



# CITY COUNCIL and COMMUNITY DEVELOPMENT AGENCY MINUTES

Tuesday, March 30, 2004  
7:00 p.m.  
801 Laurel Street, Menlo Park, CA 94025  
Menlo Park City Council Chamber

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## **7:00 p.m. REGULAR MEETING** (Menlo Park City Council Chamber)

**ROLL CALL** – Duboc, Winkler, Collacchi, Jellins, Kinney

**STAFF PRESENT** – David Boesch, City Manager; William McClure, City Attorney; Audrey Seymour, Assistant City Manager; Silvia M. Vonderlinden, City Clerk. Various department heads and other City staff were present.

## **PLEDGE OF ALLEGIANCE**

### **A. COMMISSION VACANCIES, APPOINTMENTS, AND REPORTS**

1. Recognition of outgoing Library Commissioner Nancy Devine.

Mayor Duboc expressed her appreciation for Ms. Devine's contributions to the Library Commission. A certificate of appreciation was presented to the outgoing commissioner.

2. One vacancy on the Library Commission to fill an un-expired term ending July 2006. The deadline for receipt of applications is 5:30 p.m. on April 12, 2004.

3. Appointment to the Bicycle Commission.

**Mayor Duboc opened the floor for nominations.**

Mayor Pro Tem Winkler nominated Sandy Napel.

There were no other nominations.

**The vote on appointing Mr. Napel to the Bicycle Commission was unanimous.**

4. Swearing in of two new commissioners George Pappas, Transportation Commission and Stephen Luder, Parks and Recreation Commission.

City Clerk Vonderlinden administered the oath of office to the two new commissioners.

5. Commission Reports.

None.

### **B. PRESENTATIONS AND PROCLAMATIONS - None**

### **C. PUBLIC COMMENT #1 (*Limited to 30 minutes*)**

Ross Wilson thanked the Council for approving the Chester Plan, and said he was one of the many volunteers who participated in the cut through traffic survey. Mr. Wilson requests that the results be shared with residents, and he believes cut through traffic is not improving. He believes the City Council needs to protect this neighborhood in traffic matters.

Elizabeth Houck spoke about ordinance 926, and in her opinion there wasn't enough outreach or a redlined version of the ordinance. Ms. Houck stated that residents oppose this ordinance and have expressed their opinions via letters. She feels that the Council options were to either place the item on the ballot or repeal the ordinance.

Pat White said that 2,300 residents who signed the petition/referendum are still a minority. Mr. White also said that a vast majority in the last election voted for the current Council. Mr. White believes that El Camino Real is benefiting from the new Chevron station, and redeveloping El Camino should be a Council focus. Mr. White disagrees with the concept that 60% of the trees in Menlo Park are in danger.

#### **D. CONSENT CALENDAR**

Consent Agenda items are considered to be routine and will be enacted by one motion. There will be no separate discussion on these items unless members of the Council, staff or public request specific items to be removed for separate action.

1. Adoption of a Resolution No. 5501 modifying and extending the contract for water meter reading, billing and customer service with California Water Service Company until February 28, 2005 at a cost of \$4.28 per account billed per month and authorizing the City Manager to extend the contract for four additional one year terms.
2. Introduction of an ordinance adopting an amendment to the Community Development Plan for the Las Pulgas Community Development Project and amending related ordinances to extend by one year the time limits for implementing the Community Development Plan and for receipt of tax increment and that the City Council adopt the proposed notice of exemption for the ordinance.

**M/S Winkler/Collacchi to approve the Consent Calendar. Motion carries unanimously.**

#### **I. COUNCIL MEMBER REPORTS – (this item was addressed at this time and out of sequence)**

Council Member Kinney reported on attending a San Francisquito Creek JPA meeting and he was disappointed that one grant given to this group for the Bonde Weir was returned with the termination of the project, only approximately 50% utilized, and the second grant (from the US Army Corps of Engineers in the amount of \$7.5 million) has not been released.

#### **E. PUBLIC HEARING**

1. Introduction of the proposed amendments to the Heritage Tree Ordinance (Chapter 13.24, Municipal Code).

Dianne Dryer, Environmental Programs Coordinator, presented the staff report providing a brief overview of the history leading to the current proposed amendments. The amendments include:

- amendment to change designation of protected redwood trees from 10" diameter to 15" diameter.
- amendment to change the tree measurement location from 48" above natural grade to 44".
- clarify the measurement location of trees with more than one trunk, specifically at the point the trunks divide.
- include the age distribution of existing trees in the area to be considered when determining good cause for a permit.
- amendments throughout to update staff oversight designations.
- amendment to exempt certain trees from permitting requirements under certain conditions.
- limit appeal privileges to Menlo Park residents and owners of property in Menlo Park.
- Add language in the intent and purpose section to acknowledge the historical value of trees.

#### **Council Discussion**

Council Member Jellins thanked staff for its well-prepared report. There were no other Council questions.

#### **Public Comment**

Avery Cowan said he hopes the trees won't be cut because the animals live in them, and they keep the air clean for people to breath.

Lou Deziel (with time donated by Mark Bercow, Dawb Bercow, and David Cowan) said he supports ordinance 926 and wishes people had more respect when addressing the Council. He does not appreciate the caustic comments made to Council on this matter. Mr. Deziel would like the heritage tree matter to be discussed, but he would like heritage trees to be kept on the basis of property rights. He would like the neighbors to have some rights, and voice in keeping the trees since they add about 12% to property values. Based on his research, the average heritage tree is valued at \$64,000 additionally this value is spread throughout adjacent properties. While staff has created a few good tools, he would like to make some suggestions giving neighbors some power to appeal the removal. One of his solutions is to exempt the prominent trees from ministerial removal, and he would also like to make it easier for property owners to keep trees. In his opinion, there is a conflict of interest because 1/3 of the trees are on public land, and the person who approves the removal of the trees works for Public Works. In his opinion, and to avoid this situation, Community Development could handle this matter.

Cynthia Dusel-Bacon, member of a previous Environmental Beautification Commission, said she helped design the previous ordinance. Ms. Dusel-Bacon opposes this new ordinance because it endangers the existing heritage trees, and it implements substantial changes that remove the current discussions that take place with staff. In her opinion, the buildable area exemption is dangerous because it does not protect the trees. She also has concerns that the message seems to be that heritage trees have no value to the community.

Haviland Thompson was part of the group who wrote the original ordinance and did a lot of research with neighboring towns. Ms. Thompson said that granting so much leeway on the removal of a tree is going too far with the process. She sees conflicts that she does not understand, and hopes that Council appreciates the benefit of trees on Santa Cruz, which have helped bring restaurants and businesses forth.

Mary Kenney, speaking as chair of the Environmental Quality Commission (EQC), advised against the addition of section 13.24.050 because this exemption is unnecessary. Ms. Kenney stated that the ordinance has remained intact for 25 years, and there will be no recourse if the current section gets approved. Ms. Kenney stated that the exemption amendment shuts down the rights of the property owners and staff to address concerns. The Commission recognizes property rights but the trees also need to be protected. Ms. Kenney spoke on her own behalf stating that the current ordinance allows for respect for heritage trees because it demands a dialogue in case of removals. Ms. Kenney believes heritage trees protections should not be decreased.

Patti Fry, spoke on her behalf, asking the Council to not approve the entire proposed new ministerial process. She believes that making it easier for project developers to eliminate trees does not protect trees. Ms. Fry stated that the permit process section makes it very uncertain for the neighbors in the community. She asked that Council not approve this section because it will destroy the character of the city. Ms. Fry asked who raised the current issue and why this is being addressed now.

Maureen Teter stated that this ordinance doesn't please anybody, and she does not believe a 15- gallon tree will replace a 65-foot tall tree. She would pay more for a property with a heritage tree, and in her opinion saving Menlo Park trees is priceless. Ms. Teter does not agree with section 13.24.050, because it allows for heritage trees to be cut down without review.

Doug Teter said that he does not support the proposed changes. He does not believe that section 13.24.050 is good for residents. Mr. Teter urges the Council to listen to its commissioners, staff and residents who do not wish to weaken the heritage tree ordinance.

Matt Ackerman spoke against the ordinance amendment, and does not see the value of exposing these trees. He says he does not understand how the City will save money by cutting more trees. Mr. Ackerman said the trees are our symbol, and while the objective is to streamline and simplify he does not see validity in reducing the protection to the trees.

Elizabeth Houck is unclear on the motives behind addressing this matter now. She opposes these proposed amendments because the tree is the City's symbol. Ms. Houck believes the Council is undermining the neighbors because removing trees without notifying neighbors is not the right approach.

David Speer spoke against this ordinance because in his opinion getting rid of public notices, and eliminating appeal rights is an undemocratic approach.

Hank Lawrence believes there are two points of view and to him the definition of a heritage tree is of concern. He proposes that if a less desirable tree (eucalyptus or pine trees) was to be replaced with an oak or redwood tree, then this should be possible without appeals. He thinks residents should be promoting oak trees and planting them.

Harry Harrison commented that his property has many heritage trees and he is counting on them for his retirement fund. Mr. Harrison said he was a builder for many years and he does not appreciate when people refer to developers in a negative way because he tried to make things right. He made some remarks about a tree located on Mr. Kinney's yard. He agrees with the change because it gives the homeowner more power.

*Mayor Duboc announced a five-minute recess.*

### **M/S Collacchi/Winkler to close the Public Hearing. Motion passes unanimously.**

#### **Council Discussion**

Council asked questions about the current process and the elimination of appeals. There was some discussion about statistics on permits in recent years, and how this will reduce Council deliberations. Mr. Murphy, Principal Planner, explained the current process and how staff engages the applicants. Council also discussed how these changes would apply to large properties that are being rezoned, and Legal Counsel McClure, stated that if the area was zoned R1-S or R1-U the applicant could remove the trees. Council discussed variances as an option in cases of hardship, and Mr. McClure stated that it all depends on the case at hand. Questions were asked about the environmental review and the categorical exemption. Mr. McClure explained that there is a categorical exemption on single family residential, however a permit is still required to remove trees. The zoning ordinance was discussed.

Council Member Kinney made a presentation on the number of trees that have been removed over the years, and the difference between the previous process and the proposed process. Mr. Kinney presented his views on what he says are contradictions in the staff report. He specifically disagrees with section 13.24.050 and its implications for the tree population in Menlo Park. Mr. Kinney said that it is important to inform various professionals in the community about the new rules and he would like a brochure printed. He said that one of his goals is to nurture the environment and make this a tree friendly community, and emphasis should be made on dialogue. His recommendation is to approve the amendments, but exclude 13.24.050 and brochures to be prepared and disseminated to all parties affected.

Mayor Pro Tem Winkler thanked Ms. Haviland Thompson and Ms. Cynthia Dusel-Bacon for their past work, and she appreciates their wisdom. Ms. Winkler clarified that the previous Council made serious changes to the heritage tree ordinance and mandated that this ordinance be reviewed once a year. Ms. Winkler stated the EQC and staff responded by streamlining the application process, and costs to the City have been greatly reduced, but on the owner side it has increased their costs. Mayor Pro Tem Winkler supports Ms. Kenney's views, and she believes that homeowner rights have also been respected in the process. For the reasons mentioned above, and since no cost reduction will be achieved with 13.24.050., Mayor Pro Tem Winkler would be comfortable excluding it.

### **M/S Winkler/Kinney motion to introduce the ordinance as is, with the exception of section 13.24.050. that is to be removed.**

Mayor Duboc thanked the staff and the EQC for their work and diligence, as well as all the residents who provided comments. Mayor Duboc made a suggestion that staff look at the cost implications to

homeowners. Council Member Kinney asked about nuisance trees, and how this would be addressed. Mr. Dryer explained that to keep the ordinance as simple as possible it was decided to not include a list of species that could be considered nuisance trees.

**The Mayor called for the vote. Motion carries unanimously.**

## **F. REGULAR BUSINESS**

1. Review of and status report on the Percent for Art Ordinance.

Michelle Bell, Business Manager for the Community Services Department, presented the staff report asking for direction regarding changes that need to be reviewed by Council. Ms. Bell stated that currently there are four Percent for Art applications in process, and she covered the eight steps that each applicant has to complete. As of April 1, 2004 Ms. Bell will be handling this program. She clarified details about the in-lieu fee, and how applicants can opt for this approach. Furthermore, Ms. Bell went over the challenges that have been brought forth during the process.

### **Council Discussion**

Council Member Jellins asked about the in-lieu fee and how the staff came to this 1.5 percentage. Ms. Bell stated that this is based on the extra work (maintenance and additional staff time) that staff will need to do. The Arts Commission also will need to choose the artist for these situations. Council Member Kinney clarified that the 1% is for any project that is over \$250,000 and he wondered how it gets computed if the base amount changes. Ms. Bell provided clarification on this matter. Mayor Duboc asked if a particular project could be changed to an in-lieu fee if it already started through the existing process. Mr. McClure, City Attorney, said that the ordinance would have to be changed to be retroactive in order to impact various projects in the works.

### **Public Comment**

Sue Kayton believes art is very subjective. Ms. Kayton believes that some of the problems with the ordinance are that some of the artwork is not maintainable because the items change and sometimes it is impossible to get the same artist to work on it. She does not think people need a bench in front of the Seven Eleven, and she disagrees with asking for an experienced artist.

Fran Dehn representing the Menlo Park Chamber of Commerce, stated that art is something that enhances the city. Ms. Dehn wants to attract new business and not impose barriers. She believes the percent for art is creating a tax aiming at a segment of the population, and art should be a duty that is the responsibility of all. Ms. Dehn disagrees with having building permit applications tied to the Percent for Art ordinance. She believes any applicant should be able to choose the in-lieu fee over the art submission selection process, and this fee should not be higher than the 1% fee. She suggests creating a panel of artists, or those trained in art, to review percent for art applications.

Elizabeth Houck, speaking as a member of the Safeway Working Group, said she supports art projects and she believes it is a good approach. Ms. Houck believes something needs to be fixed but she is not sure what. She suggests that the Arts and Parks Commissions continue working on it, since they've devoted so much time and attention to this matter.

Erin Glanville supports this ordinance and hopes the Council will too because it adds a sense of place to the neighborhoods. She believes public art adds to the community since it makes buildings less of a structure and more of a special place.

Mr. Milton Borg, with time donated from Andrea Borg, said he thinks art is a good idea, however the current ordinance is too strict and is aiming only at a certain segment of the population. Mr. Borg stated that he has had many challenges with the process, and Dave Johnson has tried to help. Mr. Borg refuses to sign a covenant that will commit him and the building in perpetuity. He does not think this art program is flexible enough. Mr. Borg said that it is really hard to find the right artist to be approved.

Gerald Brett stated that he is from Palo Alto and he is the vice-chair of the Arts Commission in Palo Alto. Mr. Brett said that Menlo Park, with its percent for art program, is ensuring that it is a lead City and its

children will be exposed to art everyday. He said the City should be very proud of its first step towards being famous not only for its trees but also for its art.

Nancy Chillag, speaking as the Chair of the Arts Commission, believes this is an impressive program with four projects completed. In her opinion it is too early to evaluate if the program has been successful, but she hopes the Council appreciates the benefits it brings to the City. Ms. Chillag referred to Mike's Café's mural and how the community has welcomed it. In addition the members of Boys and Girls Club are extremely excited to incorporate art into the Chevron station. Ms. Chillag stated that this ordinance creates partnerships, and makes Menlo Park a more exciting place to live, work and shop. She clarified that this ordinance applies to public buildings as well, such as Measure T buildings. Ms. Chillag asks that the in-lieu fee be voluntary, and to keep the fee at 1.5% to cover all the expenses. She urges Council not to change the ordinance.

Council asked questions of Ms. Chillag in regards to the various projects, and those that had challenges with the process. Ms. Chillag stated that the two problematic applications were due to lack of cooperation. Council also asked about the 1.5% in-lieu fee and why it is justified. Ms. Chillag stated that the in-lieu fee requires additional staff time, and the maintenance of the artwork, so it is justifiable at 1.5%.

Diane Caselli, employee at the Chevron station in Menlo Park, said she disagrees with the ordinance because it will make it hard for certain applicants to keep it up with their businesses. She said that Council should respect the efforts applicants make, and she asks to keep the Chevron station art free.

Laura Fechete, member of the Arts Commission, said that she approves this ordinance because she supports the beautification of the City. She has been an Arts Commissioner for the last year and a half, and she hopes that staff will continue to work hard to make this a reality.

Michael Lambert would like the City to set funds aside to make a gift to the public. Mr. Lambert would like to see the City erect public art in strategic places. He thinks this would be a great gift to the public, and funds could be collected through donations. Mr. Lambert does not agree with having a particular segment pay for the cost of art, and he would like to see this on the ballot.

Candy Galea said that with all the events that are going on in the world she does not understand how art and trees are being discussed here.

### **Council Discussion**

**M/S Winkler/Jellins direct staff to prepare amendments to the ordinance, with the idea of allowing applicants a 1% in-lieu fee option, this to be applicable to projects that cover exterior only, new additions to the exterior (but not the interior and exempting interior remodels), these amendments to be retroactive, and to apply to new construction, and staff is then to take this item to the Arts Commission for exploration of ideas discussed by Council tonight, and establish a review period within 18-months from the date the amendments become effective. "Council also directed staff to come back with a formula regarding the cost of administering an in-lieu program and maintaining public art."\***

Council discussed various facets of the motion and how to assist business owners that are in certain impasse. Some Council Members believe the City has a responsibility to make art part of the city services, and not charge a segment of the population for it. Council Member Collacchi explained why he would not vote for the motion since he was against the original motion that implemented this program. While he supports art, he does not think that a certain portion of the residents should pay for it. Mr. Collacchi has concerns that by having this program in place, it will deter the City from pursuing other approaches. Mayor Pro Tem Winkler also questions assessing fees to a portion of the residents.

**Mayor Duboc called for the vote.**

**Motion carries with 4 votes in favor, and one abstention from Council Member Collacchi.**

2. Consideration of state and federal legislative items or items referred to in Written Communications or Information Items, including decisions to support or oppose any such legislative, written communication or information item.

**G. WRITTEN COMMUNICATION - None**

**H. INFORMATION ITEM - None**

**I. COUNCIL MEMBER REPORTS**

Mayor Duboc read a letter from Congresswoman Anna Escho stating that she has secured \$300,000 in funding for the adapted traffic signal coordination on Willow Road. Ms. Eschoo will continue to do everything she can for signalization coordination.

Council Member Kinney asked if the Mayor will attend a League of California Cities event, and Mayor Duboc said that they could discuss this matter later.

**J. PUBLIC COMMENT #2 (Limited to 30 minutes)**

None.

**K. ADJOURNMENT – the meeting was adjourned 10:10 p.m.**

Respectfully submitted

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Silvia M. Vonderlinden, CMC

Approved at the City Council Meeting of April 20, 2004 and the amended version approved at the Council Meeting of June 22, 2004.

*\*At the request of Mayor Duboc these approved Minutes are being re-submitted to Council for approval of an amendment on page six (italics portion).*