

## PIEDMONT CITY COUNCIL

Special and Regular Meeting Minutes for Monday, November 16, 2020

Special and Regular Sessions of the Piedmont City Council were held November 16, 2020, via teleconference, consistent with Executive Orders N-25-20 and N-29-20 and the Alameda County Health Official's Shelter in Place Order. In accordance with Government Code Section 54957(b), the agenda for this meeting was posted for public inspection on November 12, 2020.

### CALL TO ORDER

The Council met in Closed Session for Conference with Real Property Negotiators (Govt. Code §54956.8), Negotiating Parties: City and Gulf South Towers, Negotiators: City Admin. & Atty; Under Negotiation: Price & Terms of Payment. Following the 6:00 p.m. Closed Session, Mayor Bob McBain called the meeting to order at 6:47 p.m., announced no reportable action was taken in the Closed Session, and said the Pledge of Allegiance.

### ROLL CALL

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

Staff: City Administrator Sara Lillevand, City Attorney Michelle Marchetta Kenyon, Fire Chief Bret Black, Human Resources Manager Stacy Jennings, Planning & Building Director Kevin Jackson, Public Works Director Chester Nakahara, City Engineer John Wanger, Recreation Director Chelle Putzer, Finance Director Michael Szczech, Assistant Planner Gopika Nair, Planning Technician Ignacio Franco, and Assistant City Administrator / City Clerk John Tulloch

### CONSENT CALENDAR

The Consent Calendar consisted of the following items:

#### **Council Meeting Minutes**

Approval of Meeting Minutes for 11/02/2020

#### **Approval of Conditional Use Permit, 29 Wildwood**

Approval of a Modification of a Conditional Use Permit for Piedmont Shell Service at 29 Wildwood Avenue (0340)

#### **Approval of Conditional Use Permit, 1345 Grand Avenue, Suite 103**

Approval of a Conditional Use Permit for Dr. Christopher Guerisoli, DDS, to Operate Piedmont Oaks Dental at 1345 Grand Avenue, Suite 103 (0340)

#### **Resolution No. 85-2020**

RESOLVED, that the City Council approves the consent calendar.

Moved by King, Seconded by Cavanaugh

Ayes: Andersen, Cavanaugh, Rood, King, McBain

Noes: None

Absent: None

### PUBLIC FORUM

Rick Schiller appreciated the donation to Piedmont Unified School District to repave the Piedmont Middle School courts, where pickleball is played almost daily.

### REGULAR AGENDA

The Council considered the following items of regular business:

**Appointment of  
Micheal Despain as  
Interim Fire Chief**

City Administrator Sara Lillevand reported Fire Chief Black's final day of employment with the City is November 30, 2020. She summarized Micheal Despain's experience as a Fire Chief and interim appointments as a retired annuitant. Ms. Lillevand advised that Human Resources Administrator Stacy Jennings and the City Attorney's Office have ensured the employment agreement complies with CalPERS' rules and regulations for retired annuitants.

City Attorney Michelle Marchetta Kenyon indicated Mr. Despain's proposed employment would begin December 1, 2020, at an hourly rate of pay of \$98.53 but with no fringe benefits or other compensation.

Micheal Despain thanked the Council for the opportunity to work with the City of Piedmont.

There was no **Public Testimony** on the matter.

**Resolution No. 86-2020**

WHEREAS, Government (Gov.) Code Section 21221(h) of the Public Employees' Retirement Law permits the governing body to appoint a CalPERS retiree to a vacant position requiring specialized skills during recruitment for a permanent appointment, and provides that such appointment will not subject the retired person to reinstatement from retirement or loss of benefits so long as it is a single appointment that does not exceed 960 hours in a fiscal year; and

WHEREAS, the City Council of the City of Piedmont desires to appoint Micheal Despain as an interim appointment retired annuitant to the vacant position of Interim Fire Chief for the City of Piedmont under Gov. Code Section 21221(h), effective December 1, 2020; and

WHEREAS, the City Council of the City of Piedmont, the City of Piedmont and Micheal Despain certify that Micheal Despain has not and will not receive a Golden Handshake or any other retirement-related incentive; and

WHEREAS, the City Council hereby appoints Micheal Despain as an interim appointment retired annuitant to the vacant position of Interim Fire Chief for the City of Piedmont under Government Code Section 21221(h), effective December 1, 2020 pursuant to execution of the contract by the City Administrator and Micheal Despain; and

WHEREAS, an appointment under Gov. Code Section 21221(h) requires the retiree is appointed into the interim appointment during an active recruitment for a permanent appointment; and

WHEREAS, the current status of this recruitment is the recruitment was publicly posted on November 13, 2020; and

WHEREAS, this Gov. Code Section 21221(h) appointment shall only be made once and therefore will end on April 18, 2021; and

WHEREAS, the entire employment agreement, contract or appointment document between Micheal Despain and the City of Piedmont has been reviewed by this body and is attached herein; and

WHEREAS, the compensation paid to retirees cannot be less than the minimum nor exceed the maximum monthly base salary paid to other employees

performing comparable duties, divided by 173.333 to equal the hourly rate; and

WHEREAS, the maximum base salary for this position is \$17,078 and the hourly equivalent is \$98.53; the minimum base salary for this position is \$17,078 and the hourly equivalent is \$98.53; and

WHEREAS, the hourly rate paid to Micheal Despain will be \$98.53; and

WHEREAS, Micheal Despain has not and will not receive any other benefit, incentive, compensation in lieu of benefit or other form of compensation in addition to this hourly pay rate; and

THEREFORE, BE IT RESOLVED THAT the City Council of the City of Piedmont hereby certifies the nature of the employment of Micheal Despain as described herein and detailed in the attached employment agreement / contract / appointment document and that this appointment is necessary to fill the critically needed position of Interim Fire Chief for the City of Piedmont by December 1, 2020, in order to provide continuity of leadership in the Fire Department while the City recruits for a permanent replacement.

BE IT FURTHER RESOLVED THAT the City Council approves the employment agreement with Micheal Despain.

Moved by Cavanaugh, Seconded by King

Ayes: Andersen, Cavanaugh, Rood, King, McBain

Noes: None

Absent: None

(0045, 0085)

**Design & Cost  
Options for Retaining  
Walls on Oakland and  
San Carlos Avenues**

Public Works Director Chester Nakahara noted the replacement project has been delayed due to COVID-19 and described the locations and problems with the walls.

City Engineer John Wanger presented several options for the replacement of these replacement walls along with staff's recommendation on the method to use. He detailed the locations of the walls, structural problems, potential impacts of the walls' failures, geotechnical investigation of both sites, as well as a possible timeline and budget for the replacements. He detailed the three methods for possible replacement, which are pour-in-place, big block, shotcrete, and concrete masonry unit (CMU) as well as the advantages and disadvantages and cost estimates of each option, and staff's recommendations to use the cast in place method.

There was no **Public Testimony** on the matter.

The Council considered the options and directed staff to proceed with its recommendation for the replacement of retaining walls on Oakland Avenue and San Carlos Avenue and strongly preferred inclusion of a bioswale on Oakland Avenue.

(1000, 0825)

**1<sup>st</sup> Reading of Ord.  
758 N.S., Lease of 801  
Magnolia Avenue to**

City Administrator Lillevand reported the Piedmont Center for the Arts (PCA) desires to continue its operations from 801 Magnolia Avenue beyond the end of the existing lease agreement on June 30, 2021. She advised that, under the 2011 lease, PCA renovated the building in exchange for use of the space to

**Piedmont Center for  
the Arts**

provide art programming for the community. She related that PCA is a tax-exempt charitable organization that complies with requirements for tax-exempt status and that PCA's purpose is to provide an affordable rental venue for artists to showcase their talent. Ms. Lillevand indicated PCA has provided valuable arts programming not otherwise offered by the City, especially programming for adults.

Ms. Lillevand noted concerns about the highest and best use of the facility have been raised. She reported City facilities should not remain vacant but should serve multiple uses. She indicated the Council may direct staff to explore, analyze, and present other potential uses of the space; however, given PCA's investment in the City building and the City's commitment to develop a viable gathering space and expand benefits to the community, staff believes it is appropriate for the Council to consider PCA's request to continue to operate an arts venue in the City facility.

Ms. Lillevand believed the terms of the proposed lease will ensure the space is rarely idle and is available for non-arts uses. She indicated the proposed lease gives the Recreation Department the ability to schedule programs in the main hall in advance of publishing seasonal schedules and registration materials, which has not been possible in the past. Ms. Lillevand added that the City will handle non-arts-related rentals of the facility. She noted the early termination clause ensures the City can fully utilize the space if the City undertakes significant renovation or replacement of the Fire Department, Police Department, or Recreation Department buildings in the future.

Ms. Lillevand related that program diversification and transparency are not terms of the proposed lease, but PCA has committed to both and to seek input from community groups including the Piedmont Anti-Racism and Diversity Committee, the Piedmont Racial Equity Campaign, and the Piedmont Asian-American Club. She noted PCA will extend invitations to a Recreation Department staff member and the Mayor or designee to participate as liaisons to PCA's Board of Directors.

Ms. Lillevand reported the City pays for maintenance of the exterior of the building, landscaping, and charges for water and refuse collection, but otherwise the City will not incur any direct expense relative to the proposed agreement. She added that in exchange for use of a portion of the building, PCA will continue to maintain and improve the aging facility while providing valuable, low-cost arts programming to the community.

Ms. Lillevand shared staff's belief that describing the transaction as a subsidy is not accurate because the City's intent is to enhance the community's access to arts-related events and activities and because no General Fund monies will be expended aside from water and refuse collection fees. She noted Finance Director Szczech has determined that the office space could be rented at an estimated market rate of \$50 per square foot while the Piedmont Education Foundation rents City office space of nearly identical size in the Veterans Memorial Building at a rate of approximately \$36 per square foot. She indicated without major renovation, the main hall would be best suited for recreation programming, community group meetings, and small events, which could generate some net positive income.

Ms. Lillevand reported staff believes the proposed agreement appropriately allows for City programs and private events such that the space will be utilized

more fully than in the past, will result in some rental income for the City, and allows PCA to continue to grow and expand its benefit to the community.

The Council recessed from 8:18 p.m. to 8:24 p.m.

**Public Testimony** was received from:

Tom Reicher, Poppea Dorsam, Debbie Dare, Andreas Neyer, and Joseph Gold supported approving the proposed lease with PCA.

Steve Schiller, Rachel Long, Rick Schiller, Rebecca Posamentier, Rick Raushenbush, Garrett Keating, and Nancy Lehrkind suggested the Council obtain public input and consider alternative lease terms and uses of the facility before approving a lease agreement.

Gautam Wadhvani questioned PCA's status as a nonprofit and ability to pay rent.

Charles Lee believed California Environmental Quality Act (CEQA) review is required for consideration of the lease.

Sue Malick, PCA Board President, provided information regarding PCA's nonprofit status and finances.

The Council discussed at length the need for additional information; community engagement; City oversight; non-arts-related programming; terms of the lease; incompatibility of potential uses; and PCA's diversity, rehabilitation of the building service to the community, and cooperation with the City.

**Resolution No. 87-2020**

RESOLVED, that the City Council defers consideration of Ordinance 758 N.S. to allow time to receive public input and allow questions raised by Councilmembers to be answered.

Moved by Cavanaugh, Seconded by Rood

Ayes: Cavanaugh, Rood

Noes: Andersen, King, McBain

Absent: None

**MOTION FAILED**

**Resolution No. 88-2020**

RESOLVED, that the City Council approves the 1<sup>st</sup> reading of Ordinance 758 N.S., Amended and Restated Lease of Portions of City Property at 801 Magnolia Avenue to the Piedmont Center for the Arts, with the term amended to seven years.

Moved by McBain, Seconded by King

Ayes: Andersen, King, McBain

Noes: Cavanaugh, Rood

Absent: None

(0705)

Mayor McBain noted additional review and consideration of the lease agreement can occur prior to a second reading of the ordinance.

**REPORTS AND  
ANNOUNCEMENTS**

Mayor McBain announced a virtual Tree Lighting Ceremony is scheduled for December 2<sup>nd</sup>. In addition, he appreciated Councilmembers', particularly

Councilmember Andersen's, work on Measure UU and expressed confidence in the Council's and staff's ability to build a great pool facility.

Vice Mayor King announced park ambassadors will return to parks to distribute face coverings in response to Alameda County returning to the purple tier of public health restrictions. She also announced the Board of Supervisors has implemented a \$5 million grant program to support small businesses.

Councilmember Andersen announced registration for Recreation Department programs will open on November 18<sup>th</sup> for residents and November 23<sup>rd</sup> for nonresidents, the Fire Department will offer free flu shots on December 2<sup>nd</sup>, 1-4 p.m., at Community Hall, the Public Safety Committee will meet at 5:30 p.m. on December 3<sup>rd</sup>, and the League of Women Voters will present California's New Normal: Drought or Deluge on December 6<sup>th</sup>.

Councilmember Cavanaugh announced the Piedmont Climate Challenge is underway, the deadline to apply for an Alameda County Arts Relief Grant is November 20<sup>th</sup>, and a virtual scavenger hunt will replace the 2020 Turkey Trot Challenge.

The Council acknowledged Fire Chief Bret Black's knowledge, professionalism, and service to the City and wished him good luck in his future endeavors.

**ADJOURNMENT**

There being no further business, Mayor McBain adjourned the meeting at 10:28 p.m.