



# CITY COUNCIL COMMUNITY DEVELOPMENT AGENCY MINUTES

Tuesday, July 25, 2006  
7:00 p.m.

701 Laurel Street, Menlo Park, CA 94025  
Menlo Park City Council Chambers

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Teleconference with participation by Mayor Pro Tem Fergusson from  
2652 O'Hara Lane, Crescent Beach, Surrey, B.C., Canada V4A 3E3

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

**ROLL CALL** – Jellins, Fergusson (via teleconference), Cohen, Duboc, Winkler

**STAFF PRESENT** – David Boesch, City Manager; William McClure, City Attorney; Audrey Seymour, Assistant City Manager; and Silvia Vonderlinden, City Clerk. Other city staff was present in the audience.

**PLEDGE OF ALLEGIANCE**

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

1. There are two vacancies on the Las Pulgas Committee. Deadline is Monday, July 31, 2006 at 5:30 p.m.
2. There is one vacancy on the Environmental Quality Commission. Deadline is Tuesday, August 15, 2006 at 5:30 p.m.
3. No Commission Reports.

**B. PRESENTATIONS AND PROCLAMATIONS**

1. Proclamation in honor of "National Gymnastics Day".

The Mayor presented a proclamation in honor of "National Gymnastics Day" to multiple staff and users of the program.

**C. PUBLIC COMMENT #1 (*Limited to 30 minutes*) – None**

**D. CONSENT CALENDAR**

1. Adoption of resolution no. 5689 authorizing the City Manager to execute a contract with the State of California Department of Education to reimburse the City \$655,151 for child care services at the Belle Haven Child Development Center.
2. Adoption of resolution no. 5690 approving the revised Investment Policy for the City and the Community Development Agency of Menlo Park, to become effective immediately.
3. Adoption of resolution no. 5691 of the City Council extending by five years the period during which the Community Development Agency may retain the Hamilton East site for purposes of causing development of affordable housing and affirming the intention that the site, or a portion of the site, be developed to include affordable housing.

**Item D4 pulled**

4. Adoption of resolution no. 5692 approving a Memorandum of Understanding (MOU) between the City of Menlo Park and the Menlo Park Police Officers' Association (POA) for the period beginning July 1, 2006 through June 30, 2008.

**M/S Cohen/Winkler to approve Consent Calendar item D1 through D3. Motion carries unanimously by a roll call vote.**

**Discussion on pulled item D4**

4. Adoption of resolution no. 5692 approving a Memorandum of Understanding (MOU) between the City of Menlo Park and the Menlo Park Police Officers' Association (POA) for the period beginning July 1, 2006 through June 30, 2008.

City Manager Dave Boesch explained that this has been going on for several months with 10 negotiations meetings and the need to hire a mediator.

**M/S Duboc/Fergusson to approve D4. Motion carries unanimously by a roll call vote.**

The Mayor asked that Mr. Boesch address the issue of the City Council minutes. Mr. Boesch said that all City Council meetings are broadcast live and rebroadcast. Additionally, the meetings are video streamed live and archived in an effort to make the community aware of the issues before the Council. These files are available 24 hours a day and 365 days per year. Mr. Boesch explained that in regards to the timeliness of the minutes the City Clerk's office is a one person operation with multiple tasks. He acknowledged the current backlog and staff is looking for solutions to address this challenging situation.

**E. PUBLIC HEARINGS – None**

**F. REGULAR BUSINESS**

1. Introduction of an ordinance adopting a Utility User Tax for the City of Menlo Park.

City Manager Boesch went through various scenarios and the budgetary problem to be solved. He covered multiple approaches providing detailed information on a 10-year projection and the tax level. He also said the more complex the tax, the more costly it is to administer.

Council Member Duboc asked about the funds that were gained and referred to in the investment portfolio and Mr. Boesch said that the budget includes those amounts. Carol Augustine, Finance Director, said these amounts showing an increase are seasonal; usually two quarters are positive and two negative. Council Member Winkler asked about potential tax generation options and absolute cap values. Council Member Cohen said this was unclear and asked what types of businesses the cap benefited. Mr. Boesch said it would benefit the larger businesses that pay more. Council Member Cohen asked specific questions about these large businesses, but Mr. Boesch was unable to provide details due to legal limitations on information releases.

City Attorney McClure explained that Council may change the ordinance at any time, but cannot increase the tax amount. Mr. McClure introduced Don Maynor, an attorney who specializes in advising local jurisdictions on utility user taxes. McClure stated that this ordinance would only be valid if the voters approve it in November: there is a 90-day period after the 10-day period once the election is certified. Mr. McClure went through each of the clauses in the ordinance and the sunset clauses.

City Attorney McClure said the ordinance is being introduced this evening and will return next week to include a resolution on election consolidation for the measure to be on the ballot. The final ballot language cannot be modified once it returns, unless another meeting is scheduled for August 8, 2006. Council Member Cohen asked who drafted the ballot wording and Mr. McClure said it was a joint effort of the City Manager, Assistant City Manager, Management Analyst and the consultant. Mayor Jellins said that the ballot wording can be decided by the Council and edited accordingly. Council Member Cohen asked about the difference between a general and a special tax, and Mr. McClure provided details on the matter.

**Public Comment**

Sanford Carnahan conditionally supports adoption of the ordinance at the 4% level. He suggests the Council keep it simple and have one rate for residents and one for businesses. He supports a sunset clause.

John Boyle seconded a sunset clause and would like this to return regularly to Council for its support. He supports separating sales-tax generators from non-sales-tax generators. Mr. Boyle said that from his understanding cellular users would be included.

Henry Riggs said he does not believe this issue was part of the Your City/Your Decision process. He mentioned numerous other taxes that will be on the ballot. He believes that fiscal health is a Council goal

and asked that the sunset be 5 years and a supermajority needed for renewal. He also asked to include a cap that will not discourage businesses; perhaps limit the rate to 2%.

Hank Lawrence spoke about various issues such as a homeowner exemption for solar panels. He agrees with the previous speaker on the 5-year clause.

Fran Dehn supports a sunset clause and a cap and she referred to page 14 Section C and so that the language does not expire and this way it will not promote alternative uses of energy. She does not support a temporary exemption.

Harry Harrison spoke about the sound system in the Council Chambers. He does not support a regressive tax and agrees with Council Member Cohen.

Council Member Winkler asked about landline versus cellular phones and Attorney Manor specifically mentioned that the ordinance is technology-neutral.

**M/S Jellins/Duboc for the ballot language to include: the rate, whether it should contain a cap, a sunset provision, a definition of the users affected and at what percentage.** Mayor Jellins said that the 10-year projection sees a deficit of \$22,871,991, which implies \$2.2 million per year which could be generated by including a UUT at 3% with a cap of \$17,500 and have the same rate for all users. He prefers the language suggested by Godbe Research, with a sunset clause as set forth in the addendum provided by Mr. McClure. This requires findings every two years and as otherwise stated. **The maker of the motion said the number would be 3% for the ordinance and not 4%. In regards to §3.14.060 Subsection C, the City Attorney should draft language that achieves the concerns brought forth by Fran Dehn.**

Council Member Duboc would like a sunset clause that incentivizes sales-tax generation. Council discussed the various options and additional language was suggested by various Council Members. Council Member Cohen referred to his concerns not being heard and feels the Budget Advisory Committee (BAC) should have provided input. He believes better information could have been provided and proposes that the Council pass a 4% UUT, but also include other items. He will oppose a \$6,000 cap. Mayor Pro Tem Fergusson believes in the differentiation between consumptive utilities and those that aren't. She supports Ms. Duboc's suggestion of differentiating between the sales-tax producers and non-sales-tax producers.

Council Member Duboc agreed with a \$12,000 cap with a 3.5% rate and to keep the differentiation between consumptive and non-consumptive users as well as utilities. Mayor Jellins believes that a consensus is needed to have this passed in November. Council Member Cohen has concerns with the ballot wording and believes staff needs a measure that will alleviate the long-mounting pressure. Various ordinance terms and ballot language proposals were shared and a discussion ensued.

**The conclusion was for staff to return next week with alternative forms of ballot language that reflects the motion's discussion so further dialogue can occur. The maker and seconde of the motion agreed on this approach. Motion to introduce a City Council ordinance to adopt a Utility Users Tax, including but not limited to the following changes:**

- **Page 8, tax would be 2.5% for all communications**
- **Page 10, electricity users tax would be 3.5%**
- **Page 12, gas users tax 3.5%**
- **§3.14.060 Subsection C on solar exemption: Mayor Jellins wants to extend the five-year exemption to ten years from the effective date with the following sentence added before the last sentence: "The City Council shall review the exemption prior to its expiration and shall make a determination as to whether the exemption shall expire or shall be extended."**
- **Page 14, the water users tax will be 3.5%**
- **Page 17, the maximum accumulative tax paid by any user pursuant to §3.14.040, §3.14.050, §3.14.060 and §3.14.070 shall be \$12,000 per fiscal year**
- **Other references to \$50,000 would read \$12,000**
- **Instead of a quarterly invoice, taxpayers would pre-pay in advance of the \$12,000**

- **§3.14.030, delete the words, “In recognition that some utility services may, at times, experience extraordinary increases in cost (e.g. energy increases)” and replace them with, “The City Council may by resolution and upon...” by a majority vote.**
- **Reducing the tax or the temporary period would require a finding that the reduction shall not adversely affect the City’s ability to meet its financial obligations as contemplated in its current budget.**
- **The exemption would disappear, unless the Council votes to extend it.**

**Motion carried unanimously by roll call vote.**

2. Adoption of resolution no. 5693 ordering and calling an advisory election to be consolidated with the General Election of November 7, 2006 for the purpose of submitting to the voters of the City of Menlo Park an advisory measure regarding the use and development of Bayfront Park.

Mayor Jellins said this is a continuation from a matter that was on the agenda last week. Mayor Jellins said that the language was the one item pending.

*At 10:23 p.m. Mayor Pro Tem Fergusson was away from the phone and returned at 10:25 p.m.*

The advisory measure wording proposed by Council Member Winkler was: should the City of Menlo Park have the option of constructing sports fields with necessary infrastructure on not more than 17 acres of the 160 total acres at Bayfront Park, protecting the wetlands and all other open space, after conducting environmental studies and obtaining all the necessary government permits using developer fees, user fees and other voter-approved funds.

**Public Comment**

Steven Schmidt said that the current Council majority was elected on the basis of achieving more sports fields with the assumption of a mix of open space and play fields. Mr. Schmidt said that the ballot measure language for the Bayfront Park should be more impartial and include the staff estimated costs.

Hank Lawrence disagrees with the comments from the previous speaker. He does not believe the former dump is a precious resource. He took issue with the statements made by a Council Member in a local newspaper. He believes that the Council is trying to be responsive to the majority of Menlo Park residents.

Nancy Borgeson believes that the Council is moving forward with the advisory measure regardless of public input. She does not believe the Council wishes to mislead the public; but, she opined that comments made previously weren’t true and she provided details on various parks around the Bay Area.

Elizabeth Lasensky believes the Council is gambling with the issue of the revenue and that Menlo Park is taking a risky environmental approach. She also commented that there was potential for cost overruns and was concerned about added maintenance costs the fields imply.

Nicholas Corsano spoke positively about his experience in Bayfront Park. Mr. Corsano enumerated the various organizations that enjoy the park and value it. He believes that the fields and concession stands could change the character of the park.

John Slater said that more reliable information is needed on this issue and believes there are multiple commitments involved. He said there is a shortage of fields and expressed concerns with the traffic fields bring.

Henry Riggs believes a plebiscite is needed if the Council wants to act on the peoples’ will. He said he goes to Bayfront Park and enjoys it but about 10% of its space could be shared for fields. In his opinion, the proposal has been on the table for so long, that Council either drops the issue or builds the fields.

**M/S Duboc/Winkler proposed language modification: should the City of Menlo Park have the option of constructing sports fields, with necessary infrastructure, on not more than 17 acres of the 160 total acres of Bayfront Park, subject to obtaining all environmental clearances and regulatory agency approvals necessary to build the sports fields, using developer fees, user fees, donations and other voter-approved funds.**

Council Members expressed their views and why they would or would not support the motion. Mr. Boesch asked if the last three words of the motion could be changed to not to confuse the voters.

**The maker and the second of the motion agreed with changing the last three words of the motion to “voter-approved parks and recreation funds”. Motion carried 3-2 by a roll call vote with Fergusson and Cohen opposing. The motion included approval of the resolution (exhibit A).**

3. Consideration of state and federal legislative items. None.

**G. WRITTEN COMMUNICATION – None**

**H. INFORMATION ITEMS**

1. Review of the City’s investment portfolio as of June 30, 2006. No questions or comments from staff.

**I. COUNCIL MEMBER REPORTS**

Council Member Duboc said that according to the Grand Jury Report. Menlo Park was one of the highest rated cities in San Mateo County in regards to emergency preparedness.

**J. PUBLIC COMMENT #2 (*Limited to 30 minutes*) – None**

**K. ADJOURNMENT – the meeting adjourned at 11:07 p.m.**

Respectfully submitted,

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Silvia M. Vonderlinden, Certified Municipal Clerk

Approved at the Meeting of November 28, 2006.