

## CITY COUNCIL AUDIT SUBCOMMITTEE

Regular Meeting Minutes for Tuesday, August 23, 2011

A Regular Session of the City Council Audit Subcommittee was held August 23, 2011, 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 August 19, 2011.

### 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, Interim City Clerk John Tulloch and Recording Secretary Chris Harbert

Others Present: Former Public Works Director Larry Rosenberg (ret.) and Former City Clerk Ann Swift (ret.)

### PUBLIC FORUM

There were no speakers for the public forum.

### APPROVAL OF MINUTES

**Resolved**, that the City Council Audit Subcommittee approves as submitted its meeting minutes of March 15, 2011.

Moved by Kawaichi, Seconded by Chiang

Ayes: Barbieri, Chiang, Kawaichi

Noes: None

Absent: None

### REVIEW OF DRAFT PRELIMINARY FINAL REPORT

The City Administrator stated that per subcommittee direction, the three independently prepared draft final reports presented at the March 15th meeting were combined into a single document by the Interim City Clerk. Thereafter, this combined report was revised by Vice Mayor Chiang to incorporate edits submitted by himself and Judge Kawaichi (dated July 27, 2011). This revised draft has been re-titled *Preliminary Report of the Audit Subcommittee on the Piedmont Hills Underground Assessment District Project* as is now the subject of tonight's review and discussion.

**Correspondence** was received from: Neil Teixeira; Joe Hurwich; Sanford Margolin; Rick Schiller; Larry Rosenberg; George Childs; Thomas Clark; Carl Anderson; Geoff Grote

**Public testimony** was received from:

Rob Hendrickson requested that the subcommittee's final report address the City's \$296,000 expenditure to repair Crest Road. He felt that the Crest Road failure was not the City's fault and therefore the City should not have expended City taxpayer funds on this repair, stressing that no adequate explanation was

ever given to residents by City staff or the City Council justifying such expenditure, the expenditure represents an inappropriate "gift of public funds" to the Piedmont Hills Utility Undergrounding Assessment District and the use of City Sewer Fund monies to pay for Crest Road storm drain improvements was illegal under current statutes. He noted the suspicious coincidence that at the exact time that project cost overruns were being discussed with the project contractor, the City agreed to pay \$296,000 to this contractor and he voiced concern over whether this was a quid pro quo arrangement. Citing these concerns, he emphasized the need for a completely independent investigation of the Piedmont Hills Utility Undergrounding Project. The City Administrator disagreed with Mr. Hendrickson's contention that the issue of Crest Road damage/repairs and whether the expenditure of City Sewer Funds to correct the problems quickly would constitute a "gift of public funds" were not publicly discussed, urging Mr. Hendrickson to review the video and staff report from the Council's November 16, 2009, meeting, wherein these issues were discussed in detail. He added that while there was no explicit discussion regarding the appropriateness of using Sewer Fund monies to pay for the storm sewer improvements to Crest Road, historically Sewer Fund monies have been determined to apply to both storm and sanitary sewer systems per the legal definition of "sewer."

George Childs agreed with Mr. Hendrickson's comments, believing that the Crest Road payment was an inappropriate bail-out of the project contractor. He also referenced his correspondence in urging the subcommittee to consider his suggestions regarding available funding mechanisms for utility undergrounding projects that would lessen the City's role and financial exposure. He urged that the City undertake a comprehensive examination of the utility tariff practices applied by other municipalities, volunteering to assist the City in such a review.

Neil Teixeira voiced his belief that the subcommittee's draft report fails to acknowledge the critical fact that much of the blame for the problems encountered with the Piedmont Hills project was the City Administrator's failure to recognize the irregular numbers in the project contractor's bid, his blind reliance on the work product and recommendations of Harris & Associates and his failure to exercise good judgment in overruling Harris and recommending to the Council that Valley Utility bid's be rejected. He felt that the City Administrator should be held accountable for this huge mistake and fired.

Rick Schiller also cited the subcommittee's failure to address the Crest Road expenditure in its final report, agreeing with Mr. Hendrickson and noting that for 87 years, prior to the undergrounding project, Crest Road never needed a storm drain system. He also felt that the opinion of the former City Attorney (George Peyton) that the expenditure of City funds to repair Crest Road did not represent a "gift of public funds" was wrong. He criticized the subcommittee's report for failing to adequately examine staff's responsibility in terms of its action/inaction and mistakes/failures to recognize the project's serious problems in a timely manner. He also requested that the subcommittee include in its final report

responses to the questions raised in previous correspondence to and appearances before the subcommittee.

Aaron Salloway voiced his frustration that the subcommittee has been investigating the Piedmont Hills Project for one and half years. He reiterated his strong belief that a subcommittee consisting of City Council members and assisted by City staff who were involved in the Hills Project cannot be expected to investigate themselves. He inquired why the Council does not retain an outside auditor to investigate the Piedmont Hills fiasco.

Kathleen Quenneville also remarked on the subcommittee's lengthy process and voiced concern that the subcommittee is using attorney/client privilege and Brown Act arguments to stall the process and avoid confronting the real, underlying issues. She was critical of the draft for several reasons, citing in particular its: (1) failure to include communication timelines; (2) implication that the project's failings are the former city clerk's fault; (3) deletion of earlier references to "management by committee" and its failure to state who was responsible for this project management approach; and (4) its inaccurate characterizations of the League of Women Voters' recommendations resulting from its examination of the issue. She urged that the subcommittee adopt a sense of urgency in finalizing its investigation and report and endorse the League of Women Voters' recommendation that the lessons learned from the Piedmont Hills Project be applied to all major City projects, not just those dealing with utility undergrounding.

Dawn Margolin read the letter submitted by her husband Sanford in inquiring why the subcommittee's report fails to answer the following primary concerns of residents: whether the City Council ever inquired before approving the project what would happen if there were project cost overruns and who would be responsible for paying such overruns; how can City project management procedures be improved to avoid future debacles such as the Piedmont Hills Project and why are there no consequences for mistakes made or answers given to citizen questions.

The subcommittee discussed the revised draft, agreeing that it would proceed with finalizing this preliminary report and forwarding the document to the City Council containing policy and procedure recommendations as to how the City should manage and control major projects in the future so that the mistakes which occurred with the Piedmont Hills Project will not be repeated. It was further agreed that a final report would be prepared and issued once current and pending litigation regarding the Piedmont Hills project is resolved and all pertinent information can be publicly disclosed.

The subcommittee reviewed Judge Kawaichi's August 19 "specific topic" recommendations as well as additional revision suggestions raised during tonight's discussion and in correspondence from the public and staff. In the end, Vice Mayor Chiang volunteered to revise the preliminary report to include the following:

- technical background information to be obtained from George Childs;
- clarify and differentiate the two types of steering committees referenced in the report: citizens steering committee and staff committee;
- include under *City Policies* recommendations that:
  - (a) Sewer Fund legislation be clarified to explicitly include in the definition of "sewer" that it applies to both sanitary and storm drain sewer systems;
  - (b) the City Engineer contract should be made easily accessible to the public;
  - (c) copies of all relevant pleadings and complaints that are not confidential should be posted on the City's website, with periodic public record updates provided regarding the status of litigation, e.g. hearing dates, etc.
- recommend that the Municipal Tax Review Committee make it clear in the ballot language renewing the City's Sewer Tax that monies from this tax can be used for repairs/improvements to both the sanitary and storm drain sewer systems;
- under *Risk Management* recommend that the City Council consider this recommendation within a short time frame;
- under *Finalization of the Draft Audit Subcommittee Report* section:
  - (a) state that the subcommittee's Final Report will detail the City's total incurred financial liability and cost recovery;
  - (b) include Judge Kawaichi's recommendation that consideration be given to expanding the subcommittee's non-Council membership;
- revise page 18 (Item 2.b., 1st paragraph, line 5) to read in part: ". . . to the attention of the staff committee and it was agreed to use . . ." Examine billing records to ascertain the approximate date that this issue of using the In-Force Account was discussed;
- revise page 7 (Background, 2nd paragraph, line 5) to read in part: ". . . significant cost overruns on November 2, 2009."
- request the Finance Director to review Exhibit F as to accuracy;
- include in the *Background* section a summary of the Crest Road damages/repairs issue based upon consultation with former City Attorney George Peyton;

The Vice Mayor agreed to provide the re-edited draft to the Interim City Clerk for distribution to the subcommittee for review. The Interim City Clerk was requested to poll the subcommittee as to a future meeting date to review and approve the revised preliminary report, with said meeting to be held if possible early enough so that the report can be considered by the City Council at either its September 6 or 19 meeting.

## ADJOURNMENT

There being no further business, Mayor Barbieri adjourned the meeting at 9:35 p.m.