



Public Works Department

Minutes

SPECIAL MEETING OF THE CITIZENS STREET OVERSIGHT COMMITTEE

Thursday, April 3, 2014, 7:00 p.m.
El Cerrito City Hall
Hillside Conference Room
10890 San Pablo Avenue

Call to Order at 7:00 p.m.

1. Roll Call

Present: Chair Thomas Miller, and Vice Chair Lynne Kessler, and Committee Members Al Miller, Elizabeth Ozselcuk, and Matthew Kelly

Absent: none

Other Attendees: Yvetteh Ortiz, Staff Liaison, Interim Public Works Director/City Engineer
Sky Woodruff, City Attorney
Lisa Malek-Zadeh, Finance Director
Amy Meyer, City's Consulting Auditor
Nicholas Arzio, Public Speaker
Bruce Yow, Public Speaker
Anne Ogonowski, Public Speaker

5. Review Fiscal Year 2012-1 Audit and Auditor's Report

(Committee agreed to take Agenda Item 5 before other items at the request of Chair T. Miller as he indicated it has been the past practice of the Committee to allow the finance staff and auditor to be first on the Agenda.)

Liaison Ortiz introduced City's Consulting Auditor, Amy Meyer; the City's new Finance Director, Lisa Malek-Zadeh; and the City Attorney, Sky Woodruff. Auditor Meyer reviewed excerpts from the City's Comprehensive Annual Financial Report (CAFR), Agenda Packet Pages 5-1 through 5-11. She indicated that the CAFR includes the audit of Street Improvement Fund, which is the fund the City use to expend Measure A funds, along with other City funds. She indicated that the as part of the CAFR the auditor issues it opinion as to whether the City's Financial Statements are fairly stated. She went on to explain that the Agreed Upon Procedures Report (AUPR), Pages 5-12 through 5-16, includes specific procedures to determine if the City is in compliance with required steps of the bond issuance. She indicated that this includes testing expenditures to check if they complied with allowable Measure A expenses. Auditor Meyer noted that some procedures are outdated because all the original bond proceeds have been expended and so the focus of the AUPR will change in future years to check if

expenditures are in accordance with restrictions. She explained that Page 5-10 shows revenues and expenditures, while Page 5-11 shows budget versus actuals. She also explained that funds are transferred for debt service on bonds and projects that were expended in other funds. She indicated that these transfers are described in detail in the Notes section of the CAFR. Finance Director Malek-Zadeh indicated that the CAFR Notes should be included as part of the Agenda Packet in the future because they contain more detailed information.

Auditor Meyer indicated that her firm tested expenditures for capital improvements and transfers out. The majority of the transfers are for debt service and also include pre-funding for projects that will be expended in FY14. She indicated they found expenditures to be in line with Council directives and with limitations of Measure A. There were no exceptions in report other than statements describing these items.

Chair T. Miller indicated that he understands that the City is bringing more revenues than expenditures and asked whether there is any reason why excess could not be used to pay off bonds early or save for maintenance of streets.

Committee Member A. Miller commented that the funds that can be accumulated for maintenance of streets are already being used for that purpose. Chair T. Miller expressed his disagreement and indicated that staff is going afield to use Measure A funds. Committee Member A. Miller inquired whether Chair T. Miller is saying that money being spent on projects not approved by City Council. There is discussion as to whether staff is following Council direction. Committee Member Kelly indicated that he understands the Committee is looking to verify that funds are used as intended by Measure A, so does not understand why there is discussion on whether funds should be banked.

Committee Member A. Miller inquired regarding revenues on Page 5-8, and whether he is correct that there are funds other than Measure A funds in the Street Improvement Fund. Auditor Meyer, indicated that, yes there is grant money but it is on a reimbursement basis. She indicated that the only cash funds are the moratorium fees and the restricted funds must be used first. Committee Member A. Miller indicated that he understands the charge of the Committee is to review and check if Measure A funds have been used appropriately and does not know how one can tell the source of the money. Auditor Meyer indicated that cash in the fund is only from Measure A and moratorium fees.

Committee Member Kessler inquired about transfers. Liaison Ortiz indicated most is for debt service and other is for the Central and Liberty Project as shown in September 2013 package.

Committee Member A. Miller and Chair T. Miller both indicated that the Committee should not have to review use of moratorium fees. City Attorney Woodruff indicated that the City chose to put moratorium fees in the Street Improvement fund because they are for similar purposes.

Committee Member A. Miller, inquired regarding Page 5-13, Paragraph 2A, which indicates that the auditor reviewed the listing of City Council designated projects. Auditor Meyer indicated that they are in the City's budget book. Liaison Ortiz indicated that the list of projects has previously been provided to the Committee. Committee Member Kessler indicated she does not remember an itemized listing of projects. Committee Member A. Miller indicated review is difficult because time elapsed between previous meetings of the Committee.

Committee Member A. Miller inquired about the meaning, in Paragraph 2b, of “Request of the City”. Auditor Meyer indicated that because there are no bond proceeds at this time, none were filed.

Committee Member A. Miller inquired regarding Page 5-15, Paragraph 5, if the revenues mentioned are only generated by Measure A tax. Auditor Meyer responded in the affirmative.

Liaison Ortiz summarized the difference between the unaudited revenues and expenditures in September 2013 and audited ones being presented today. There is a difference of about \$56,770 in additional revenue and \$150,000 of additional capital outlay for Potrero Avenue expenses that were incorrectly charged to another project and subsequently correctly charged to the Annual Paving project. Expenditures were related to paving, curb and gutter work.

Finance Director Malek-Zadeh and Auditor Meyer left the meeting at approximately 7: 30 PM.

Liaison Ortiz indicated that staff is requesting review and approval of the annual report to City Council, and that a draft is provided on Page 5-17 for the Committee’s consideration.

Action taken: Moved and seconded (A. Miller/Kelly) that the Committee approve and sign the annual report as indicated on Page 5-17 or change as needed to get approval of the Committee.

AYES: Committee Members A. Miller, Ozselcuk and Kelly

NOES: Chair T. Miller and Vice Chair Kessler

ABSTAIN: None

Chair T. Miller indicated that report does not have to only include the opinion of the majority.

City Attorney Woodruff asked for clarification regarding the motion as indicated above. Committee Member A. Miller confirmed and clarified that the report should be changed to indicate that is was approved by a 3 to 2 vote.

Discussion ensued regarding the Brown Act and providing opportunity for members of the public to speak on agenda and non-agenda items.

Public Speaker: Nic Arzio, El Cerrito, expressed his concern particularly regarding the voting of new Committee members. He understood that Committee members are required to attend meetings regularly before being appointed to a committee. Mr. Arzio questioned whether Committee Member Kelly can vote because he may have potentially been incorrectly appointed by the Council and because of Brown Act concerns regarding public meeting. He encouraged Committee Member Kelly to abstain from voting on this item because he may not have had an opportunity to digest all the information regarding the item since his appointment. Mr. Arzio expressed concern about the translation of the ballot measure language into the Ordinance, Chapter 4.60.150 which includes many items including any such item that the City Council deems necessary. He indicates that this part of the Ordinance could be source of contention. He concluded that the language of the Ordinance that creates the Citizens Streets Oversight Committee seems to be contradictory regarding the role of the Committee and these items should be addressed as soon as possible.

2. Comments from the Public (on non-agenda items)

Public Speakers: Nic Arzio, El Cerrito, inquired as to whether the title of an item on an Agenda needs to specify the action being requested of the Committee. He provided Item 5 on the Agenda as an example. Chair T. Miller answered that the title is generally descriptive of the item and what governs is the description beneath the title. Committee Member A. Miller generally agreed that this is the case.

Bruce Yow, El Cerrito, indicated he would like to understand the concerns of Committee members as they relate to the appropriate use of Measure A funds. He also expressed an interest in serving on the Committee in the future and indicated he understood that he had to attend at least three meetings before being eligible for consideration.

3. Approval of Minutes

Several Committee members indicated that the meeting minutes were long. Liaison Ortiz indicated that future summary minutes would be more concise. Committee Member A. Miller indicated that on Page 3-6, Paragraph 5, Line 6, the sentence beginning “Lynne Kessler asks if City the City Council . . .” should be corrected to read “Lynne Kessler asks if the City Council . . .”

Committee Member A. Miller indicated that on Page 3-8, Paragraph 3, the second to last sentence should include “approved” or something similar after “conform to what Council”. Also, the “is” before “does” should be deleted in the last sentence.

Action taken: Moved and seconded (Kessler/A. Miller) to approve minutes as corrected.

AYES: Chair T. Miller, Vice Chair Kessler, Committee Members A. Miller and Ozselcuk

NOES: None

ABSTAIN: Committee Member Kelly

Public Speaker: Nic Arzio, El Cerrito, asked the Committee to reconsider Item 5 since public comment was taken after the Committee’s vote. Committee members discussed whether this was necessary.

Sky Woodruff, City Attorney, indicated that a member of the Committee would have to make a motion to reconsider Item 5 and clarified that the Brown Act does not require that public comment precede a decision making body’s vote but requires that the public be heard on an item. Committee Member Kelly indicated it was generally best practice to allow the public to comment before a vote was taken.

4. Discussion of Permissible Uses of Measure A Funds and Role of the Committee

Chair T. Miller indicated that he wrote a letter asking for specific items to be on the Committee Agenda and was displeased that the City Attorney had concluded that some items would not be on the Agenda. Committee Member A. Miller indicated that he understood the City Attorney to mean that items within the purview of Committee would appear on the agenda while those not within the purview of the Committee would not appear on the agenda. Committee Member A. Miller indicated that the Committee should not waste time on items over which it has no authority. Chair T. Miller disagrees

and indicates that as long as the public is notified about an item through posting of the agenda, then anything any Committee member thinks is worth considering should be put on agenda. Committee member Kelly inquired as to what “anything” actually meant. Chair T. Miller responded that anything is any item of significance to any member of the Committee. Discussion continued as to what items should be on agenda as it relates to role of the Committee.

Chair T. Miller indicated that he cares a lot about Measure A, was involved since its inception, and feels the Committee has been insulted. He indicated that the Committee functioned well for several years until September 2013 when Committee members became aware of a diversion of funds that had not been previously communicated by staff to the Committee. Of specific concern, was the \$100,000 for a traffic management project. Vice Chair Kessler indicated she was particularly troubled that the Committee was not kept up-to-date about funds being diverted to other such projects. She indicated that the transfer of funds had been recommended by staff to City Council and Council had approved, but that the Committee was not informed in a timely manner.

Chair T. Miller asked Committee Member Kelly to elaborate on his interest in joining the Committee. Committee Member Kelly communicated his understanding of Measure A and the quality of the work completed to date. He indicated that he understood Measure A was intended for street paving as well as sidewalks, crosswalks, and other items related to the streets. Chair T. Miller indicated he agreed that Measure A includes signage, markings, ramps, and other items related to quality of streets, but disagrees with its use for traffic management. Chair T. Miller indicated Measure A should not be used for radar devices and traffic calming as these items should be handled by Police enforcement activities.

Chair T. Miller indicated that based on the ballot language the Committee’s role should at least include providing opinion regarding appropriate expenditure of Measure A funds. He indicated that the streets were so terrible, voters would do almost anything to get the streets fixed and therefore no one questioned limited authority of the Committee. He indicated that the Committee as formed has no useful function and is powerless other than to rubber stamp City Council actions. He indicated that the issue is not legality, but rather what is right and that he knows what the voters voted for and they are not getting it.

Committee Member A. Miller indicated he does not agree that the Committee is powerless and any resident of the City that feels that way should go to City Council. Committee Member A. Miller indicated that the role of the Committee is to review expenditures to ensure they comply with the Measure A Expenditure Plan approved by City Council. Committee Member A. Miller indicated that Chair T. Miller’s concerns could not be resolved within the Committee given the role of the Committee.

Committee Member Kelly indicated that he would appreciate staff informing the Committee when funds are being requested for other projects. Committee Member Ozselcuk indicated that this is more an issue of timing given that, when the Committee meets, it looks at what has been already been spent. She also indicated that the Committee would benefit from being given a heads-up regarding projects approved by Council. Vice Chair Kessler indicated that the Committee needs clarity on approved projects.

Chair T. Miller asked how the Committee should report things to City Council and indicated that he believed that at the last meeting he had asked Committee members to submit ideas in writing on how to deal with the division within the Committee. Committee Member A. Miller indicated he chose not to do it, because while he recognizes there is a difference of opinion between members of the Committee, he does not believe it is within the purview of the Committee to take action on this subject matter so he did not recommend an action. He also indicated that instead his recommended action is that anyone who disagrees with City Council decisions should directly address the City Council. Chair T. Miller distributed written suggestions for a report to City Council (attached). Committee Member A. Miller indicated he cannot support the suggestion due to Item 3b. Chair T. Miller indicated he would like to submit as a minority report. Committee Member A. Miller indicated that whatever the Committee decides to do, he would support. Vice Chair Kessler indicated she has decided she cannot fight City Hall. She indicated that she thinks the City has done a beautiful job of paving streets and the projects to which funds were transferred are good projects, but she is just not sure voters were aware that Measure A funds would be used for those type of projects and is concerned that funds would be depleted in 15 years and another bond or parcel tax would be needed because there would be insufficient funds for street paving.

Public Speakers: Nic Arzio, El Cerrito, inquired what Measure A funds were spent on. He indicated that the Committee is supposed to make sure that Measure A funds are spent on the items that appear on a certain plan and he is looking for that plan. Liaison Ortiz commented that the plan is the Expenditure Plan, which is approved as part of annual budget and is amended by subsequent City Council actions. He inquired as to whether radar/lidar guns appeared in the plan. Liaison Ortiz indicated that the traffic management project was amended into the plan by City Council approval subsequent to the annual budget. Liaison Ortiz also clarified that the devices are not hand-held guns but rather post-mounted speed feedback signs. Mr. Arzio indicated it is not clear that such new signs can be purchased using Measure A funds except for the open-ended clause regarding other improvements deemed by the City Council to best serve the public. He indicated that because there does not appear to be a check on that clause, City Council could do almost anything and there is no end to how far they can go and this reinforces the need for Committee to oversee the action of City Council. He further indicates that the Measure A language does not allow the Committee to do that and that the language only allows the Committee to oversee that City Council wishes are carried out. Mr. Arzio indicated that the set-up of the Committee is seriously wrong. He indicated that luckily Measure A funds have been used for good things, paved streets, and it has been done right, up to point of the radar/lidar project. Committee Member Kelly indicated that there could potentially be some benefit to pavement from reducing speeds of trucks. Mr. Arzio indicated that Measure A should not be used to supplant funds that are available for speed feedback signs. Vice Chair Kessler indicated that a certain a percent, some 30%, of streets still need to be paved. Liaison Ortiz indicated that the accelerated program completed in the first few years surpassed the goal of reaching a Pavement Condition Index (PCI) of 70 by achieving a PCI of 80. Liaison Ortiz indicated that there are streets that need to be repaved and the City is leveraging grant funds to support Measure A funds to resurface some of the streets that need to be reconstructed.

Bruce Yow, El Cerrito, indicated that the City should not supplant other funds with Measure A funds. He is concerned that maybe there is excess Measure A funds so ideas started formulating. He indicated he does not remember and does not believe that the detailed wording of the Measure A Ordinance was provided as part of the mail-in ballot.

Ann O., El Cerrito, indicated she is a 15-year resident and mostly involved with City on environmental issues. She indicated that she came to this via Edward Snowden because of her concern for lack of oversight of the National Patriot Act and NSA. She indicated “oversight” is the crucial word and she is disillusioned that the Committee is not charged with decision making regarding priorities, schedules, details, and funding sources. She indicated that although this likely perfectly legal, it is not the highest standard of democratic involvement She indicated she was sorry the Committee does not have more input into what is decided.

The Committee discussed whether any actions were required under this item although not requested by staff. There was discussion as to whether the annual report had already been approved. Committee Member A. Miller indicated that it was his opinion that the required annual report was already approved under Item 5 with a modification indicating a 3-2 vote. City Attorney Woodruff confirmed. Chair T. Miller indicated that the last sentence of draft report says that the Committee agrees that expenditures were spent in conformance with Measure A and not annual Expenditure Plan and so should not be included based on prior discussion that this was not within the purview of the Committee. Chair T. Miller indicated he will not present the annual report to Council. Committee Member A. Miller recommended that the Committee remove Chair T. Miller’s name from the report, and that the report list “Ayes” and “Noes” and set the stage for Chair T. Miller to present the report. Vice Chair Kessler agreed that this was a good idea. Chair T. Miller indicated he would present the report to City Council.

Committee Member Ozelcuk, reported she was not feeling well and left the meeting at 9:15 p.m.

Action taken: Moved and seconded (Kessler/Kelly) to conclude Item 4.

AYES: Chair T. Miller, Vice Chair Kessler, Committee Members A. Miller and Kelly

NOES: None

ABSENT: Committee Member Ozelcuk

6. Staff Liaison Report

Liaison Ortiz indicated that the Agenda Packet includes quick facts about meeting attendance. She indicated that the staff liaison is required to submit an attendance report to the City Clerk at the end of year. The attendance will be based on the Roll Call at each meeting.

Public Speaker: Nic Arzio, El Cerrito, made note that the quick facts about absences indicates that members who are absent for three consecutive regularly scheduled meetings without cause are presumed to have resigned. He indicated that he understands this to be related to the requirement that members of the public must attend three meetings before being appointed to a committee, board or commission of the City as he had not been appointed to one of these because he had not attended three meetings. He expressed concern that Committee Member Kelly was making a determining vote and had not attended three meetings of the Committee and that the Committee had not made a recommendation to Council regarding his appointment. Liaison Ortiz indicated that City Council appointed Committee Member Kelly and she is relying on that appointment as confirmation that he is eligible to vote. Chair T. Miller indicated that he has not previously heard of the three-meeting

requirement. Vice Chair Kessler indicated that the Committee only has three meetings in a year. City Attorney Woodruff indicated that the three-meeting rule is not a requirement for this Committee.

7. Future Agenda Items and Meeting Schedule

Liaison Ortiz indicates that the next regular meeting is scheduled for Monday, September 22, 2014.

Public Speaker: Nic Arzio, El Cerrito, requested that a special meeting be scheduled as soon as possible so the public can review the minutes from the meeting and be informed regarding the concerns of two of the Committee members. Chair T. Miller indicated he shares the viewpoint because the Committee meets only two to three times a year and a lot can transpire during that time. He indicated that this previously worked well until September 2013 and suggested that the Committee meet every 60 days in order to stay informed. Committee Member A. Miller mentioned a potential meeting date in June and July. Potential agenda items were discussed including regular standing items, a supplemental report to City Council and a Staff Liaison update on projects approved by City Council. Committee Member Kessler asked if information regarding projects approved by Council is available to the public. Liaison Ortiz indicated that project approved as part of the annual budget are available on the website and that mid-year approvals are available on the City Council Resolution archive, also on the City website. Committee Member A. Miller informed Vice Chair Kessler that the budget is a complicated document and she might want to ask questions of staff. Committee Member A. Miller indicated it would be great for staff to provide a listing of all projects/expenditures approved by City Council. Committee Member A. Miller also indicated that he recommended to Mayor Lyman that a “whereas” clause regarding Measure A be included in future resolutions that involved expenditure of Measure A funds. Liaison Ortiz indicated she will reach out to Committee members to set up the next meeting.

Chair T. Miller indicated that he will compose a report to City Council summarizing majority and minority opinion. City Attorney Woodruff indicated that the report approved under Item 5 is compliant with the Committee's role as assigned by Measure A. Committee Member A. Miller suggested the Chair's report be a supplemental report trying to explain the differences in opinion in the Committee. City Attorney Woodruff indicated that given agenda item under discussion, by majority vote, the Committee could add a supplemental report on the next Agenda.

No date was confirmed nor motions made on this item.

8. Adjournment

Adjourned at approximately 10:05 pm.

Action taken: Moved and seconded (Kessler/T Miller) to adjourn.

AYES: Chair T. Miller, Vice Chair Kessler, Committee Members A. Miller and Kelly

NOES: None

ABSENT: Committee Member Ozselcuk