's current wireless telecommunication facility review process, noting the significant changes in technology and the wireless industry since the City's regulations were adopted in 1997 and the challenges Piedmont's predominate residential character, hilly topography and lack of industrial zones/sites pose in finding suitable locations for wireless facilities. She referenced the City Attorney's memo regarding the legal limitations on local regulation of the siting of wireless communication facilities in summarizing the City's options for balancing the increasing demand for new wireless services with protecting Piedmont neighborhoods from unwanted visual intrusions from wireless communication equipment. The options highlighted included (i) developing a wireless facilities master plan; (ii) minor changes to the City's existing code; and (iii) providing citywide free wireless services. The Planner noted staff's belief that the master plan option would be extremely difficult and expensive to pursue for a variety of reasons and even if developed, could quickly become out of date because of the ever-changing advances in the wireless technology industry. Staff also noted that citywide free wireless service would also be problematic because of topography, cost and the fact that Wifi does not provide cellular phone service. Therefore, staff recommends that modifications to the City's code be pursued to:

- expand the definition of services to include new types of services, such as data transmission; and/or
- consider reducing the requirements for equipment replacement; and/or
- require an independent third party review for all new equipment and sites at application submittal

**Correspondence** was received from: Paul Kuroda; Liz Menkes of Center for Municipal Solutions; Stuart Schneck

**Public testimony** was received from:

Paul Kuroda voiced his belief that wireless communication facilities pose a public safety hazard, citing documentation he submitted from the World Health Organization classifying radio frequency electromagnetic fields as possibly carcinogenic to humans. He also stated that the cities of Burbank and Burlingame have successfully prohibited new antenna installations, although he acknowledged that he was unaware of the basis for this denial. Mr. Kuroda encouraged the Council to retain The Center for Municipal Solutions (CMS) to develop and/or revise the City's wireless facilities regulatory ordinances.

The Council and Commission discussed with staff the legal limitations and risks associated with local regulations of telecommunication facilities. During discussion, general consensus was reached regarding support for requiring upfront, third-party review and analysis of wireless communication facility applications, suggesting that this third party be completely independent with no employment history with telecommunication companies. In addition, staff was requested to provide more background information to both the Council and Commission regarding The Center for Municipal Solutions.

**CLOSED SESSION**

At 7:05 p.m. the Council recessed to Closed Session in the City Hall Conference Room to discuss pending litigation in the matter of *Friends of Moraga Canyon v. City of Piedmont* and labor negotiations with the Piedmont Firefighters Association.

**REGULAR SESSION**

Following the 7:05 p.m. Closed Session regarding (i) pending litigation in the matter of *Friends of Moraga Canyon v. City of Piedmont* relating to potential litigation (Blair Park) held pursuant to Government Code Sections 54956.9(b)(1)(B) and 54956.9(b)(1)(E); and (ii) discussions regarding labor negotiations for Fire held pursuant to Government Code Section 54957.6, Mayor Chiang reconvened the Council in the Council Chambers at 7:35 p.m.

**ROLL CALL**

Present: Mayor John Chiang, Vice Mayor Margaret Fujioka and Councilmembers Garrett Keating, Robert McBain and Jeff Wieler

Staff: City Administrator Geoff Grote, City Attorney Tom Curry, Finance Director Mark Bichsel, City Clerk John Tulloch, City Planner Kate Black, Planning Technician Jennifer Feeley and Recording Secretary Chris Harbert

**PUBLIC FORUM**

There were no speakers for the public forum.

**APPROVAL OF MINUTES**

The Council considered proposed amendments to the *Public Forum* portion of the Council's September 4, 2012, meeting minutes submitted by the City Administrator and Councilmember Keating, with additional amendments from Mayor Chiang and Councilmember Fujioka.

**Correspondence** was received from: Rick Schiller; Aaron Salloway; Ryan Gilbert/Rick Schiller

**Public testimony** was received from:

Rick Schiller referenced the City Administrator's proposed revision to the September 4th Council meeting minutes, stressing his belief that the revision is editorializing in nature and fails to acknowledge that the argument in favor of Measure Y on the November 6th ballot (renewal of the City's parcel tax) contains a misstatement of fact nor does it explain how the City intends to rectify this error. He cited misstatements of facts in the ballot argument in favor of Measure A (Sewer Surtax) on the February 7, 2012, Municipal Election Ballot. He urged that the Council correct the Measure Y Ballot Argument either through filing a writ with the court, circulating a Citywide mailer, posting a correction with local media outlets or place corrected information on the City website's *ballot information* page.

**Resolution 90-12**

RESOLVED, that the City Council approves as amended its meeting minutes of September 4, 2012.

Moved by Fujioka, Seconded by Wieler

Ayes: Chiang, Fujioka, Keating, McBain, Wieler

Noes: None

Absent: None

**Conditional Use Permit  
1331 Grand Avenue**

Planning Technician Feeley stated that Leslie Oldershaw, Licensed Acupuncturist, Inc. is requesting renewal of her conditional use permit to continue offering alternative healthcare services, including acupuncture, nutrition and herbal medicine, at 1331 Grand Avenue. A CUP for this business was granted on December 18, 2000, for a 5-year term. The application proposes the following:

*Days & Hours of Operation:* Monday-Friday, 9 a.m. to 9 p.m.; Saturday, 9 a.m. to 6 p.m.

*On-Site Parking:* 2 on-site parking spaces for staff, one shared handicap spot and 2 patient parking spaces after 5 p.m.;

*Types of Personnel:* 1 physician, 1 full-time staff

On July 9, 2012, the Planning Commission unanimously recommended Council approval of the renewal application for a permit term of 10 years. The City Planner stated that while the original permit expired in 2005, this expiration was not discovered until recently when the City's new computer tracking software was installed. She added that there are several CUPs in Piedmont that are currently expired and the City is pursuing renewal applications with these businesses.

**Public testimony** was received from:

Leslie Oldershaw stated that she was unaware that her original use permit had expired, believing that her permit required a one-time only approval process. She noted that there is no proposed changes to her current business, adding that she has paid her Piedmont business license tax annually since 2000.

Tom Zhang, Planning Commission Vice Chair, briefly reviewed the Commission's deliberations of Ms. Oldershaw's application, noting that a 10-year renewal term was recommended because of the business' good track record in Piedmont.

**Resolution 91-12**

WHEREAS, Leslie Oldershaw, Licensed Acupuncturist, Inc., is requesting a Conditional Use Permit to operate alternative healthcare services at 1331 Grand Avenue, Piedmont, California, and;

WHEREAS, the Piedmont City Council has reviewed the application, staff and Planning Commission reports, and any and all other documentation and testimony submitted in connection with the application and has visited the subject property;

The Piedmont City Council makes the following findings:

1. The use is of benefit to Piedmont residents because it provides accessible healthcare services.
2. The use will be properly related to other land uses and transportation and service facilities in the vicinity. It is in a commercial zone where other medical, dental and professional services are located.
3. Under all the circumstances and conditions of the particular case, the use will not have a material adverse effect on the health or safety of persons residing or working in the vicinity. It is a well-established business and no polluted materials are generated.
4. The use will not be contrary to the standards established for the zone in which it is to be located. It is located in a commercial zone.
5. The use will not contribute to a substantial increase in the amount of noise or traffic in the surrounding area. There is no change in this pre-existing use.
6. The use is compatible with the General Plan and will not adversely affect the character of the surrounding neighborhoods or tend to adversely affect the property values of homes in the surrounding neighborhoods. This is a pre-existing use, permitted by the General Plan.
7. Adequate provision for driveways to and from the property has been made; facilities for ingress and egress from secondary streets instead of arterials, where possible, have been made; provision for parking in compliance with this Chapter 17 has been made, together with sufficient agreements to enforce the carrying out of such plans as may be required by the Council. There are no proposed changes to the existing commercial building where the use is located.
8. The plans conform to all other laws and regulations of the City, provided, however, that the Council shall have the right to require front, rear and side yard setbacks greater than those otherwise provided in the laws and regulations of the City if the Council finds that such larger front, rear and side yard areas are necessary to provide for the health, safety and general welfare of the residents of Piedmont in accordance with its zoning laws.
9. The project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e).

RESOLVED, that in consideration of the findings and facts set forth above, the Piedmont City Council approves the application for a conditional use permit by Ms. Oldershaw for property located at 1331 Grand Avenue, Piedmont, subject to the following conditions:

1. The term of the approval shall be 10 years from the date of permit approval;
2. Days & Hours of Operation: Monday-Friday, 9 a.m. to 9 p.m.; Saturday, 9 a.m. to 6 p.m.  
On-Site Parking: 2 on-site parking spaces for staff, one shared handicap spot and 2 patient parking spaces after 5 p.m.;  
Types of Personnel: 1 physician, 1 full-time staff

3. If there is a third party administrative, legal or equitable action challenging the project approvals, including CEQA issues, the Property Owner shall defend and indemnify the City against any liability, fees and costs arising out of the defense, including the costs of City's own counsel. If such an action is filed, the Property Owner and City shall then enter into an agreement regarding selection of counsel and other provisions related to the defense. For this purpose, "City" includes the City and its elected and appointed officials, agents, officers and employees.

Moved by Wieler, Seconded by McBain

Ayes: Chiang, Fujioka, Keating, McBain, Wieler

Noes: None

Absent: None

(0340)

**Pension Reform  
Legislation Update**

As an informational item, the City Administrator reported that the City has reached a labor contract agreement with the Piedmont Firefighters Association. This agreement will be submitted for Council review and approval on October 1, 2012. The Administrator and Finance Director also reported on the major provisions of the *California Public Employees' Pension Reform Act of 2013* signed by Governor Brown and how this legislation will affect the City's labor negotiations and contracts going forward. In summarizing the impacts on this new legislation, the Administrator and Director referenced a legal opinion from the City Attorney's Office subtitled "Major Impacts on City of Piedmont Under PERL." The Council and staff noted that the major concepts of the new Pension Reform legislation mirror in many substantial ways the provisions of the City's most recent labor agreements with City employees.

**ANNOUNCEMENTS**

Harvest Festival Weekend -- the Council encouraged residents to participate and/or attend the *Fallfest 5K* footrace benefitting the Piedmont School District's Wellness Center on September 29th and the *Harvest Festival*, with its many related activities, including a *Public Safety Fair*, on September 30th.

Recreation Commission Meeting -- Councilmember Keating announced that tomorrow night the Recreation Commission will be conducting public hearings on proposed changes to the Beach Playfield Use Restrictions and sports club contributions to the City/School Athletic Facilities Preservation Fund. He encouraged interested residents to attend.

Piedmont League of Women Voters -- will host a forum on September 19th in the Ellen Driscoll Playhouse to discuss California's crisis in public school funding and Proposition 30 on the November 6th General Election Ballot.

**ADJOURNMENT**

There being no further business, Mayor Chiang adjourned the meeting at 8:30 p.m. in memory of 1978 Piedmont High School graduate and U.S. Ambassador to Libya Christopher Stevens who was killed following an attack on the American Consulate in Benghazi on September 11, 2012.

