

REGULAR MEETING OF THE
CONCORD CITY COUNCIL
CITY COUNCIL CHAMBER
1950 PARKSIDE DRIVE
CONCORD, CALIFORNIA
TUESDAY, SEPTEMBER 5, 2017

The Concord City Council met in a regular meeting in the City Council Conference Room located at 1950 Parkside Drive at 5:30 p.m. on Tuesday, September 5, 2017, with Mayor Hoffmeister presiding. The meeting was recessed and immediately reconvened in a closed session under Public Employee Appointment pursuant to Government Code Section 54957(b)(1), Title: Community and Economic Development Director and Conference with Real Property Negotiators pursuant to Government Code Section 54956.8 Property: Area within Concord Community Reuse Plan, Agency Negotiators: Valerie Barone, City Manager; Guy Bjerke, Director of Community Reuse Plan, Negotiating parties, Alan Lee, Department of the Navy, Under negotiation: Price, Terms of Payment.

The meeting recessed at 6:26 p.m. to reconvene in regular session in the Council Chamber.

The Concord City Council met in a regular meeting in the Council Chamber located at 1950 Parkside Drive at 6:30 p.m. on Tuesday, September 5, 2017, with Mayor Hoffmeister presiding. The pledge of allegiance was led by Councilmember Leone. Minutes follow in abbreviated form per Resolution 3361 and Council Minutes of September 26, 1966.

ROLL CALL

COUNCILMEMBERS PRESENT: Edi Birsan, Ron Leone, Tim McGallian, Carlyn Obringer, Laura Hoffmeister

STAFF PRESENT: Valerie Barone, City Manager; Susanne Brown, City Attorney; Kathleen Trepa, Assistant City Manager; Patti Barsotti, City Treasurer; Joelle Fockler, City Clerk; Guy Swanger, Chief of Police; Steve Voorhies, Director of Parks and Recreation; Justin Ezell, Director of Public Works; Jeff Lewis, Director of Information Technology; John Montagh, Economic Development Manager; Michael Cass, Principal Planner; Kevin Marstall, Senior Civil Engineer; Ali Hatefi, Associate Civil Engineer; Bernard Enrile, Associate Civil Engineer, Jeff Rogers, Infrastructure Maintenance Manager; Jeff Roubal, Fleet Manager, Bob Hardie, Facilities Maintenance Manager; Afshan Hamid, Senior Planner; Leslye Asera, Community Relations Manager

MEMBERS OF THE PUBLIC WHO ADDRESSED THE COUNCIL: Natalie; Joe Partansky, Concord; Daryl Bergman, Concord; George Fulmore, Concord; Silva Amico, Concord; William Colin, Concord; Carol Edgerton, Concord; Harmesh Kumar, Concord; Michelle McDermott, T-Mobile

PUBLIC COMMENT PERIOD

Natalie, spoke of banning smoking in apartments and parks and raising the legal age of smoking to 21.

Joe Partansky, Concord, invited the Council and the public to Diablo Valley College on Wednesday, September 6, 2017, at 4 p.m. for a program about US - Russia relations and truth and accountability.

Daryl Bergman, Concord, spoke of the crime, lack of parking, overcrowding, and lack of infrastructure on Monument Boulevard and asked the City to form a Monument Boulevard Task Force.

George Fulmore, Concord, spoke of Deferred Action for Childhood Arrivals (DACA) status, and requested that the City develop a statement in opposition of President Trump's decision regarding DACA. Mr. Fulmore presented a list of his top ten Council priorities.

Silvia Amico, Concord, spoke of drug dealers, addicts, homeless, and prostitution rings on Meadow Lane in Concord, and the lack of response by the Concord Police Department.

William Colin, Concord, spoke of his concern about the President's DACA rescission, and stated that even with a six month delay, the rescission has created a heightened concern for students in the area. He requested assistance to help the students to feel safe.

Carol Edgerton, Concord, requested that the Council release a statement in support of DACA. She spoke of concern about illegal dumping, crowding, parking, and too much low income housing in the Monument area.

PRESENTATIONS

DANIEL C. HELIX AWARD OF EXCELLENCE - Rob Schweitzer

Mayor Hoffmeister introduced Justin Ezell, Director of Public Works, who presented Rob Schweitzer, Facilities Maintenance Technician, the Daniel C. Helix Award of Excellence.

UPDATE ON POLICE DEPARTMENT ACTIVITIES

Mayor Hoffmeister introduced Guy Swanger, Chief of Police, who gave a presentation on Police Department Activities for the period January 2016 – June 2017.

Following questions by the Council, Mayor Hoffmeister opened a public comment period.

Joe Partansky, Concord, stated that even though presentations are non-action items, the public should be made aware that they can comment on presentations and spoke of iphones not working on 911 calls due to not being able to zero in on the location of the caller.

Harmesh Kumar, Concord, stated that mental illness is an issue at the national level, and the City needs to address it at a local level.

Silvia Amico, Concord, stated that she has an eternal homeless encampment every day in her complex.

George Fulmore, Concord, spoke of a designated representative to the Police Department from the Monument community.

Natalie, questioned if the police department participates in Urban Shield, and if so, what they get out of it.

CONSENT CALENDARAPPROVAL OF MEETING MINUTES – May 23 and June 3, 2017

The minutes from the May 23, 2017, meeting were pulled from consideration by staff.

Motion was made by Obringer and seconded by Birsan to approve the June 3, 2017, meeting minutes. Motion passed by unanimous vote of the Council.

ACCEPTANCE OF IMPROVEMENTS – Phase 1 of the Downtown Sidewalk, Curb, and Gutter Improvement Project, Project No. 2374

Motion was made by Obringer and seconded by Birsan to accept improvements for Phase 1 of the Downtown Sidewalk, Curb, and Gutter Improvements Project, Project No. 2374, and direct the City Clerk to file a Notice of Completion. Motion passed by unanimous vote of the Council.

APPOINTMENT OF TWO MEMBERS TO THE OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY OF THE FORMER CONCORD REDEVELOPMENT AGENCY – Moses Sullivan and Ryan Lenhardt

Motion was made by Obringer and seconded by Birsan to appoint Moses Sullivan and Ryan Lenhardt (Local 29 Representative) to the Oversight Board for the Successor Agency to the Redevelopment Agency of the City of Concord. Motion passed by unanimous vote of the Council.

ADOPT ORDINANCE No. 17-9 – Subdivisions

Motion was made by Obringer and seconded by Birsan to adopt Ordinance No. 17-9 entitled, "An Ordinance Repealing and Replacing Concord Municipal Code Title 17 (Subdivisions)." Ordinance No. 17-9 was introduced on July 11, 2017, by reading of the title only and waiving further reading. Motion passed by unanimous vote of the Council.

ADOPT RESOLUTION No. 17-68 – Litter Abatement Activities

Motion was made by Obringer and seconded by Birsan to adopt Resolution No. 17-68 entitled, "A Resolution to Accept Funding under California Beverage Container Recycling and Litter Abatement City/County Payment Program and Allocate the Funds to Beverage Container Recycling and Litter Abatement Activities within the City of Concord." Motion passed by unanimous vote of the Council.

AWARD OF CONTRACT AND APPROVAL OF PROFESSIONAL SERVICES AGREEMENT – Operational Improvements Along Parallel Arterials, Project No. 2356

Motion was made by Obringer and seconded by Birsan to award a construction contract in the amount of \$2,812,879 to Ray's Electric and authorize staff to utilize the available project contingency for contract change orders up to 10 percent of the contract amount; approve a Professional Services Agreement with Swinerton Management and Consulting in the amount of \$159,200 for construction management services and \$10,000 for materials testing services for a not to exceed amount of \$169,200; authorize the Mayor to execute the contract in a form acceptable to the City Attorney and the City Manager to execute the Agreement in a form acceptable to the City Attorney; and approve a \$325,000 budget transfer from Pavement Management Annual Program Holding Account – Measure J, Project No. 2157. Motion passed by unanimous vote of the Council.

REJECT SOLE BID – Downtown Sewer and Streetscape Improvements Phase 2B, Project No. 2404

Motion was made by Obringer and seconded by Birsan to reject the sole bid submitted by Ghilotti Bros, Inc. of San Rafael for the Downtown Sewer and Streetscape Improvements Phase 2B, Project No. 2404; and direct staff to re-advertise the project for bids. Motion passed by unanimous vote of the Council.

ADOPT RESOLUTION NO. 17-65 – Used Oil Collection Programs

Motion was made by Obringer and seconded by Birsan to adopt Resolution No. 17-65 entitled, "A Resolution Accepting California Department of Resources Recycling and Recovery Used Oil Payment Funding and Allocating Funds to the City of Concord Oil Collection Programs." Motion passed by unanimous vote of the Council.

AWARD OF PURCHASE – Five Police Motorcycles

Motion was made by Obringer and seconded by Birsan to award the purchase of five police motorcycles in the amount of \$123,189.95 to Long Beach BMW Motorcycle, Long Beach, California. Motion passed by unanimous vote of the Council.

APPROVAL OF AGREEMENT FOR PROFESSIONAL SERVICES – Citywide Bridge Repair Program Group 2 Bridges, Project No. 2371

Motion was made by Obringer and seconded by Birsan to approve an Agreement for Professional Services in the amount of \$278,148 with Ghirardelli Associates to provide construction management and related services for Citywide Bridge Repair Program Group 2 Bridges, City Project No. 2371, Federal Project No. BPMP 5135 (049); and authorize the City Manager to execute the agreement, subject to approval of the City Attorney. Motion passed by unanimous vote of the Council.

ADOPTION OF RESOLUTION NOS. 17-66 and 17-67 – Concord Tourism Improvement District

Motion was made by Obringer and seconded by Birsan to adopt Resolution No. 17-66 entitled, "A Resolution Declaring its Intention to Renew the Concord Tourism Improvement District (CTID) and Fixing the Time and Place of a Public Meeting and a Public Hearing Thereon and Giving Notice Thereof," and Resolution No. 17-67 entitled, "A Resolution Requesting Consent of the County of Contra Costa to Renew the Concord Tourism Improvement District." Motion passed by unanimous vote of the Council.

The Public Hearing on Wireless Communications Facilities for New & Substantially Changed Facilities was heard at this time.

PUBLIC HEARING

INTRODUCTION OF ORDINANCE NO. 17-11 – Wireless Communications Facilities for New & Substantially Changed Facilities

Senior Planner Afshan Hamid reported that the item before the Council was to introduce Ordinance No. 17-11 to amend the Development Code by repealing and replacing Chapter 18.205, Wireless Communications Facilities for New and Substantially Changed Facilities, adding Chapter 18.207, Wireless Communications Facilities for Eligible Facilities Requests, and amending other sections of the Development Code and Municipal Code to bring the regulations into compliance with Federal and State legislation by reading of the title only and waiving further reading.

Ms. Hamid stated that over the past several months, representatives from IT, Engineering, City Attorney, Public Works, and Planning have been working on the process. She reviewed the public interaction process regarding the topic and introduced Tripp May, Telecom Law Firm, PC, who presented an overview of existing law.

Mr. May explained that a major new feature in the proposed ordinance is how it addresses small cells installed in the public rights-of-way. He noted that the proposed ordinance aims to channel facilities to the most appropriate support structures in the areas the carriers need to deploy them, strongly encourage the carriers to deploy the best and least impactful equipment available, and require all such facilities to adopt the best possible concealment available given the location and equipment.

Mr. May clarified that the City cannot explicitly or effectively prohibit wireless services or wireless facilities; must allow the provider to close a significant gap in service through the least intrusive means; cannot unreasonably discriminate between functionally equivalent services or providers; cannot regulate based on environmental effects from RF emissions to the extent such emissions comply with FCC regulations. He reported that the City must act on wireless applications with a reasonable time given scope and project type – FCC Shot Clock Rules; and the City must issue a written decision based on substantial evidence in the written record.

Mr. May explained that, according to the Public Utilities Code, municipalities cannot “surrender” police powers to the CPUC to regulate the relationships between the public and utilities. In addition, Section 7901 grants telephone corporations a state-wide franchise to access use the public rights-of-way to the extent necessary to provide telephone services, providers cannot incommode the public’s use, and preserves aesthetic control over ROW facilities. He noted that Section 7901.1 preserves reasonable time, place, and manner regulations over how telephone corporation’s access and use the ROW, and regulations must be applied equally to all providers.

He reported that state and local governments may not deny and shall approve any collocation or modification request for an existing wireless tower or base station so long as it does not cause a substantial change in its physical dimensions. He confirmed that the FCC defines the terms, and the City cannot adopt different standards. Section 6409 preempts zone height, aesthetic, and legal nonconforming regulations but not general health and safety. In addition, permits are deemed granted if the City fails to act in time.

Mr. May specified that Government Code Section 65964.1 states that California law “deems approved” any application for a new or substantially changed wireless site when the city fails to approve or deny the application within the applicable FCC shot clock timeframe; the applicant has provided all public notices required for the application; the applicant has provided notice to the city that the application is deemed approved; and 30 days have passed since the notice date.

In summary, Mr. May stated that SB 649 precludes discretion over “small cells” on new poles, existing poles, and other structures within the public rights-of-way and on private property; requires ministerial approvals (no CEQA); requires cities to lease space on poles or similar facilities and private property.

Following questions by the Council, Mayor Hoffmeister opened a public comment period.

Michelle McDermott, T-Mobile, spoke of concerns of onerous application requirements and pre-submittal procedures, open-ended application requirements, unreasonable delay to obtain a submittal appointment, and burdensome ongoing obligations and restrictions on location.

Mayor Hoffmeister closed the public comment period.

Following clarifying questions by the Council, a motion was made by McGallian and seconded by Birsan introduce Ordinance No. 17-11 entitled, "An Ordinance to Repeal and Replace Development Code Chapter 18.205, add Chapter 18.207, and Amending other Sections of the Development Code and the Municipal Code, in Connection with Wireless Communication Facilities" amending the Ordinance text to state "up to a maximum of 15 days", adding Section 18.205.030(B)(6) to state "Wireless facilities that are micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with applicable codes by or for a communications services provider authorized to occupy the rights-of-way, " and adding a new definition for micro wireless facility at Section 18.205.020 to state "Micro wireless facility' means a wireless facility having dimensions no larger than 24 inches in length, 15 inches in width, and 12 inches in height and an exterior antenna, if any, no longer than 11 inches" by reading of the title only and waiving further reading. Motion passed by unanimous vote of the Council.

Mayor Hoffmeister called a recess at 9 p.m. The meeting resumed at 9:15 p.m.

CONSIDERATION ITEMS

INTERVIEW PROCESS FOR UNSCHEDULED ELECTED, AND APPOINTED, CITY OFFICE VACANCIES

City Attorney Susanne Brown presented a report stating that the item addresses the process for unscheduled elected and appointed City office vacancies. Ms. Brown reported that at its March 28, 2017, meeting, the City Council directed the Council's Committee on Policy Development and Internal Operations (PD&IO) to explore application and interview parameters for appointing members of the community to advisory bodies or to fill elected office vacancies, and that the PD&IO met on June 14, 2017, to discuss those issues. She noted that Concord follows a typically standard application and interview process for unscheduled vacancies rather than calling a special election, and the application and interview process includes an announcement of the application period and eligibility requirements, receipt of applications and items required by state law and the City Clerk, and interviews applicants at a public meeting. She conveyed that the item before the Council focused on the interview process. Ms. Brown explained that the Council typically speaks as one body, and in that vein, the City Council agrees upon a group of questions and asks the same questions of each applicant. She asserted that she reviewed the various recommended approaches, and based on the PD&IO discussions, stated that staff does not recommend changes to Policy No. 89, Council Appointments to Boards and Commissions.

Mayor Hoffmeister stated that in its discussions the PD&IO did not reach consensus on four areas: whether the public may suggest questions to be asked of candidates, whether Councilmembers may submit their own supplemental questions to candidates for written response in advance of the interviews, and whether Councilmembers must reach consensus on the questions to be asked or whether Councilmembers may craft their own questions, so long as they are legally permissible, and having a vacancy filled by appointment of the next runner up from the last election receiving at least 70 percent of the vote.

Mayor Hoffmeister opened a public comment period, and upon receiving no public testimony, closed the public comment period.

The Council discussed questions posed to candidates. Vice Mayor Birsan felt strongly that any Councilmember should be able to ask a candidate any question s/he deemed appropriate, as long as they are legal questions. Councilmembers Leone, McGallian, had no problem with the Vice Mayor, as a citizen of Concord, sending questions to candidates but felt that consensus should be reached on questions posed at a public forum.

Councilmember Obringer noted that Vice Mayor Birsan was able to send out questions to candidates during the last application and interview process, and there are no recommended

changes prohibiting him from doing that in the future. She supported standardized questions posed by the Council as a team searching for another member of the team.

Vice Mayor Birsan stated his opposition to three members of the Council being able to override a question that one of the Councilmembers proposes to ask. He requested advice from Counsel, to which Ms. Brown replied that a Councilmember is one member of a five member body that acts together as one. Certain individual rights are lost when sitting at the dais acting as a member of the body. If the Council is deciding on a group of questions, it is a Council decision, not an individual decision.

Motion was made by McGallian and seconded by Obringer that the City continue with its current practice and adopt no specific approach at this time. Motion passed by the following vote of the Council:

AYES: Leone, McGallian, Obringer, Hoffmeister NOES: Birsan ABSENT: None

PROPOSED REVISIONS TO POLICY AND PROCEDURE NO. 2, CITY COUNCIL MEETING PROCEDURES

City Attorney Susanne Brown presented a report, stating that the Council was being requested to consider proposed revisions to Policy and Procedure No. 2, City Council Meeting Procedures, switching from Robert's Rules of Order to a modified version of Rosenberg's Rules of Order; a change to the length of the mayoral term, and the establishment of a mayoral/vice mayoral rotation process.

Ms. Brown advised that staff recommended considering the Council consider the report and provide any additional direction; adopt the revised Policy and Procedure No. 2 provided as Attachment No. 1; switch from Robert's Rules of Order to a modified version of Rosenberg's Rules of Order provided as Attachment 2; provide direction on the length of the mayoral term and mayoral/vice mayoral rotation process.

Mayor Hoffmeister conveyed that the PD&IO agreed upon changes to Policy and Procedure No. 2, Section 2.4 and its subsections, to permit a Councilmember who was on the majority side of a vote to call for a motion to reconsider at the same City Council meeting, and Section 4.42, Speaker Decorum, as presented. She noted the Committee did not reach consensus on Procedures Section, 5.1, Agenda Preparation; Section 8.1, Mayoral Term; potential new Sections 8.4 and 8.5, Mayoral and Vice Mayoral Rotation; and Section 3, Meeting Length.

Mayor Hoffmeister opened a public comment period, and upon receiving no public comment, closed the public comment period.

Motion was made by Birsan and seconded by McGallian to switch from Robert's Rules of Order to a modified version of Rosenberg's Rules of Order. Motion passed by unanimous vote of the Council.

Motion was made by McGallian and seconded by Birsan to revise Policy and Procedure No. 2, Section 3.1 to state, "No new items may be heard after 11 p.m. without a majority vote of the City Council. Motion passed by unanimous vote of the Council.

Motion was made by Birsan and seconded by Leone to add "Future Agenda Items" as a standing item on Council Meeting Agendas, and allow items be placed on "Future Agenda Items" upon a motion and a second. Motion failed by the following vote of the Council:

AYES: Birsan, Leone NOES: McGallian, Obringer, Hoffmeister ABSENT: None

Motion was made by McGallian and seconded by Obringer to keep Policy and Procedure No. 2 as written and not allow members of the public to place items on the agenda. Motion passed by the following vote of the Council:

AYES: Leone, McGallian, Obringer, Hoffmeister NOES: Birsan ABSENT: None

Motion was made by Obringer and seconded by McGallian to amend Policy and Procedure No. 2 Section 4.42, Speaker Decorum, to clarify that the City cannot prohibit remarks or conduct at its meetings unless those remarks or conduct actually disrupt the meeting. Motion passed by unanimous vote of the Council.

Motion was made by McGallian and seconded by Obringer to amend Policy and Procedure No. 2, Section 8.1, Mayoral Term, back to one year from the recently increased two year term. Motion passed by the following vote of the Council:

AYES: Leone, McGallian, Obringer, Hoffmeister NOES: Birsan ABSENT: None

Motion by Birsan to add Policy and Procedure No. 2, Section 8.5, Selection of the Vice Mayor, as follows: If there is only one candidate Councilmember for the office, that candidate will be selected automatically. If there is more than one candidate, then the senior Councilmember (in consecutive years or portions thereof) who has not yet been Vice Mayor will automatically become Vice Mayor. In the case of a seniority tie, then the Councilmember with the most votes in that election will be designated as the Vice Mayor. The outgoing Vice Mayor will automatically drop to the bottom of the seniority list that will be maintained by the City Clerk as a public document. The motion failed due to lack of a second.

Motion by Leone and seconded by McGallian to table Vice Mayoral Rotation until after the reorganization in December 2017. Motion passed by the following vote of the Council:

AYES: Leone, McGallian, Obringer, Hoffmeister NOES: Birsan ABSENT: None

Motion by McGallian and seconded by Obringer to approve amended Policy and Procedure No. 2 attached to the staff report as Attachment No. 1. Motion passed by unanimous vote of the Council.

CORRESPONDENCE

- a. Letter dated August 28, 2017, to Senator Harris from Mayor Hoffmeister
- b. Proclamation – Concord's Kung Fu Academy – August 5, 2017
- c. Commendation – International Support 4 Recovery – August 31, 2017
- d. Proclamation – Pain Awareness month – September 2017
- e. Proclamation – CAER "Shelter in Place Education Day" – November 1, 2017
- f. Proclamation – Monument First 5 Center Fifth Anniversary – August 25, 2017
- g. Comments dated September 5, 2017, submitted by Joe Partansky
- h. Comments submitted regarding the Shamrock Condos located at 1133 Meadow Lane
- i. Public Safety PowerPoint Presentation
- j. Wireless Ordinance Update PowerPoint Presentation
- k. Benched correspondence on Wireless Ordinance Item
- l. Additional PowerPoint Slides on Wireless Ordinance Item
- m. Benched email response dated July 26, 2017, to Hope Johnson from Vice Mayor Birsan


CLOSED SESSION REPORTS – none

COUNCIL AND STAFF REPORTS

Councilmember Leone requested Committee review of research on selling the naming rights for streets and parks. Vice Mayor Birsan agreed that the item should be discussed. The request did not have consensus of the Council.

Councilmembers shared information on events and activities in which they had participated since the last meeting and commented on items of interest.

By order of the Mayor, the meeting was adjourned at 10:45 p.m. in memory of those who lost lives in Hurricane Harvey.


LAURA M. HOFFMEISTER
MAYOR


JOELLE FOCKLER, MMC
CITY CLERK