



CITY COUNCIL AND COMMUNITY DEVELOPMENT AGENCY MINUTES

Regular Meeting
Tuesday, March 5, 2002
7:30 p.m.
Menlo Park Council Chamber
801 Laurel Street, Menlo Park

ROLL CALL – Mayor Schmidt called the meeting to order at 7:35 p.m. Mayor Pro Tem Kinney and Councilmembers Borak, Collacchi, and Jellins were present. Staff present included City Manager Boesch, City Attorney McClure, Assistant City Manager Seymour, City Clerk Ramos and other department heads.

A. PRESENTATIONS AND PROCLAMATIONS

1. Presentation by the Child Care Action Campaign for quality childcare in San Mateo County.

Jan Stokely, Co-Chair, Child Care Action Campaign, provided an overhead presentation and responded to Council questions.

Staff responded to Council questions regarding the City's zoning regulations for childcare.

B. ANNOUNCEMENTS, APPOINTMENTS AND REPORTS

1. Housing Commission (one vacancy), Library Commission (one vacancy), and the Planning Commission (three vacancies). The deadline for applications for the Housing and Library Commissions is March 19, 2002 and the deadline for the Planning Commission is April 16, 2002.

Mayor Schmidt announced the current vacancies and the application deadlines.

2. Councilmember Reports: Schmidt, Kinney, Borak, Collacchi, Jellins

Councilmember Kinney reported on the San Francisquito Creek Joint Powers Authority meeting that included a discussion on the Authority's budget next year and the City's role in providing facility assistance. He also commented about a federal long-term project for flood protection and the maintenance of the creek's natural and environmental qualities.

Mayor Schmidt reported on the SamTrans meeting to discuss Caltrain crossing issues, noting that they are continuing to find ways to reduce noise from train horns and improve safety. He said that recent state budget cuts have delayed the construction of grade separations to six years. He commented about a tour of the Millbrae and San Francisco train stations by the SamTrans Board that is open to the public.

Councilmember Jellins reported about a meeting with a consultant and the Safe Routes Task Force this week to review safety concerns in the Oak Knoll area and invited the public to attend.

C. PUBLIC COMMENT #1

Nancy Travers, Menlo Park, said that the presentation about childcare is timely especially with the discussions about a childcare center since the passage of Measure T. She would like to know if the Council has a definitive opinion about the proposed childcare center.

Mayor Schmidt replied that discussions are ongoing and the City will keep the public posted on any new development.

Irene Searles, Menlo Park, commented about the importance of the City's children's programs and she would like to know how to become involved in continuing to make child care a priority in Menlo Park. She applauded the efforts of the childcare campaign that was presented earlier.

Mayor Schmidt replied that there is a study session on March 19 at 6:00 p.m. at City Hall to provide direction regarding the childcare program. He invited the public to attend and express comments.

Steve Blanton, Silicon Valley Association of Realtors, urged the Council not to pass the proposed heritage tree ordinance. He asked that the Council allow the real estate community to provide its comments. He stated that the issue about the ordinance is that it is a bit overreaching and restrictive to homeowner rights. He said he would be happy to assist in providing alternatives to some of the provisions in the ordinance.

Discussion ensued about some of the provisions in the ordinance including tree removal, size and comparisons to other similar ordinances in the area.

Mary Kenney, Menlo Park, spoke on her own behalf to urge the Council to adopt the proposed ordinance. She noted its good qualities, the extensive research that was done by staff and the more than adequate public process. She said it would be wrong to reject the ordinance at this point. She noted that the email that was circulated had incorrect information which caused concerns from some of the residents. She reminded the Council and the public of the true intent and spirit of the ordinance to preserve Menlo Park trees into the future.

Ms. Kenney, speaking as a Environmental Quality Commission member, commented that the ordinance may trigger an increase in tree appeals and that the ordinance would facilitate the collection of information about the City's tree activities. She suggested that if the ordinance becomes problematic or creates concern after its implementation, then the Council could bring it back for reconsideration.

Staff provided a chronological summary of the noticing and public process that has taken place.

Karen Cotter, Menlo Park, expressed support and noted some of the benefits of the ordinance including reducing the diameter of the tree.

Susan Hart, Menlo Park, expressed opposition noting that this is a property rights issue and urged the Council to reject it or take the matter to the voters.

D. CONSENT CALENDAR

Mayor Schmidt read the consent calendar as listed. Councilmember Jellins requested to pull items 3, 5 and 6.

M/S Borak/Kinney to approve consent items 1, 2 and 4 as presented. Motion passed 5-0.

1. Approval of audited bills for period 35 ending February 22, 2002 and pay period 4 February 9, 2002.
2. Adopt a Resolution endorsing the efforts of the San Mateo County Child Care Action Campaign.
4. Adopt a Resolution authorizing Destruction of Obsolete City Records.

PULLED ITEM

3. Approve and authorize the City Manager to enter into agreements with US Bancorp Piper Jaffray, for up to a maximum of \$9.00 per \$1,000 of the par amount of bonds, as Financial Advisor/Investment Banker; Kelling, Northcross and Nobriga (KNN), in the amount of \$14,000, as pricing advisor; and Jones Hall, in the amount of \$10,000, as disclosure counsel related to the Menlo Parks and Recreation General Obligation Bond Issue.

Staff responded to questions about total costs and the selection process.

Councilmember Jellins stated he is not convinced that the subject contract is the best contract for the City and questioned staff's selection process, noting his fiduciary responsibility to his constituents as a Council member. He said that he needs more information to justify the selection of Piper Jaffray as the investment banker for the subject General Obligation Bond.

M/S Borak/Collacchi to approve consent item 4 as presented. Motion passed 4-0-1, Councilmember Jellins abstained.

PULLED ITEM

5. Adoption of the amendments to the Heritage Tree Ordinance.
 - a. Waive reading
 - b. Adopt ordinance

Questions and discussion ensued regarding ordinances from other cities, size of tree, removal of tree, and the permitting process.

Councilmembers Collacchi and Jellins suggested allowing time to receive additional input from the real estate community.

Councilmember Borak reiterated her concern about reducing the size of a heritage tree, nevertheless, she stated that a good and adequate public process has occurred. She said that the reactions and concerns that have recently come forward could be a result of misinformation that was disseminated. She would support adopting the ordinance tonight with a condition to revisit at a designated future time to allow those groups to comment if problems with the ordinance occur.

Mayor Schmidt expressed support for revisiting the ordinance in one year from its effective date.

Councilmember Kinney reiterated that the public process has been more than adequate and the email that was disseminated contained inaccurate information. He responded to a comment about property owner rights by noting that the City has other rules and regulations that affect private properties like construction and development. He added that the City is known for its trees which have become an important aspect so it is essential that the City should take steps to preserve them. He expressed support of the ordinance and revisiting it in one year.

Councilmember Collacchi said that although he viewed the public process as a fairly short one, he supported revisiting the ordinance in one year. He liked the idea by Mr. Blanton about offering to plant trees and thought that there might be some benefit to getting more buy-in from the community.

Councilmember Jellins concurred with Councilmember Collacchi and suggested a motion to table the ordinance to a date certain to allow time to receive comments from the professional community.

Discussion ensued about a date certain on which the matter might come back to Council.

M/S Jellins/Collacchi to table the adoption of the ordinance to the meeting of April 16, 2002 to allow time to receive additional comments and input from the professional community. If changes to the ordinance are recommended, based on the comments received, they would be submitted to the Environmental Quality Commission for its review and recommendation to the Council.

There was no voted taken on this motion.

City Attorney McClure clarified that if there are changes to the ordinance recommended by the Commission, then the ordinance would be before the Council for a re-introduction. If there are no changes to the ordinance, then the Council can adopt the ordinance on that date.

M/S Borak/Kinney to waive the reading of the ordinance in its entirety (requires a unanimous vote). Motion failed 4-1, Councilmember Jellins dissenting.

The entire ordinance was read.

M/S Borak/Kinney to adopt the ordinance as proposed. Motion passed 4-1, Councilmember Jellins dissenting.

Councilmember Jellins explained that although he supports the intent of the ordinance, he does not agree that the process has fully afforded the Council opportunity to listen to all of the comments.

There was consensus of the Council to bring the ordinance back to the Environmental Quality Commission one year after its effective date to review a report from staff on the activities that have occurred since its implementation. The Commission will then present its recommendation to the Council. In the interim, if a problem occurs, staff will bring the ordinance forward to the Commission for its recommendation to the Council.

PULLED ITEM

6. Approval of City Council Minutes for the Special Meeting of February 7, 2002 and the City Council meeting of February 12, 2002.

Councilmember Jellins corrected the minutes of February 12, 2002 to add the word "potential" such that his statement about his abstention under agenda item no. 4 related to a potential conflict of interest.

M/S Jellins/Collacchi to approve the minutes of February 7 as presented and February 12, 2002 as amended. Motion passed 5-0.

Mayor Schmidt declared a recess at 9:20 p.m. and reconvened the meeting at 9:30 p.m.

E. PUBLIC HEARING

1. Consideration of a long-term plan for market operations including the continued use of loading zones on Evelyn Street and in public parking Plaza #4 for Draeger's Supermarket, located at 1010 University Drive, and review of a food processing and delivery operations study.

Arlinda Heineck, Chief Planner, presented the staff report highlighting the ten elements of the Draeger's Market plan. She noted that ten additional letters have been received since the distribution of the staff report, nine in opposition to and one in support of the proposal. She introduced Mr. John Harold, a consultant whom staff has been working with during the review.

The consultant and staff responded to questions about delivery patterns, loading zone, access, parking, the proposed consolidation plan, timeline, and loss of sales tax revenue.

Richard Draeger, Applicant, commented about the improved loading operations and the success of the operational plan that is in place. He supported staff's recommendation and the conditions of approval and concurs with the findings of the study. He noted that Draeger's could complete deliveries by 10:00 a.m. without the consolidation plan and would prefer to invest the high cost of the consolidation plan towards new kitchen facilities in another location. He said that there is nothing in the proposal that would prevent the Troglis from developing their property. He urged the Council's approval.

Mayor Schmidt opened the public hearing at 10:35 p.m.

Joseph Carcione, Attorney, reiterated that the delivery activities are causing inaccessibility and are an infringement on the Troglis property. He commented about Draeger's breach of contract and noted that the applicant has received a lot of consideration from the City.

L.E. Gates, Menlo Park, questioned why Draeger's is held to higher standards than other stores who also have loading and truck delivery activities. She does not want Draeger's to leave and would like to see some consideration be placed on their efforts to resolve the concerns and conform with the City's conditions and recommendations.

Questions and discussion ensued about the impact on the Troglis property.

City Attorney McClure explained that the Troglis property is currently unimproved and cannot be used for parking because the City does not allow parking on unimproved lots, and therefore, there is no impact on the use of their property. He further stated that any future development on the Troglis property would go through an application review process at which time, different receiving and shipping activities would have to be implemented.

Carol Dillon, Draeger's Attorney, clarified that Draeger's has complied with the agreement referred to by Mr. Carcione and it should not be an issue.

Teresa Morris, San Jose, commented that she works in Menlo Park and frequently shops at Draeger's. She noted that there are delivery trucks all over Menlo Park and it might be an inconvenience for some neighbors but one should learn to live with it if it is a convenient place to shop and an important business in the community.

Anthony Draeger, Menlo Park, commented about the consolidation plan and its cost effects and believes there's a better solution.

Sue Flood, Menlo Park, opposed the project and referred to some inaccuracy in the Draeger's/Troglio contract. She said that it is unreasonable to block access to the Troglio property since the owners have a right to use their property.

There was consensus to close the public hearing at 11:06 p.m.

Questions and discussion ensued regarding the schedule to move the bakery component, delivery activities when the Troglio property is developed, the completion of deliveries by 10:00 p.m., loading activities on Evelyn, employee parking and the status of relocation of facilities.

Mayor Schmidt asked the pleasure of the Council.

Discussion ensued regarding Attachment A of the staff report which lists the conditions for a long term plan for receiving operations at Draeger's, the timeline and the process if development where to occur on the Troglio property, and transit incentive programs.

Councilmember Collacchi stated his support to not require delivery consolidation at this time because the cost for that could go to Draeger's facility in South San Francisco. At the same time, he would prefer to see a set date for the transfer of the bakery to occur instead of giving it an 18-month period, which would put that date to September 2003. He would still like to see a plan to expedite the discontinuation of the use of the loading zone on Evelyn Street.

M/S Kinney/Schmidt to approve the conditions listed in Attachment A and the following additions:

- **Condition 19: Draeger's shall use its best efforts to develop a receiving program that eliminates the loading zone on Evelyn Street within 24 months of approval;**
- **Condition 20: Draeger's shall implement an incentive program for employees that do not drive to work, such programs to include an equivalent payment to such employees equal to a Caltrain pass or bus fare for the employees from their residence to work;**
- **Condition 14 additional language to the last line: "...to promote the program among employees and report annually to the City."**

Councilmember Jellins asked and City Attorney McClure clarified the delivery hours as follows:

- Item b of Attachment A would read as follows, "Continuation of the loading zone in Public Parking Plaza #4, with modified receiving hours from 9:00 p.m. on Sunday to 10:00 a.m. on Monday; 9:00 p.m. on Monday to 10:00 a.m. on Tuesday; 9:00 p.m. on Tuesday to 10:00 a.m. on Wednesday; 9:00 p.m. on Wednesday to 10:00 a.m. on Thursday; 9:00 p.m. on Thursday to 10:00 a.m. on Friday. These hours will also apply to Condition 3 in Attachment A.

Councilmember Jellins suggested amending the motion to change the language in Item j and Condition 14 regarding the reimbursement for commute trips to reflect a reimbursement of at least 50 percent in lieu of up to 50 percent. Council concurred.

Motion as amended passed 5-0.

F. REGULAR BUSINESS

1. Authorization of a letter of comment relative to the University Palms Project in East Palo Alto.

Jamal Rahimi, Transportation Manager, presented the staff report.

Questions and discussion ensued regarding Dumbarton Rail, impacted intersections of Willow Road and Bayfront Expressway.

Staff clarified that basically staff is expressing concern about adding traffic to the University corridor because it will impact the Willow corridor.

The Council recommended adding the following items to the draft letter:

- Dumbarton Rail's contribution to the mobility or access to jobs south of East Palo Alto and south of Menlo Park on the Caltrain corridor coming from the east bay
- Identify the impacted intersections as Bayfront Expressway and Willow Road
- Request for East Palo Alto's proposed mitigations for Willow Road

- Copy letters to the City of Palo Alto, C/CAG, and the Metropolitan Transportation Commission (MTC)

Mayor Schmidt clarified that a revised letter will be prepared based on Council's comments and forwarded to the City of East Palo Alto.

2. Consideration of legislative items listed in the League of California Cities Bulletin(s), or items referred to in Written Communications or Information Items, including decisions to support or oppose any such legislative, communication or information item – None.

G. WRITTEN COMMUNICATIONS - None

H. INFORMATION ITEMS

1. Fiscal Year 2001-2002 Mid-year Report.

Staff responded to questions about franchise fees. The report was noted and filed.

I. PUBLIC COMMENT #2 – None.

J. ADJOURNMENT - 11:57 p.m.

Respectfully submitted,

Susan A. Ramos, CMC
City Clerk