

DRAFT

CITY COUNCIL AUDIT SUBCOMMITTEE

Regular Meeting Minutes for Wednesday, May 13, 2010

A Regular Session of the City Council Audit Subcommittee was held May 13, 2010, in the City Hall Council Chambers at 120 Vista Avenue. In accordance with Government Code Section 549542(a) the agenda for this meeting was posted for public inspection on May 10, 2010.

CALL TO ORDER

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

ROLL CALL

Present: Mayor Dean Barbieri, Vice Mayor John Chiang and Judge Ken Kawaichi (ret.)

Staff: City Administrator Geoff Grote, Public Works Director Larry Rosenberg, City Clerk Ann Swift and Recording Secretary Chris Harbert

PUBLIC FORUM

There were no speakers for the public forum.

SCOPE OF WORK REPORT

Per Subcommittee agreement at the last meeting (March 31, 2010), Committee members reported on their review of background documentation related to the following scope of work assignments:

1. Review of existing City Council policy for underground utility assessment districts (20B projects)
 - a. Steering Committee functions & obligations (Kawaichi)
 - b. Role of Piedmont staff (Barbieri)
 - c. Engineer of Work - Development of plans, bid specifications and cost estimates (Kawaichi)
 - (1) Rock clause and standard provisions
 - (2) Validation or verification of engineer's work
 - d. Legal obligations of the city and financial exposure under current law (Kawaichi)

During discussion of its review activities, the Subcommittee acknowledged receipt of background documentation Exhibits 1-A through 12-A in addition to a partial list of California statutory provisions that relate to utility undergrounding districts as well as a flow chart indicating the general steps followed with regard to the utility undergrounding process in Piedmont. Said Exhibits 1 through 12 are copies of staff reports, Council policies and City Council minutes related to utility undergrounding covering the period 2003 through 2007 as well as documentation related to the formation of the Piedmont Hills Utility Undergrounding District. Mayor Barbieri reiterated that because of Brown Act provisions, each Subcommittee member independently pursues his own fact-finding assignments.

Judge Kawaichi reported on his research of the multitude of statutory provisions related to utility undergrounding districts, the fact that the City's own utility undergrounding policies and procedures have changed over the years (2003 to the present), his discussions with Piedmont Hills Steering Committee Member Carl Anderson regarding issues related to the district and stated that because of legal reasons, he was prevented from discussing the Hills District project with the City's former engineer Harris & Associates (pending litigation) or the City Attorney (attorney/client privilege). Based upon his review of the hodge-podge of legal statutes related to utility undergrounding, he recommended that a by-product of the Subcommittee's work include developing a workable list of legal statutes, with case law, upon which to base the City's new utility undergrounding policy. Judge Kawaichi also summarized his review of the work documentation completed by Harris & Associates.

Mayor Barbieri stated that his investigation of the role of City staff is on-going and not yet complete. He stated that the outside legal consultant retained by the City Council to investigate staff's actions with regard to the Hills District has submitted her preliminary report to the Council. Her final report and findings will be presented to the City Council in Closed Session on June 7. The Mayor also stated that the Council anticipates that a settlement mediation meeting with Harris & Associates will take place before July.

Vice Mayor Chiang referenced his on-going examination of financial issues related to the Hills District.

Public testimony was received from:

George Childs referenced the utility undergrounding flow chart in emphasizing that it is not the only way to proceed with undergrounding projects. The Subcommittee agreed, stressing that the flow chart is merely a general description of steps which have occurred with previous undergrounding districts in Piedmont and in no way reflects what the Subcommittee believes should be the process in the future.

Rick Schiller requested that the Subcommittee examine the actions and fiduciary obligations of the City's attorneys and engineers who reviewed and approved the Hills District's bid specifications and contracts, investigate staff's role with regard to "assumed credits" and the apparent discrepancy between contractor documents and the credit reports provided to the City Council by the City Clerk, ascertain whether Carl Anderson or other Steering Committee members were aware of correspondence from residents within the district who encountered very shallow bedrock during routine home improvement/landscaping projects and investigate how low bids are determined, noting in particular that Valley Utility's low bid for the Hills District had higher unit costs for hard rock than other submitted bids.

Aaron Salloway urged the Subcommittee to also investigate the role of the City Council and City Attorney in the Hills District Project.

During discussion, the Subcommittee received a briefing from the City Administrator and City Clerk regarding the history of utility undergrounding projects in Piedmont, beginning with the Dudley/Blair Project. During this review, the following issues were discussed: the impacts the failure of the Central Piedmont District had on the City's utility undergrounding policies and procedures and the long-standing debate within the community as to whether the Council's policy requiring a 70% threshold support level for petition submittal also applied to the level of ballot support necessary to approve district formations. The Subcommittee engaged in a lengthy question and answer session with staff concerning specific information contained in the various Exhibit documentation.

STAFF REQUESTS

In preparation for the next meeting, the Subcommittee requested staff to:

- indicate in table form the specific changes in the City's undergrounding policy which occurred between 2003 and 2007 and at what point were these policy changes in effect during specific undergrounding projects/districts;
- ascertain from the City Attorney why the Preliminary Expense Agreement for the Hills District did not reflect the position reflected in the City's FAQ regarding reimbursement agreements (Exhibit 1-B(1), page 7) that . . ."The reimbursement may be reduced if the actual costs for construction exceed the budget . . ."
- provide information as to how the City determines the "low bidder" in a unit price contract;
- provide copies of the actual bonds and bond contract associated with the Hills District;
- provide the financial records for Piedmont's other undergrounding districts;
- organize the undergrounding documentation on the City's website in logical order, with a table of contents;

NEXT MEETING

June 22 at 7:30 p.m. in the Council Chambers. Meeting Agenda to cover the remaining items of Task 1:

Review of existing City Council policy for underground utility assessment districts (20B projects)

- e. Construction -- coordination, inspection and change orders and the role of the City Engineer (Chiang)
- f. Payments and commitments upon issuance of bonds (Chiang)
- g. Past experience with undergrounding projects (Barbieri)

Judge Kawaichi encouraged the Hills District Steering Committee to submit to the Subcommittee any documentation it may have related to its District.

ADJOURNMENT

There being no further business, Mayor Barbieri adjourned the meeting at 9:30 p.m.