

EL CERRITO CITY COUNCIL

MINUTES

CITY COUNCIL MEETING
Tuesday, August 20, 2013 – 7:00 p.m.
City Council Chambers

Meeting Location
El Cerrito City Hall
10890 San Pablo Avenue, El Cerrito

Greg Lyman – Mayor

Mayor Pro Tem Janet Abelson
Councilmember Jan Bridges

Councilmember Rebecca Benassini
Councilmember Mark Friedman

ROLL CALL

Present: Councilmembers Abelson, Benassini, Friedman and Mayor Lyman.

Absent: Councilmember Bridges.

7:00 p.m.

CONVENE CITY COUNCIL MEETING

Mayor Lyman convened the regular City Council meeting at 7:05 p.m.

1. PLEDGE OF ALLEGIANCE TO THE FLAG OR OBSERVATION OF MOMENT OF SILENCE was led by Mayor Pro Tem Abelson.

2. COUNCIL / STAFF COMMUNICATIONS

Councilmember Benassini stated that El Cerrito is one of nine cities that recently adopted a more streamlined checklist based solar permit process and also noted that the City's solar fees are among the lowest among the same nine cities. The Contra Costa Library will convene a town hall meeting on September 9 at 7:00 p.m. in City Hall to receive input on its strategic plan. On August 25 from 1-4 p.m., the City is hosting a three mile walking tour of the northern hills of El Cerrito in which residents can provide input on how bicycle and pedestrian pathways can be improved. Councilmember Benassini also reported that some El Cerrito Firefighters along with other firefighters in Contra Costa County have been deployed to Stanislaus County to help with fire fighting and wished them well.

3. ORAL COMMUNICATIONS FROM THE PUBLIC

Tom Panas, El Cerrito, stated that he Library is encouraging the public to sign up for the Library Strategic Plan Town Hall meeting on the city's website or through the County's website. Mr. Panas encouraged all to engage fully in the creative process when considering a new library and break the bonds of conventional thinking and library planning.

Ralph Boniello, El Cerrito, invited all to participate in a work party at Creekside Park on Saturday, August 24 at 10:00 a.m. to help pick up trash and remove invasive plants and to also participate in other ongoing creek related projects.

4. PRESENTATIONS – None.

5. ADOPTION OF THE CONSENT CALENDAR – Item Nos. 5A through 5H

Moved, seconded (Abelson/Benassini; Ayes – Councilmembers Abelson, Benassini, Friedman and Mayor Lyman; Noes – None; Absent – Councilmember Bridges) and carried to approve Consent Calendar Item Nos. 5A through 5F and 5H as indicated below. Item No. 5G was removed from the Consent Calendar at the request of the City Attorney and voted on separately as indicated below.

A. Minutes for Approval

Approve the July 16, 2013, 2013 Special City Council and July 16, 2013 Concurrent City Council/Public Financing Authority and Pension Trust Board meeting minutes.

Action: Approved minutes.

B. City Classification Plan Amendments

Adopt a resolution amending the City's Classification Plan to establish the class of Community Service Officer with an initial salary range of \$4,110 to \$4,902 per month and approve a side letter of agreement between the City and the Police Employees Association to include the classification of Community Service Officer.

Action: Adopted Resolution No. 2013–39A.

C. Reject Bids for Ohlone Greenway Natural Area and Rain Garden Project – City Project No. C–3067

Adopt a resolution for the Ohlone Greenway Natural Area and Rain Garden Project, City Project No. C–3067 approving the following actions:

1. Grant the request for relief of bid from Star Construction;
2. Reject the two remaining submitted bids; and
3. Authorize City Staff to proceed with value engineering measures and re-advertise the project for public bid.

Action: Adopted Resolution No. 2013–40.

D. 2013 Street Improvement Program – City Project No. C–3072

Adopt a resolution approving the following actions:

1. Approve plans for the 2013 Street Improvement Program Project, City Project No. C–3072; and
2. Authorize the City Manager to award a contract, contingent on successful negotiations with VSS International, Inc. (the lowest responsible bidder for the project), for a deductive change order after undergoing a value engineering process which is not inconsistent with the revised budget for the 2013 Street Improvement Program, City Project No. C–3072.

Action: Adopted Resolution No. 2013–41.

E. Establish School Zone Speed Limit on Lincoln Avenue 500 Feet West of Ashbury Avenue

Adopt a resolution establishing a school zone speed limit of 15 miles per hour (mph) on Lincoln Avenue 500 feet west of Ashbury Avenue.

Action: Adopted Resolution No. 2013–42.

F. Consultant Services Agreement with Goldfarb & Lipman LLP for Legal Services

Adopt a resolution authorizing the City Manager or his designee to execute a consultant services agreement with Goldfarb & Lipman LLP for legal services related to the implementation of AB1x26 and the City's affordable housing program.

Action: Adopted Resolution No. 2013-43.

G. Authorize Short Term Cash Loan from Municipal Services Corporation

Adopt a resolution authorizing the City to enter into a short-term no interest cash loan from the Municipal Services Corporation.

Action: Removed from the Consent Calendar at the request of the City Attorney. Moved, seconded (Friedman/Benassini; Ayes – Councilmembers Abelson, Benassini, Friedman and Mayor Lyman; Noes – None; Absent – Councilmember Bridges) and carried to adopt Resolution No. 2013-44.

H. Local Agency Investment Fund (LAIF) Authorization

Adopt a resolution authorizing the City Manager and Finance Director/City Treasurer to conduct investment transactions with the Local Agency Investment Fund (LAIF).

Action: Adopted Resolution No. 2013-45.

6. PUBLIC HEARING

Appeal of the Planning Commission's Approval of a Conditional Use Permit to Allow a Wireless Telecommunications Facility on an Existing Utility Pole Near 851 Seaview Drive

Conduct a public hearing and upon conclusion adopt a resolution denying an appeal of the Planning Commission's approval of a Conditional Use Permit to allow a wireless telecommunications facility on an existing utility pole near 851 Seaview Drive.

Councilmember Benassini reported that she received several emails addressed to the Council. Chon Jin Lee, one of the appellants, sent her detailed emails that provided ideas for alternatives to the project. Mr. Lee also provided information about how signals could be relayed on Moeser Lane and how AT&T could use some of the City's existing infrastructure to place their fiber optic along infrastructure in the hills or consolidate the antennae into a larger antennae. Mr. Lee also provided a number of images of other AES networks that could hide in lamp poles or other devices better than what the current proposal offers. Councilmember Benassini also received a number of comments from Mary Renfro who expressed concerns regarding CEQA and a full environmental analysis not being done. Ken Mintz, from AT&T, provided post-cards that support AT&T just before the meeting.

Presenters: Margaret Kavanaugh-Lynch, Development Services Manager, Sean Moss, Senior Planner and Sky Woodruff, City Attorney.

Applicant: Ken Mintz, External Affairs, and Matt Yergovich, AT&T. *Presentation and rebuttal.*

Appellant: Chong Jin Lee, El Cerrito. *Presentation and rebuttal.*

Mayor Lyman opened the public hearing. 13 speakers.

Diana Inchauspe, El Cerrito, spoke in opposition to the proposed antennae and stated that the AT&T project is ugly, may contribute to the deterioration of the landscape and would reduce property values. Ms. Inchauspe also cited a World Health Organization health study that

stated more research is needed and that the question regarding potential health risks is unresolved. Ms. Inchauspe urged the City Council to uphold the appeal and deny the project to give the City and AT&T more time to explore other options and provide the best solution to serve the community.

Paul Menkes, El Cerrito, spoke in opposition to the proposed antennae, primarily due to the obstruction of views and aesthetics. Mr. Menkes also stated that he is an AT&T customer who has a great signal at his house. Mr. Menkes urged the City Council to have AT&T come back with a different solution.

Judith Rosen, El Cerrito, spoke in opposition to the proposed antennae and raised issues regarding seismic safety, equity and aesthetics.

Alison Shimada, El Cerrito, stated that procedures and processes were not clear and stated that it is improper to proceed without all of the residents input. Ms. Shimada stated that she did not find any arguments for the antennae to be convincing to her, expressed other concerns with the proposed antennae and stated that the Council should represent the views of the residents.

Pamela Fingado, El Cerrito, asked the Council to deny use permits for the proposed AT&T project, reject the use of the utility pole for the antennae and uphold the appeal. Ms. Fingado explained that the Design Review Board had stated that the project did not support the visual aesthetics of the neighborhood and that alternatives should be considered. Ms. Fingado also stated that an environmental study on the safety of the poles during an earthquake needs to be performed.

William Fingado, El Cerrito, expressed concerns regarding seismic activity, the utility pole, and aesthetics of the antennae. Mr. Fingado stated that AT&T can do a better job on the location and design and that there are alternatives [to this project].

Mary K. Johansson, El Cerrito, expressed concerns with the proposed antennae, including noise, and stated that there has been poor communication about the antennae. Ms. Johansson asked that alternatives be looked at in other locations and suggested Huber Park as a possible location. She stated that she gets great AT&T reception in her house.

Paulina Lee, El Cerrito, stated that she bought her house within the past year and would not have purchased her home if she knew the view would be obstructed by the proposed antennae. Ms. Lee said she does not have a land line and relies on her existing cell coverage.

Mary Shaughnessy, El Cerrito, stated that she is an AT&T customer within Node 3. Ms. Shaughnessy also stated that she is an AT&T customer that has no problem with cell coverage. Ms. Shaughnessy stated that the antennae is not within the City's best interests and asked that the City develop a comprehensive plan for cell phone coverage.

David Zemanek, El Cerrito, spoke in opposition to the antennae and asked that AT&T find another solution. Mr. Zemanek stated that cell service is good, expressed concerns with view impacts and reduced property values. Mr. Zemanek asked that AT&T meet with the neighborhood to come up with a better solution and pay for an independent consultant.

Austin Roorda, El Cerrito, spoke in opposition to the antennae and asked that the potential benefit of placing services on Moeser Avenue be looked at.

Mary Renfro, El Cerrito, stated that the City Council must decide whether the applicant has convinced the Council that there is a significant gap in coverage and that [the AT&T antennae proposal] is the least intrusive means. Ms. Renfro also stated that M2 coverage could be employed on an individual basis. Ms. Renfro asked the Council to grant the appeal, deny the project, and if the Design Review Board decision is appealed expect to see the

neighborhood back before the Council again.

Mardi Veiluva, Walnut Creek, reported on an AT&T appeal in Walnut Creek that she participated in and urged the Council to require an independent gap analysis.

Moved, seconded (Friedman/Benassini; Ayes – Councilmembers Abelson, Benassini, Friedman and Mayor Lyman; Noes – None; Absent – Councilmember Bridges) and carried to close the public hearing.

Action: Moved, seconded (Friedman/Benassini; Ayes – Councilmembers Abelson, Benassini, Friedman and Mayor Lyman; Noes – None; Absent – Councilmember Bridges) and carried to adopt Resolution No. 2013–46 to deny the appeal and as further amended by Councilmember Friedman to include the following conditions: 1) A consultant selected by the City shall perform a gap analysis that will be paid for by AT&T; 2) For the first five years that the facility is operating, AT&T shall provide an annual report from an independent consultant analyzing whether the facility complies with operational requirements; 3) The pole will be inspected jointly by AT&T and the City. If the pole is found to be inadequate by either party, it will be replaced at AT&T's expense; 4) A noise report shall be conducted that is satisfactory to City Staff; and 5) AT&T shall present to the Design Review Board, alternative design plans for the existing proposed pole as well as an alternative that would reach AT&T's coverage objectives and allow for the possibility of a brand new pole. The motion was further amended by Mayor Lyman to modify the 8th finding in the resolution as follows:

8. The applicant investigated alternative locations including the adjacent existing telephone poles like Blake Garden, Huber Park and the First Unitarian Church of Berkeley and Kensington. At all of these alternative sites it was either not feasible to meet the applicant's coverage objectives or the sites were more visible. The California Public Utilities Commission, through General Order 95, requires a minimum separation requirement of six feet between antennas and existing electrical lines. It is therefore not feasible to lower the elevation of the proposed antennas and meet the applicant's coverage objective. operates wireless telecommunications facilities at El Cerrito Plaza and 6830 Stockton Avenue. The topography of this portion of El Cerrito provides coverage challenges. The proposed facility will extend the existing utility pole to the minimum height required for separation from existing utilities and to provide coverage.

7. POLICY MATTERS

A. Single Use Bag Ordinance

Introduce by title, waive any further reading, and approve an ordinance amending the El Cerrito Municipal Code by adding Chapter 8.22 – El Cerrito Single-Use Bag Ordinance.

Presenter: Garth Schultz, Operations and Environmental Services Manager.

Speakers: Maya James, spoke in support for the proposed ordinance.

Ralph Boniello, described the impacts of plastic on the environment, expressed support for the proposed ordinance and the Council's leadership on this issue in Contra Costa County and the State of California.

Mayor Lyman combined the presentation and public comment on Item Nos. 7(A) and 7(B). Action on both items were taken up by separate motion as indicated below.

Action: Moved, seconded (Friedman/Abelson; Ayes – Councilmembers Abelson, Benassini, Friedman and Mayor Lyman; Noes – None; Absent – Councilmember Bridges) and carried to adopt first reading of Ordinance No. 2013–03. *Adoption of the ordinance is scheduled for consideration on September 17, 2013.*

B. Food Ware Ordinance

Introduce an ordinance, waive any further reading, and approve an ordinance amending the El Cerrito Municipal Code by adding Chapter 8.24 – El Cerrito Food Ware Ordinance.

Presenter: Garth Schultz, Operations and Environmental Services Manager.

Action: Moved, seconded (Friedman/Abelson; Ayes – Councilmembers Abelson, Benassini, Friedman and Mayor Lyman; Noes – None; Absent – Councilmember Bridges) and carried to adopt first reading of Ordinance No. 2013–04. *Adoption of the ordinance is scheduled for consideration on September 17, 2013.*

C. Annual League of California Cities Conference Resolutions

Confirm Mayor Pro Tem Abelson's appointment as voting delegate at the 2013 League of California Cities Annual Conference and Councilmember Friedman as the alternate, and provide direction to Mayor Pro Tem Abelson regarding the following 2013 League of California Cities Conference resolutions:

1. Water Bond Funds [sponsored by Los Angeles County]
League Recommendation: Approve
2. Public Safety Realignment [Public Safety Committee]
League Recommendation: Approve

Action: Moved, seconded (Abelson/Friedman; Ayes – Councilmembers Abelson, Benassini, Friedman and Mayor Lyman; Noes – None; Absent – Councilmember Bridges) and carried to support the League of California Cities position on the Water Bond Fund and Public Safety Re-alignment resolutions and confirm the appointment of Mayor Pro Tem Abelson as voting delegate at the annual conference.

8. COUNCIL ASSIGNMENTS/LIAISON REPORTS

All reports were held over to the September 17, 2013 City Council meeting.

SUPPLEMENTAL COMMUNICATIONS AND REPORTS

Item No. 6 Appeal of the Planning Commission's Approval of a Conditional Use Permit to Allow a Wireless Telecommunications Facility on an Existing Utility Pole Near 851 Seaview Drive

1. Comments on DAS Antennae – *Submitted by Jon Celesia.*
2. Wireless facilities appeal August 20 – *Submitted by Mary Renfro, El Cerrito.*
3. Please, no cell antennae or towers in EC residential areas – *Submitted by Steve Brown, El Cerrito.*
4. I support cell antennas in the EC Hills – *Submitted by Michael Emery, El Cerrito.*
5. No DAS wireless antennae in El Cerrito – *Submitted by Karol Doi, El Cerrito.*
6. Wireless antennae – *Submitted by Jacqueline Lasahn.*
7. Verizon/AT&T cell tower buzz – *Submitted by Al Miller.*
8. Objection to DAS wireless antennae in El Cerrito – *Submitted by Kathleen Meadows, El Cerrito.*
9. Opposition to DAS wireless antennae in El Cerrito – *Submitted by Jackie Olson, El Cerrito.*
10. Objection to DAS wireless antennae in El Cerrito – *Submitted by Ayako Takamatsu, El Cerrito.*
11. Re Cell phone tower on Colusa and elsewhere in El Cerrito – *Submitted by Joshua Whitmer and Rebecca Butler, El Cerrito.*
12. Protection from cell towers – *Elena, El Cerrito.*

Item No. 7(A) Single Use Bag Ban Ordinance (and single use ban and styrofoam combined)

13. Comments supporting the single use bag ban – *Submitted by Timothy James, Manager, Local Government Relations, California Grocers Association.*
14. Forwarded webpage regarding support for proposed single-use bag and food ware ordinances – *Submitted by Citizens for East Shore Parks.*
15. Support single use bag and foodware ordinance – *Submitted by Mark Murray, Californians Against Waste.*
16. Opposition to proposed plastic bag ordinance – *Submitted by Daniel Bruhn.*
17. Opposition to proposed single use bag ordinance – *Submitted by Tim Montgomery, El Cerrito.*
18. Support City action to ban plastic bags and require stores charge for paper – *Submitted by Samantha Meyer, Zero Waste Coordinator, Clean Water Action.*
19. Support for Single-use plastic bag and expanded polystyrene food container ban in El Cerrito – *Submitted by Anthony DeCicco, Education Director, Golden Gate Audubon Society.*
20. Single-use bag ordinance and food ware ordinance – *Submitted by Patricia Jones, Executive Director, Citizens for East Shore Parks.*
21. Support for draft single-use bag ordinance and draft food ware ordinance – *Submitted by Susan Schwartz, President, Friends of Five Creeks.*
22. Support for ban on plastic bags and Styrofoam food containers – *Submitted by Norman LaForce, Chair, Sierra Club West County Group.*

Item No. 7(B) Food Ware Ordinance

23. Opposition to proposed ordinance to prohibit the use of expanded polystyrene food ware – *Submitted by Javier M. Gonzalez, Director of Local Government Affairs, California Restaurant Association.*
24. Oppose polystyrene foodservice ban – *Submitted by Ryan Kenny, Manager, State Affairs, American Chemistry Council.*
25. Support City action to ban polystyrene foam food packaging – *Submitted by Samantha Meyer, Zero Waste Coordinator, Clean Water Action.*
26. *See also, Item 7(A) above.*

SUPPLEMENTAL COMMUNICATIONS AND REPORTS II

(Submitted at the August 20, 2013 City Council meeting)

Item No. 6 Appeal of the Planning Commission's Approval of a Conditional Use Permit to Allow a Wireless Telecommunications Facility on an Existing Utility Pole Near 851 Seaview Drive

27. Petition to the City of El Cerrito Planning Commission – *Submitted by Chong Jin Lee, Appellant.*
28. Powerpoint presentation – *Submitted by Chong Jin Lee, Appellant.*
29. Re: Wireless facilities appeal August 20: Administrative Record Part 2 – *Submitted by Mary Renfro, El Cerrito.*
30. Two photos and two maps – *Submitted by Judith Rosen, El Cerrito.*
31. New Cingular Wireless PCS, LLC response to appeal from the Planning Commission's approval of Development Review Application No. PL13-0006 DAS Node in public right-of-way near 851 Seaview Drive – *Submitted by John di Bene, AT&T.*

Item No. 7(A) Single-Use Bag Ordinance and 7(B) Food Ware Ordinance

32. Vendors of Compostable or Recycle Food Service Ware and Bags – *Submitted by Ralph Boniello, El Cerrito.*

Other:

33. Comments on Contra Costa Library strategic planning process and ideas for the library – *Submitted by Tom Panas, El Cerrito.*

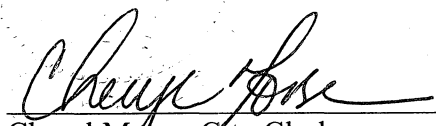
Moved, seconded (Friedman/Benassini; Ayes – Councilmember Abelson, Benassini, Friedman and Mayor Lyman; Noes – None; Absent – Councilmember Bridges) and carried to extend the meeting to 11:00 p.m.

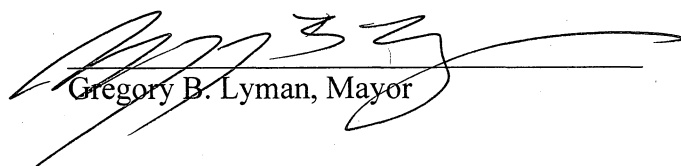
Moved, seconded (Benassini/Friedman; Ayes – Councilmember Abelson, Benassini, Friedman and Mayor Lyman; Noes – None; Absent – Councilmember Bridges) and carried to extend the meeting to 11:10 p.m.

Moved, seconded (Abelson/Friedman; Ayes – Councilmember Abelson, Benassini, Friedman and Mayor Lyman; Noes – None; Absent – Councilmember Bridges) and carried to extend the meeting to 11:20 p.m.

9. ADJOURNED CITY COUNCIL MEETING at 11:16 p.m.

This is to certify that the foregoing is a true and correct copy of the minutes of the regular meeting of August 20, 2013 as approved by the El Cerrito City Council.


Cheryl Morse, City Clerk


Gregory B. Lyman, Mayor