

**RICHMOND, CALIFORNIA, November 18, 2008**

The Regular Meeting of the Richmond City Council was called to order at 5:22 p.m. by Mayor Gayle McLaughlin.

**ROLL CALL**

**Present:** Councilmembers Bates, Butt, Lopez, Rogers, Sandhu, Thurmond, Viramontes, and Mayor McLaughlin.  
**Absent:** Vice Mayor Marquez (due to illness), Councilmembers Thurmond and Viramontes (Councilmember Viramontes arrived at 5:23 p.m.).

**PUBLIC COMMENT**

The city clerk announced that the purpose of the Open Session was for the City Council to hear public comments on the following items to be discussed in Closed Session:

**CITY COUNCIL**

**LIABILITY CLAIMS - PENDING LITIGATION (Government Code Section 54956.9):** Penny Turner vs. City of Richmond

**CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION (Subdivision [a] of Government Code Section 54956.9):** Nishioka vs. City of Richmond

**CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION (Initiation of litigation pursuant to Subdivision (c) of Government Code Section 54956.9):** Two Cases

**REDEVELOPMENT AGENCY**

**CONFERENCE WITH REAL PROPERTY NEGOTIATOR (Government Code Section 54956.8):** Property: APN: 513-321-002 South 47th Street and Florida Avenue; Agency Negotiator: Steve Duran, Richmond Community Redevelopment Agency Negotiating Parties: Richmond Community Redevelopment Agency and the Carey 1985 Trust; Negotiation: Price and Terms of Payment

There were no public speakers.

The Open Session adjourned to Closed Session at 5:24 p.m. The Closed Session adjourned at 6:09 p.m. The Regular Meeting of the City Council was reconvened at 6:13 p.m. by Mayor Gayle McLaughlin for a Study Session.

The City Council received overview of the Honda port of entry project including operations, logistics, environmental issues, financing of capital improvements, local employment impacts, and financial impacts. Port Director Jim Matzorkis, Legal Counsel John Knox, and Finance Director Jim Goins gave a presentation which included PowerPoint presentation. Other speakers were John Gibson, Fred Arm, and Robert Lane.

The Study Session adjourned at 7:48 p.m. and the City Council was reconvened at 7:54 p.m.

## **ROLL CALL**

**Present:** Councilmembers Butt, Bates, Lopez, Rogers, Sandhu, Viramontes, and Mayor McLaughlin. **Absent:** Councilmember Thurmond and Vice Mayor Marquez (Councilmember Thurmond arrived at 7:55 p.m.).

## **STATEMENT OF CONFLICT OF INTEREST**

None.

## **AGENDA REVIEW**

Removed Items F-2 and F-8 from the Consent Calendar.

Mayor McLaughlin declared November 18, 2008, as Steve B. Sack's Day.

Moved Open Forum for Public Comment directly after approval of the Consent Calendar.

## **PRESENTATIONS, PROCLAMATIONS, AND COMMENDATIONS**

None.

## **REPORT FROM THE CITY ATTORNEY OF FINAL DECISIONS MADE AND NON-CONFIDENTIAL DISCUSSIONS HELD DURING CLOSED SESSION**

City Attorney, Randy Riddle, reported the following:

### **CITY COUNCIL**

**LIABILITY CLAIMS - PENDING LITIGATION (Government Code Section 54956.9):** Penny Turner vs. City of Richmond – *No reportable action.*

**CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION (Subdivision [a] of Government Code Section 54956.9):** Nishioka vs. City of Richmond – *No reportable action.*

**CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION (Initiation of litigation pursuant to Subdivision (c) of Government Code Section 54956.9):** Two Cases – *No reportable action.*

### **REDEVELOPMENT AGENCY**

**CONFERENCE WITH REAL PROPERTY NEGOTIATOR (Government Code Section 54956.8):** Property: APN: 513-321-002 South 47th Street and Florida Avenue; Agency Negotiator: Steve Duran, Richmond Community Redevelopment Agency Negotiating Parties: Richmond Community Redevelopment Agency and the Carey 1985 Trust; Negotiation: Price and Terms of Payment – *No reportable action.*

## CONSENT CALENDAR

On motion of Councilmember Viramontes, seconded by Councilmember Sandhu, all items marked with an asterisk (\*) were approved by the unanimous vote of the Council.

\*-Adopted **Resolution No. 126-08** authorizing staff to apply for \$100,000 in State of California Transportation Development Act (TDA) Article 3 Funds through Contra Costa County for the purpose of developing a citywide Master Bicycle Plan.

A proposal to approve the installation of three speed-control undulations on Hartnett Avenue and two on Chanslor Avenue near Fifth Street, using existing approved contract funds was presented. Edward Quan gave an overview of the item. *The item continued to November 25, 2008.*

\*-Approved contract amendment #1 with Willdan Financial Services (formerly MuniFinancial), increasing the payment limit by \$6,500 to a new total limit of \$12,772 and extending the term of the contract to December 31, 2009, for assessment engineering services associated with preparation of the 2009-10 Engineer's Report for the Hilltop Landscape Maintenance Assessment District.

\*-Approved a second amendment to the contract with Vallier Design Associates, Inc. for work on the Nicholl Park Master Plan, amending the scope of services, increasing the payment limit by \$10,000 to a new total limit of \$59,000, and extending the term of the contract to June 30, 2009.

\*-Adopted **Ordinance No. 25-08 N.S.** amending Subsection 9.22.090 (3)(B) of the Richmond Municipal Code that specifies public nuisances relating to maintenance of property.

\*-Adopted **Ordinance No. 26-08 N.S.** amending Richmond Municipal Code Chapter 6.38 to provide enhanced enforcement power over unmaintained vacant property.

\*-Approved a contract with Gary Douppnik Manufacturing for delivery and installation of an ADA-compliant modular classroom and restroom trailer at the Fire Training Center in an amount not to exceed \$90,000.

A proposal to approve a contract in the amount of \$175,000 with the law firm of Shute, Mihaly and Weinberger LLP for representation of the City of Richmond in the action entitled Communities for a Better Environment vs. City of Richmond was presented. City Attorney Randy Riddle gave an overview of the item. A motion was made by Councilmember Viramontes, seconded by Councilmember Rogers to continue this item to November 25, 2008. A substitute motion was made by Councilmember Butt, seconded by Mayor McLaughlin to search for a new lawyer. The city attorney ruled that the City Council could not act on the substitute motion because it was not on the agenda. *Continued the item to November 25, 2008.*

\*-Adopted **Resolution No. 127-08** to approve the request for an extension of unspent encumbered funds for the Dornan

Drive Tunnel Repair and Rehabilitation project (Federal-Aid Project No. IBRL02-5137(029) and the Filbert and Kelsey Streets Improvement project (Federal-Aid Project No. STPLER-5137(026)) and authorized the city engineer to sign the Cooperative Work Agreement Extension Request on behalf of the City Council.

\*Adopted **Resolution No. 128-08** approving a 3% annual cost-of-living increase, in addition to the 2% minimum cost-of-living increase, for the recipients of the General Pension Fund, for a total annual cost-of-living increase of 5% for these recipients.

\*-Approved the following appointments: Youth Baseball Advisory Commission: Pamila Henderson, term expires November 16, 2011 (completing the unexpired term of Antoinette Lawrence); Housing Advisory Commission: Arnie Kasendorf, term expires November 1, 2010.

\*-Approved the minutes of the meetings held on October 21 and 28, 2008.

**OPEN FORUM FOR PUBLIC COMMENT was moved directly after the approval of the Consent Calendar.**

Dr. Jeff Ritterman thanked everyone for their support during the election. He stated that he is Proud to serve the City of Richmond and is looking forward to being on the Council.

Simms Thompson Jr. stated that the changes made in the City of Richmond have not been made in the best interest of the citizens of Richmond. He stated there is nothing popular for the citizen's safe enjoyment particularly seniors. He also stated that environmental studies need to be done.

Jackie Thompson thanked the Richmond Police Department for their support in regulating the traffic on 37<sup>th</sup> Avenue and Stege Street. She also requested the support of the Police Department for traffic issues on 37<sup>th</sup> Avenue and Cutting Boulevard. A loading zone is needed because people are blocking the handicapped parking.

James Madsen sincerely apologized to neighbors for the noise his company was responsible for at the Marina Crane Way.

Naomi Williams stated her disappointment with Councilmember Butt for comments he made.

Larry Lewis invited everyone to attend the sneak preview of the Richmond Police Activities League's Open House scheduled for Thursday, November 20, 2008, from 4 to 6 p.m. He thanked the Board of Directors, City Manager Bill Lindsay, Police Chief Chris Magnus, Parks Superintendent Anthony Norris, Councilmember Tony Thurmond, and everyone that contributed to the team effort.

## **PUBLIC HEARINGS**

The city clerk announced this was the time set, pursuant to published notice, to conduct a public hearing to consider an appeal by Fred Arm from the Design Review Board's (DRB)

approval of the certification of an Environmental Impact Report (EIR) and Design Review Permit for the Honda Port of Entry Project at Point Potrero and affirm, modify, or deny the certification of the EIR with Statement of Overriding Consideration and accompanying Mitigation Monitoring Reporting Program and affirm, modify, or deny the Design Review Permit, subject to conditions. Planning Director Richard Mitchell gave an overview of the item. Mayor McLaughlin declared the public hearing open. Fred Arm and Legal Counsel Bradley Brownlow spoke as the appellants. Mr. Brownlow submitted, for the record, a detailed list of concerns with the status of the current Environmental Impact Report (EIR). On motion of Councilmember Bates, seconded by Councilmember Lopez accepted into the record the detailed list of concerns regarding the EIR submitted by the appellant by the unanimous vote of the Council. Jim Matzorkis and Bill Robbins spoke as the major opponents. Speakers from the audience were: Katrinka Ruk, Robert Lane, Anthony J. Craig, Jim Dewitt, Eva Craig, A William Bodle, Jack Bryant, Harold Brinkley, Allison Bryant, Douglas Kidder, Bruce Beyaert, Lee Jones, Larry Magid, Bobbi Scott Hlebek, Amon Rappaport, Ric Borjes, Michael Davenport, Jerome Smith, Corky Booze, Theresa Wilkerson, Sherry Padgett, and Kate Spaulding. Bradley Brownlow gave a rebuttal on behalf of the appellant. Port Director Jim Matzorkis and Bill Robbins gave a rebuttal as the major opponents. On motion of Councilmember Bates, seconded by Councilmember Viramontes closed the public hearing by the unanimous vote of the Council. Discussion began. Councilmember Butt stated that an agreement had been reached on the last two issues regarding grade crossings and emissions. Mr. Matzorkis read the new mitigations conditions as follows: "The project shall not undertake switching operations that block traffic on Canal, West Cutting, and Garrard Boulevards. Project operations shall occur primarily between 7:00 p.m. and 4:00 a.m. Grade crossing blockages associated with the project shall be in the 1.5 to 6 minute range and in no case shall the project create blockages that violate CPUC Rule 135. The city shall be responsible for installing an automated monitoring system that automatically records grade crossing blockages on Canal, West Cutting, and Garrard Boulevards and that information shall be made available to the public on a monthly basis. Any grade crossing blockages in excess of 10 minutes that violate CPUC Rule 135 shall be prosecuted by the City." Jim Matzorkis read the following language regarding emissions: "Following implementation of carb regulation for fuel sulfur for ocean-going vessels in 2009 and 2010 the emissions of NOX and PM<sub>10</sub> including those from this project shall be lower in Richmond than in current base line and the health risk assessment shall indicate a lower risk than which currently exist. Calculations shall be provided to show how this conclusion could be reached and such calculation shall be incorporated in the Design Review Permit". Mr. Matzorkis stated the calculations could be provided within 30 days. City Attorney verified that Mr. Matzorkis read conditions to the permit not mitigation. Councilmember Viramontes requested that the record reflect that the agreement was reached with Councilmember Butt outside of the Council Meeting. Following discussion a motion was made by Councilmember Bates, seconded by Councilmember Viramontes to deny the appeal and affirm the DRB's decision. A friendly amendment was offered by Councilmember Butt to adopt the five amended conditions of approval that the applicant has agreed to which includes: train noise, grade crossing

blockages, solar electricity generation, historic resources parking, and emissions. Also modify finding 11 to reflect the latest projections provided by the Finance Director Jim Goins. The amendment was not accepted. A substitute motion was made by Councilmember Butt, seconded by Councilmember Thurmond to deny the appeal and certify the EIR with the change in finding 11 and adopt the five amended conditions of approval that the applicant has agreed to which includes: train noise, grade crossing blockages, solar electricity generation, historic resources parking, and emissions. A second substitute motion was made by Councilmember Viramontes, seconded by Councilmember Butt to deny the appeal and approve the staff recommendations and conditions of approval that the applicant has agreed to, modify finding 11 to reflect the latest projections provided by Finance Director Jim Goins. Discussion ensued and a friendly amendment was offered by Councilmember Bates to direct staff to evaluate for two years noise impacts and also to work with the railroads to eliminate horn noise. The amendment was accepted. The second substitute motion passed by the following vote: **Ayes:** Councilmembers Bates, Butt, Lopez, Rogers, Sandhu, Thurmond, and Viramontes. **Noes:** Mayor McLaughlin. **Abstention:** None. **Absent:** Vice Mayor Marquez.

The City Council adjourned at 11:38 p.m. and reconvened at 12:17 a.m.

#### **RESOLUTIONS**

None.

#### **ORDINANCES**

A proposed ordinance amending and restating Ordinance No. 1-99 N.S., creating a special fund and authorizing the City to pledge and assign net revenues from Port operations into the special fund as security for Port related debt obligations was presented. Finance Director Jim Goins gave an overview of this item. On motion of Councilmember Butt, seconded by Councilmember Viramontes said ordinance received first reading and was held over two weeks for second reading by the unanimous vote of the Council.

#### **COUNCIL AS A WHOLE**

In the matter to Direct staff to: (1) schedule a City Council study session with Jim Sandoval, California Climate Change Working group member; and (2) research the feasibility of a Sustainable Economic Zone and Incentives for the City of Richmond. Councilmember Viramontes gave an overview of the item. On motion of Councilmember Viramontes, seconded by Councilmember Sandhu approved the item by the unanimous vote of the Council.

#### **REPORTS OF OFFICERS: STANDING COMMITTEE REPORTS, REFERRALS TO STAFF, AND GENERAL REPORTS (INCLUDING AB 1234 REPORTS)**

Councilmember Rogers reported that he met with Principal Tom Cody with Gerding Elden Development on November 10, 2008, in Portland, Oregon, to discuss innovative

Smart Growth opportunities in Richmond. Mr. Cody agreed to come to Richmond in January to look at possible sites.

Councilmember Sandhu reported that attended the National League of Cities congress of Cities and Exposition in Orlando, Florida, November 11 to 15, 2008.

**ADJOURNMENT**

There being no further business, the meeting adjourned at 12:38 a.m. in memory of Eddie Harris, Marvin C. Ware, Shawna Griffin, Joe Swisher, Albert E. Silva, Joe Mitchell, Adolph Broussard, and Dr. Betty Hendricks, to meet again on Tuesday, November 25, 2008, at 7:00 p.m.

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City Clerk

(SEAL)

Approved:

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Mayor