



CITY COUNCIL and COMMUNITY DEVELOPMENT AGENCY MINUTES

Tuesday, August 31, 2004
7:00 p.m.
701 Laurel Street, Menlo Park, CA 94025
Menlo Park City Council Chambers

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

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

STAFF PRESENT - David Boesch, City Manager; William McClure, City Attorney; Pat Carson, Executive Secretary and various department managers and City staff were present.

PLEDGE OF ALLEGIANCE

A. COMMISSION APPOINTMENTS, VACANCIES AND REPORTS

1. Two vacancies on the Arts Commission to fill two expiring terms. The vacancies are for terms that will end in September 2008. The deadline for receipt of applications is September 7, 2004 at 5:30 p.m.
2. One vacancy on the Parks and Recreation Commission for a term that will end in September 2008. The deadline for receipt of applications is September 7, 2004 at 5:30 p.m.
3. One vacancy on the Bicycle Commission to fill an un-expired term ending April 2005. The extended deadline for applications is September 28, 2004 at 5:30 p.m.
4. Two vacancies on the Housing Commission to fill un-expired terms. One vacancy is to fill an un-expired term that ends July 2005 and one is to fill an un-expired term that ends September 2007. The deadline for receipt for applications is September 28, 2004 at 5:30 p.m.
5. One vacancy on the Las Pulgas Committee to fill an un-expired term ending March 2005 (for a business member seat). The extended deadline for receipt of applications is September 28, 2004.
6. Commission Reports. No reports.

B. PRESENTATIONS AND PROCLAMATIONS - None

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

Mayor Duboc announced Public Comment #1. No speakers came forward.

Council Member Collacchi arrived.

CONSENT CALENDAR

1. Award of contract to S & C Ford for police vehicle purchases for a total amount of \$140,370; approval of \$32,522.40 for the purchase and installation of emergency equipment and the transfer of computers to the new vehicles; and authorization of a total budget of \$190,100 for police vehicle purchases, police vehicle equipment and contingencies.

2. Adoption of a Resolution 5554 authorizing a budget amendment from the Water Operation Fund Balance increasing the Water Main Replacement Project Budget in the amount of \$171,558; award of contract to West Valley Construction Company, Inc. in the amount of \$1,577,354 for the Project; and authorization of a total project budget in the amount of \$1,827,354 for construction, contingencies, engineering and construction administration.

Item Pulled D3

3. Approval of an amended Joint Use Agreement between the City of Menlo Park and the Las Lomas School District for the Tennis Courts, Baseball Field and Sports Field at La Entrada School.

M/S Duboc/Kinney to approve Consent Calendar items D1 and D2. Motion carries 5-0.

Item Pulled D3

Council Member Kinney asked for clarification on the staff report and whether there is depreciation from the time of construction if the School District stops using the tennis courts. Staff Member Ruben Nino stated that this is a new condition that allows for recourse. In the past the City had no recourse. If the school decides to remodel or change the work that was done by the City, the City would receive a refund.

M/S Kinney/Winkler to approve Consent Calendar item D3. Motion carries 5-0.

E. PUBLIC HEARING - None

F. REGULAR BUSINESS

1. Approval to amend the Percent for Art Ordinance to add a 1.5% alternative In-Lieu Fee. (Continued from the City Council Meeting of August 17, 2004.)

Staff Member Bob Roessler presented the staff report. During the August 17, 2004 City Council Meeting, staff recommended Council approve a 1.5% alternative in-lieu fee. The item was tabled and the Council directed staff to come back with alternatives and details regarding improvement related fees. Staff provided this information as part of the cover memo included in the Council staff report. Staff is recommending that Council approve amending the Percent for Art Ordinance to add a 1.5% alternative in-lieu fee.

Mayor Pro Tem Member Winkler asked staff about the post entitlement fees and asked that staff elaborate. She asked that 150 Middlefield Road be used as an example. City Manager Boesch answered Mayor Pro Tem Member Winkler's question stating two things were done: the information being provided includes a summary regarding the total fee structure. Fees incurred prior to the building permit phase can include land use entitlement, which often takes the form of a Use Permit. This is an action required by the Planning Commission. In the case of 150 Middlefield Road, the fees associated with the project obtaining its entitlement were \$3,375. With this project no specific environmental review or traffic studies were required. Next, during the building permit phase where a project is submitted for construction, an applicant establishes the project improvement value. In the 150 Middlefield Road example, the project value was calculated at \$295,000. Because this is above the \$250,000 amount established for the Percent for Art fee, it is subject to the total art fee. The total art fee is 1% of the improvement value (\$2,950). Under the current structure, 85% of the fee goes to art and 15%, under this scenario and as proposed by staff, would be available to administer the program.

City Manager Boesch explained that there are other fees related to construction and inspection. The fees listed in the report were discussed. In the case of 150 Middlefield Road, the Art fees were 31% of the total fees charged.

Council Member Jellins questioned the building related fees such as the Fire Protection District, school fees and others. Staff responded that the percentage impact varies project by project. Council Member Winkler asked about other fees and questioned some of the figures. Staff stated that the factors considered in setting the level of alternative in-lieu fee included the time it would take to administer bigger projects and different levels of improvements. Staff felt more applicants would opt for paying the alternative in-lieu fee unless it was set at a higher rate. City Manager David Boesch stated that when an applicant installs the art there is a certain amount of coordination necessary. If the City chooses the art and the artist, the cost goes up. There is a processing cost to the owner that doesn't get captured in the fee. Council Member Collacchi commented that part of the cost is externalized now, and questioned whether this cost would be greater if the City were in the business. Council Member Collacchi also asked about cost recovery. City Manager Boesch feels fairly certain the City would recover its direct cost. Council Member Collacchi stated that there may be hidden costs. Mayor Duboc questioned the percentage for the rec-in-lieu fees. City Manager Boesch stated it is a more complicated and rigorous formula based upon property values. Mayor Duboc questioned if there are any comparable in-lieu fees. City Manager Boesch stated BMR's are based on a certain percentage of units, which is also different.

Council and staff continued to discuss the percentages and the fee. Council Member Kinney asked about insurance. Mayor Duboc stated there could be savings with the in-lieu fees if placed in an interest bearing account. Council Member Kinney encouraged the Council to focus on art in the city and not to narrow the range of expression. City Attorney McClure clarified some points about public art and the fees.

Public Comment

Nancy Chillag, Art Commission Chair addressed the Council with time donated by Laura Fechete. Six Art Commission members were in attendance in support of the Ordinance and for the staff recommendation. Ms. Chillag stated that the purpose is to have art throughout the City. If art on a particular site is not feasible then its better to collect the fee and place art in a public place. If the owner cannot meet the requirement the owner should not have to pay a higher fee. Projects under \$50,000 are not feasible because of staff time and cost. Ms. Chillag stated that there is a Cultural Plan in place, but no money has been spent. She urged Council not to encourage businesses to just write a check, since she feels this defeats the purpose.

Mayor Pro Tem Winkler asked what Safeway has been required to pay in fees. City Manager Boesch responded that the value of that project has not been established since Safeway has not applied for permits or paid fees, although Safeway has actively engaged the community in discussions about public art.

Patricia Daniels, Arts Commission Vice Chair, stated that the Percent for Art Ordinance is much like the Sycamore trees planted on Santa Cruz Avenue which started out small and now contribute to a lovely environment. The last two years with the ordinance have been valuable. The proposed change is a useful compromise. Businesses that feel strongly that they don't want art have the ability to choose the In-lieu fee. We don't want to create an incentive for businesses to just write a check.

David Elliott supported the comments of Council Member Kinney and Nancy Chillag. He believes there is not negativity as a whole about the requirement and that the perspective of the business community varies. Long's Pharmacy, for example, was enthusiastic.

Michael Lambert Recommended that Council repeal the Percent for Art Program. He believes there is a need for an equitable art program, for which the community shares the burden. Ideas for doing this could include the General Fund, a voter initiation property tax assessment, or city leases which is a no cost option.

Milton Borg, Menlo Park property owner, suggested that the City get rid of a bad ordinance and bring in a simple easy to administer ordinance. He feels maintenance is an issue.

Fran Dehn, the Menlo Park Chamber of Commerce Executive Director stated that we need to understand that the City is in the business of public art. The example of Mike's Café is good, but the difference was that the owner was going to put in the art anyway. There should be an allowance for individuality. The In-lieu fee helps. If the owner doesn't feel qualified, an in-lieu fee allows for this. The fee can be pooled. Art can be installed at a property or perhaps at a place like the civic center.

Council Discussion

Mayor Duboc asked if there were any more public comment cards and seeing none asked if there was further Council discussion or a motion. Mayor Pro Tem Winkler is in favor of Art but she has never liked this Ordinance. As stated by Mr. Lambert, she believes this Ordinance is about taxing businesses. She encouraged the Art Commission to come back in no more than six months. She supports a program that gives the public the opportunity to tax itself and support art universally. Mayor Pro Tem Winkler is in favor of suspending the existing Ordinance. She suggested that projects already in the pipeline accept the one percent in-lieu fee.

Mayor Pro Tem Winkler made a motion to suspend the current Ordinance.

There was discussion and Mayor Duboc asked if it is proper to make a motion to suspend the Ordinance and asked for clarification. City Attorney McClure stated the Council is not taking formal action on amending or repealing the ordinance tonight. Whether the Council directs staff to amend or repeal the ordinance, the next step is to go to the Planning Commission since the art ordinance is part of the zoning ordinance.

Council Member Collacchi stated he sympathizes with the Arts Commission. He also stated that if the Council is suspending the Ordinance he is comfortable allocating Capital funds for art. Questions were asked about how much money has been generated. City Manager Boesch answered that the amount over the two-year period is \$58,500. Council Member Collacchi offered an amendment to the motion to allocate \$40,000 for public art.

Council Member Kinney does not like the proposal but supports Council Member Collacchi's amendment. He believes art is a benefit to business. The 1.5 percent in-lieu fee is a compromise. Council Member Kinney made a substitute motion to approve staff's recommendation and amend it to add \$40,000. This motion failed due to a lack of a second.

Mayor Pro Tem Winkler says the argument is not about whether art is good for the community, but whether this is a good Ordinance. There was mention that in the City of Los Altos art is publicly located.

Mayor Duboc agreed that the argument is about the Ordinance. On the average the fee increased by 33% and on one project 49%. She questioned the fairness and expressed a desire to spread the burden and not just place it on the business community. The fee structure has an impact when competing for business. This is a challenge for the Arts Commission to go back and rethink. She suggested that the City look at what other cities do.

Council Member Collacchi stated this is a tough time. He believes this Ordinance misuses the impact fee tool. It has resulted in a fifty percent increase in fees, which has a disproportionate impact on smaller business owners. Council Member Collacchi would like to make a commitment to fund art.

After further discussion, Council Member Collacchi made a clarifying motion to rescind the Ordinance and allocate \$40,000 towards a public art project.

M/S Winkler/Duboc directing staff to recommend to the Planning Commission to repeal the Ordinance. Motion passed 3 to 2 (Council Members Jellins and Kinney dissented.)

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.

City Manager Boesch stated that all Bills are pending on the Governor's desk. Multiple letters have been sent regarding the City's opposition to AB 2702.

G. WRITTEN COMMUNICATION

1. Transmittal of Planning Commission discussion on Downtown Commercial Uses and on Medical Office Uses.

Mayor Duboc read this communication and it was accepted.

H. INFORMATION ITEM - None

I. COUNCIL MEMBER REPORTS

Council Member Kinney and Mayor Pro Tem Winkler attended the Silicon Valley Manufacturing Group Meeting and reported that it was interesting.

Mayor Duboc reported that she was part of a public service message: A commercial for Measure A. Members of the Board of Supervisors and other Mayors also participated.

J. PUBLIC COMMENT #2

No public comment.

K. ADJOURNMENT at 8:38 p.m. until September 14, 2004.

Respectfully Submitted,

Pat Carson, Executive Secretary and Acting City Clerk
Approved at the City Council Meeting of October 12, 2004.